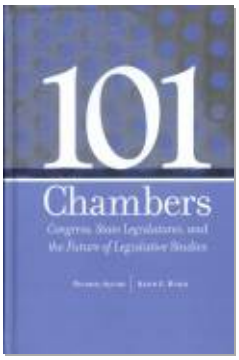
2. Fundamental Structures



.2.

Fundamental Structures

Questions about institutional design occupy a central place in the study of the evolution of legislative organizations (Shepsle and Weingast 1994). Before looking at structures or rules and procedures in American legislatures, however, we must first examine what Buchanan and Tullock (1962, 210) referred to as "the fundamental organization of activity." From our perspective, fundamental organization involves matters of constitutional design, including separation of powers, number of houses, membership size, constituency size, term of office, and qualifications for membership. How does the fundamental organization of activities vary across American legislatures?

In the preceding chapter we established that current American legislatures share common roots: that colonial legislatures morphed into state legislatures, which in turn were the models for the Congress created by the Constitution. But, since the late eighteenth century, American legislatures have evolved in many different ways. In this chapter we begin to examine those differences by looking at the fundamental organization of activities across legislatures and over time.

Constitutional Dictates

As shown in chapter 1, Congress and state legislatures are all constitutionally created and grounded institutions. That is, their basic forms and rules—relationships among branches, number of houses, number of members, terms of office, and qualifications for office—are established in constitutions. But there are significant differences between Congress and the state legislatures in the instructions their constitutions impart. As congressional scholars well know, the U.S. Constitution provides remarkably few structural directives to Congress. In contrast, state constitutions usually provide much more direction to their legislatures,

thereby giving the institutions much less flexibility. Moreover, in those states that allow for direct constitutional initiatives, voters influence legislative organization and behavior in ways they cannot influence Congress.

There are, of course, significant similarities between the U.S. Constitution and state constitutions in regard to the structures and rules imposed on their legislatures. Compare, for example, the following provisions from the U.S Constitution and the most recent state constitutions, those adopted since 1950:

> "Each House may determine the Rules of its Proceedings." (1787 U.S. Constitution, Article 1, section 5)

> "Each house shall choose its own officers, determine the rules of its proceedings and keep a journal." (1950 Hawaii Constitution, Article 3, Section 12)

> "The houses of each legislature shall adopt uniform rules of procedure." (1956 Alaska Constitution, Article 2, section 12)

> "Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings." (1963 Michigan Constitution, Article 4, section 16)

> "Each house shall determine the rules of its own proceedings." (1965 Connecticut Constitution, Article Third, section 13)

> "Each house shall determine its rules of procedure." (1968 Florida Constitution, Article 3, section 4(a))

> "Each house shall determine the rules of its proceedings." (1970 Illinois Constitution, Article 4, section 6(d))

> "Each house shall select its officers and settle its rules of procedure." (1970 Virginia Constitution, Article 4, section 7)

> "Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings." (1972 Montana Constitution, Article 5, section 10(1))

> "Each house shall be the judge of the qualifications and elections of its members; shall determine its rules of procedure, not inconsistent with the provisions of this constitution." (1974 Louisiana Constitution, Article 3, section 7(a))

A phrase granting the legislature the right to establish its own rules and procedures appears in every state constitution, save for North Carolina's (Erickson

2001). Such similarities are unsurprising because, of course, as tables 1–4 and 1–5 demonstrated, early state constitutions influenced the federal constitution. And, of course, later state constitutions often lifted concepts and language from both the federal constitution and other state constitutions.[1] But, while there are similarities between the U.S. Constitution and state constitutions, there also are stark differences.

The U.S. Congress has operated under the same constitution since 1789, with only the Seventeenth Amendment substantially changing the initial set of rules governing it. In contrast, most states have had more than one constitution—Louisiana is on its eleventh—and most states have amended their constitutions more often—Alabama has amended its 1901 constitution more than 700 times. Thus, at the state level, there have been many more opportunities to change legislative rules, chances taken up by generations of reformers. Particularly in the second half of the nineteenth century, state constitutions came to place significant limitations on state legislatures, in response to perceived and real abuses of legislative power (Barnett 1915, 457; Bryce 1906, 319; Friedman 1973, 303–314).[2] According to one study (Abernathy 1959, 15), "Between 1864 and 1880, thirty-five new constitutions were adopted in nineteen states. Distrust of the legislature was the predominant characteristic of all of them." The writers of Mississippi's 1890 constitution included 24 sections that placed limitations on the lawmaking powers of the legislature; 15 of those limits had not appeared in earlier constitutions (Fortenberry and Hobbs 1967, 83–84). Writing at the end of the era when significant restrictions were regularly imposed, Ostrogorski (1910, 359) observed of state legislatures more generally,

> Their improvement being considered hopeless, attempts were made . . . to limit their powers, to leave them as few opportunities of legislating as possible. With this object the reformers tried to insert in the constitutions—which the ordinary legislatures have not the right to touch—as many general provisions as possible, so much so that the most recent constitutions, made very voluminous, contain many clauses which do not fall within the scope of constitutional law, properly so called, at all, but relate to private, to administrative law.

It is important to note that, even though the intense period of constraints being placed on state legislatures ended around the beginning of the twentieth century, anti-legislative feelings permeated state constitution-making over a much longer period. In the middle of the twentieth century, for example, one constitutional scholar observed (Powell 1948, 370),

> each of Louisiana's nine conventions since 1812, except that of 1861, imposed new policy mandates and additional restrictions upon the legislature. Distrust of legislative discretion has been traditional. The political majority dominant in each

> convention, whether composed of Whigs, Democrats, or Republicans, has sought to fix permanently in the Constitution its own notions of needful public policies, hoping in this way to make them secure against both legislative inertia and the changing tides of political sentiment that wash up periodically in the legislature.

In general, the rules placed on state legislatures by state constitutions are far more detailed and restrictive than those placed on the U.S. Congress by the federal Constitution. Bryce (1906, 340–41) identified ten different sorts of constitutional restrictions on state legislative procedures at the beginning of the twentieth century.[3] Take, for example, Article 4, section 62 of the 1901 (and still current) Alabama constitution, which states, "No bill shall become a law until it shall have been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom, which facts shall affirmatively appear upon the journal of each house." The same steps are required of the Mississippi state legislature by Article 4, section 74 of that state's constitution: "No bill shall become a law until it shall have been referred to a committee of each house and returned therefrom with a recommendation in writing." Thus, unlike the U.S. House and Senate, where committees and referral procedures are the creations of rules promulgated by their own memberships, in Alabama and Mississippi the existence of committees and the procedures involving them are given constitutional status.

This highlights a fundamental difference between the rules under which the U.S. House and Senate operate and the rules under which most state legislatures operate. Almost all congressional rules are endogenously generated. They represent choices made over time by members of each house. In contrast, many state legislative rules are exogenous because they are imposed from outside, either by those who wrote the constitution or by voters who passed amendments to the constitution. The latter, a force that cannot directly dictate congressional rules and structures, can have a dramatic impact on state legislative rules and structures (Rosenthal 1996, 191–92). In 1988, for example, Colorado voters passed the GAVEL (Give a Vote to Every Legislator) amendment. GAVEL required every bill referred to a committee to be brought up for a committee vote, thereby negating a chair's traditional prerogative to kill legislation by failing to put it on the agenda, that all bills reported by committee go to the floor, thereby removing the Rules Committee's source of power (and leading to its abolition), and prohibited party caucuses from taking binding votes, thereby reducing the power of parties and party leaders (Rosenthal 1996, 191; Straayer 2000, 88, 109, 231).[4]

What difference does all of this make to the study of legislative institutions? It matters because who writes the rules shapes the evolution of legislative procedures and organizational structures in important ways. According to Cox (2000, 170–71), exogenously generated rules are stable. They are unlikely to change

much over time because to alter them is difficult and requires the consent of actors outside the legislative chamber. In contrast, a legislative majority can manipulate endogenously generated chamber rules to suit their own purposes. Constitutionally stipulated rules may be stable even though they result in the adoption of nonmedian policy outcomes, a situation that would likely be avoided where legislative rules can be determined by a majority of the legislature. This raises the possibility that differences between legislative bodies in policy outcomes may be rooted not just in different distributions of partisan or policy preferences, but also in who gets to write the basic set of rules under which decisions are made.

Separation of Powers

One of the enduring precepts of American government is the separation of powers, most notably as manifested in the U.S. Constitution. The existence of three distinct branches of government, each with its own sphere of influence, is accepted as a common feature of both the national and state governments. But in many crucial regards, the separation of powers is not a dichotomous variable, with a political system either having it or not. Instead, separation of powers is a complex concept, with different governments enjoying different degrees of separation. Neustadt (1990, 29) even talks of American government as having "separate institutions *sharing* power."

The notion of discrete executive, legislative, and judicial entities surfaced during the initial round of American constitution writing in 1776 and 1777. Explicit references to separation of powers were given in half of the new state constitutions (Holcombe 1931, 51). In most of the states, however, separation of powers existed more in fancy than in fact (Chambers 1928, 32–33; Wright 1933, 177). Only in New York and Massachusetts was the concept defined with much specificity (Holcombe 1931, 54–56; Wright 1933, 177–78). But even in those two states clear distinctions between the branches were not well drawn. Indeed, in the *Federalist 47,* Madison noted (Madison, Hamilton, and Jay 1961, 303–4), "If we look into the constitutions of the several States we find that, not withstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct."

Instead of creating a separation of powers, the revolutionary constitutions established legislative supremacy (Chambers 1928, 34; Kersh, Mettler, Reeher, and Stonecash 1998, 14–19). In particular, the fact that legislators elected governors and judges clearly gave legislatures the institutional upper hand. Take, for example the situation in Rhode Island, where (Holcombe 1931, 63),

> the supreme court, in the celebrated case of *Trevett v. Weeden,* decided in 1786, refused to enforce a legal tender law devised to compel the circulation of paper money. The legislature, however, being determined to have its will executed, declined to reelect those judges the following year, and filled their places with others more subservient.

The fact of legislative supremacy in the states was the reason many of the men who wrote the Constitution distrusted the state legislatures (Riker 1984, 4–5).

Perhaps not surprisingly, in most states, the era of legislative supremacy did not last long. As early as the 1780s states began to rein in their legislatures, by taking appointment powers away from them and giving greater independence to the judiciary (Dippel 1996, 34–35; Wood 1969, 446–53). This movement against legislative supremacy gained considerable steam during the first half of the nineteenth century (Kersh, Mettler, Reeher, and Stonecash 1998, 21–25). Since the end of the 1800s separation of powers in the American states appear to be much like that at the federal level. But, such similarities may be somewhat superficial, because as Kersh, Mettler, Reeher, and Stonecash (1998, 28) note, "states have developed a dizzying variety of approaches to the doctrine." A cursory glance across the states at gubernatorial veto powers and the means for gaining the bench is all it takes to substantiate the view that separation of powers comes in many different forms and in many different degrees.

Indeed, legislative supremacy can still arguably be found in Rhode Island.[5] Rhode Island's Royal Charter of 1663 placed almost all governmental powers in the hands of the legislature, including the ability to appoint its own members to executive and judicial bodies. When the state finally adopted a constitution in 1842, the framers inserted Article VI, section 10, which holds that "The general assembly shall continue to exercise the powers it has heretofore exercised, unless prohibited in this Constitution." Nothing in the constitution forbids the legislature from appointing members of executive bodies, including appointing themselves. Thus, by recent estimate, the legislature makes more than 300 appointments to 75 executive boards. And of the 300 or so appointees, over 200 are state legislators (Hogarty 1998, 138). Legislators holding these positions can, of course, intimately involve themselves in the affairs of the executive branch.

Separation of powers in the American governmental context is a complex concept. Because of the superficial similarities in governmental structures between the national and state governments it would be easy to assume that governors, state judges, and state legislators interact in the exact same ways that the president, federal judges, and members of Congress do. Given the substantial differences in constitutionally mandated relationships, such assumptions may not be warranted.

Number of Houses

Perhaps the most fundamental question of constitutional design is how many houses a legislature will have. As noted in chapter 1, bicameral legislatures have long been a fixture in the American political system. Bicameral systems are not, in and of themselves, particularly unusual, although they constitute a minority of legislative systems across the democratic world. What is distinctive about American bicameralism from a comparative perspective is the fact that both legislative

TABLE 2–1 Ratio of Upper House to Lower House Members in American Legislatures, 2003

Legislature	Lower House Members per Senator
NM	1.67
CO	1.86
DE	1.95
RI	1.97
AK, AZ, CA, ID, IL, IN, IA, MN, MT, NV, NJ, ND, OR, SD, WA, WY	2.00
HI	2.04
OK	2.10
MS	2.35
NC	2.40
NY	2.42
VA	2.50
UT	2.59
KY	2.63
LA	2.69
SC	2.70
AR	2.86
MI	2.89
WV	2.94
AL, FL, MD, OH, TN, WI	3.00
KS	3.13
GA	3.21
MA	4.00
PA	4.06
CT	4.19
ME	4.31
U.S. Congress	4.35
MO	4.79
TX	4.84
VT	5.00
NH	16.67

houses are powerful. This is true not just of the Congress, but also of the 49 bicameral state legislatures. It is possible then, to use American legislatures to generate hypotheses about the relationship between two powerful houses in a bicameral system that can be tested across a range of different dyads. These dyads differ in several critical respects. One difference is in the rules that dictate sequencing of bill consideration and voting, such as the constitutional provision currently found at the national level and in 20 states that require the lower house to originate all revenue legislation (Medina 1987, 166).[6] And, as discussed in more depth in chapter 4, there are differences in the rules governing how conflicts between two houses are to be resolved, with, for example, several states making little or no use of conference committees (Jewell and Patterson 1986, 170; Rogers 2001).

Another typical contrast between the two chambers in a bicameral system is the difference in membership sizes. This difference in size may affect their relationship, particularly in regard to information differentials. A chamber with far more members than its companion chamber enjoys considerably lower information acquisition costs, thereby conferring advantages on it (Rogers 1998). There also is evidence that disparities in membership size affect legislative productivity, with upper houses that are small in comparison to their lower houses creating substantial legislative bottlenecks (Leibowitz and Tollison 1980, 273).

As shown in table 2–1, the modal ratio between upper and lower house memberships in the states is 1:2, which is found in 16 states. But the ratios range from a low of 1:1.67 in New Mexico to a high of 1:16.7 in New Hampshire. Indeed, four state legislatures have higher ratios than the U.S. Congress. Thus, there is substantial variation of ratios with which to investigate bicameral relationships.

Data on state legislatures could be usefully employed, for example, in testing hypotheses generated by Diermeier and Myerson's (1999) theory on the consequences of bicameralism for the internal organization of legislatures. Diermeier and Myerson theorize that the number of internal veto players—committees and the like with gatekeeping powers—increases with the number of chambers or institutions with a veto power (including the executive) in a political system. Groseclose and King (2001, 195–96) label this the "bicameral rivalry theory," and discern several of its implications. They (Groseclose and King 2001, 196) observe that the theory, "sheds light on the multiple veto points in Congress," pointing to the gatekeeping roles played by committees, committee chairs, individual senators, and the House Rules committee. In contrast, they note that parliamentary systems with few constitutional veto points generally create very few internal veto players (committees and the like). The same argument is extended to unicameral legislatures because they also often have weak committee systems.

From our perspective, comparisons between parliamentary and presidential systems, as Diermeier and Myerson (1999) and Groseclose and King (2001) offer, provide a weak test of the bicameral rivalry theory. Given the fundamental differences in the two sorts of systems, finding different numbers of veto points

is not terribly surprising. A much stiffer test would be comparisons across the 50 bicameral American legislatures, because, of course, they are all presidential systems, thus controlling for an important source of potential cross-national variation. And, importantly for studying the bicameral rivalry theory, the number of potential veto points varies significantly across American legislatures, both cross-sectionally and over time. Take, for example, the executive veto. As noted in chapter 1, governors in most of the original states were not granted any veto power. But, virtually every state admitted to the union from 1812 on granted the governor a veto. Many of the older states, however, did not follow suit for many years (Fairlie 1917, 476–77). Indeed, several waited until the second half of the nineteenth century. And others waited even longer: Ohio until 1902, Rhode Island until 1909, and North Carolina until 1996. Moreover, the actual veto power exercised by the governor varies over time and across states from very powerful to very weak. Currently, for example, most but not all governors enjoy a line-item veto. Even among those with the line-item veto, however, power varies, with 14 governors being allowed to veto selected words in addition to appropriations, and three governors even being allowed to change word meanings (National Association of State Budget Officers 2002, 30–32). Besides gubernatorial veto powers, the powers of committee systems also vary across the states, as do the powers of party caucuses and party leaders (Francis 1985; 1989). Thus the number of gatekeepers varies substantially across state legislatures. The question then is whether they vary in the way that Diermeier and Myerson predict.[7]

State legislatures also provide an opportunity to examine the consequences of unicameralism.[8] As mentioned earlier, among the world's national legislatures more than twice as many are unicameral as bicameral (Tsebelis and Money 1997, 45). But because almost all unicameral legislatures exist in unitary and parliamentary governmental systems, comparison with American legislatures is difficult. But we can easily compare the Nebraska Unicameral to American bicameral legislatures on any of a number of dimensions. And, of course, the earlier American unicameral legislatures in Georgia, Pennsylvania, and Vermont offer similar opportunities for comparison.

Perhaps even more interestingly, we can examine the organizational, behavioral, and policy effects of changing from a bicameral legislature to a unicameral legislature by looking at Nebraska in the 1930s when it made the change. The study of state legislatures also provides examples of the reverse change: unicameral bodies converted into bicameral bodies. The Georgia legislature became bicameral when the state adopted its second constitution in 1789. By and large, the change was motivated by a desire to bring the state into harmony with the bicameral design in the new federal Constitution (Johnson 1938, 32–33). Pennsylvania moved to a two-house system in its 1790 constitution because of considerable unhappiness with the performance of its unicameral legislature (Johnson 1938, 33–37; Main 1967, 210–11; Watts 1936). Support for the uni-

cameral legislature in Vermont, however, continued well into the nineteenth century. Indeed, the unicameral system was maintained in both the state's 1786 and 1793 constitutions (Moran 1895, 54). A bicameral legislature was not adopted until 1836, a change driven in large part by public unhappiness with the unicameral legislature's handling of a disputed gubernatorial election (Moschos and Katsky 1965, 262–63; Johnson 1938, 38–39). Vermont was the last unicameral holdout; during the numerous constitutional conventions in the states in the first half of the nineteenth century there was virtually no support for unicameralism. Bicameralism was strongly supported because it was thought a second house prevented, or at least slowed down, the passage of legislation pressured by the political passions of the moment (Scalia 1999, 107).

Examination of the reasons for and consequences of the switch from one system to the other has been done using case studies of national legislatures that have undergone such a change (Longley and Olson 1991). Almost no work has been done using state legislatures, missing a rich source of data on the most fundamental question of institutional design.[9] Recently, however, Rogers (2003) has examined bill production before and after the shift in cameralism in the American states that have undergone such a change and found that, contrary to theoretical predictions, the switch to bicameralism does not reduce the production of legislation.

Finally, it is worth noting that the American legislative experience raises the possibility that unicameral and bicameral legislatures are not necessarily discrete categories. In Alaska, for example, although delegates to the state constitutional convention backed away from creating a one-house legislature, they incorporated some unicameral features into their bicameral system. Thus, the Alaska constitution requires the two chambers to meet and vote in joint session to consider gubernatorial appointments and gubernatorial veto overrides (McBeath and Morehouse 1994, 121). And three state legislatures—Connecticut, Maine, and Massachusetts—rely almost exclusively on joint committees, a mechanism inducing joint decision making. In practice, joint committees greatly reduce the need for conference committees to reconcile legislative differences between the two chambers (Zeller 1954, 260). With joint sessions and joint committees, the distinction between separate chambers is to some extent blurred.[10]

Membership Size

The importance of membership size as an explanatory variable in legislative studies is often taken for granted, and therefore little explored. Congressional scholars frequently cite the differences in membership size between the U.S. House and Senate to explain differences in their rules and procedures.[11] Davidson and Oleszek (2002, 28), for example, observe:

> Size profoundly affects an organization's work. Growth compelled the House to develop strong leaders, to rely heavily on its committees, to impose strict limits on floor debate, and to devise elaborate ways of channeling the flow of floor business.

Baker (2001, 72) advances a similar perspective in comparing the two houses of Congress: "Senate rules differ from House rules largely because the Senate is a quarter the size of the House."

The focus on the difference in size between the two houses of Congress is intuitively plausible. But looking at membership size from a comparative perspective raises some doubts about its power to account for differences between the U.S. House and Senate rules. First, is the important difference in Congress the original difference between a Senate of 26 members and a House of 65 members, or the current difference between 100 senators and 435 representatives? It would appear that the initial difference in size did not matter organizationally or procedurally, because the first sets of rules adopted by the two houses were very similar (Binder and Smith 1998, 403). Differences between the two chambers in rules and procedures only appeared over time. Woodrow Wilson (1908, 88) suggests that the House changed its procedures dramatically over the years as it added more seats:

> Perhaps the contrast between [the House and Senate] is in certain respects even sharper and clearer now than in the earlier days of our history, when the House was smaller and its functions simpler. The House once debated; now it does not debate. It has not the time. There would be too many debaters, and there are too many subjects of debate. It is a business body, and it must get its business done.

But if the House tightened rules and procedures as it grew, why did the Senate fail to change in similar ways as it almost quadrupled in size?

Second, it is important to fully understand the consequences of legislative membership size because although we talk about the Senate as being a small body, it is only small in comparison with the U.S. House. Looking at state legislatures gives us a very different way to think about membership size.[12] Currently, state legislative chambers range from very small (20 members in the Alaska state Senate) to very large (400 members in the New Hampshire House of Representatives, down from 443 as recently as 1942).[13] None of the 50 state senates is as large as the U.S. Senate—the largest is Minnesota with 67 members. Indeed, only 22 of the *lower* houses in the states are larger than the U.S. Senate. Thus, if size alone matters in explaining the evolution of legislature rules and procedures, then most state legislatures ought to operate like the U.S. Senate, and only a handful ought to be regimented like the U.S. House. In fact, more state legislative chambers organize and proceed like the U.S. House than like the U.S. Senate, regardless of size.

Legislative membership sizes are not static. They change over time.[14] The U.S. House and Senate regularly grew in size during the nineteenth century. Their numbers of members, however, have changed very little since 1913. The House has stayed at 435 members except for a brief increase to 437 when Alaska and Hawaii were first admitted to the union in 1959.[15] The admission of those two states permanently increased the size of the Senate from 96 members to 100 members.

The over-time change in the size of state legislatures has, in many cases, been much more dramatic than that experienced by Congress. The lower house in Massachusetts in the early nineteenth century, for example (Luce 1924, 89; see also Banner 1969, 280–81, 362–63), "varied in size according as the towns cared or not to bear the cost of representation, in exciting times running up to six or seven hundred members, but often getting down to between two and three hundred, occasionally even below two hundred."[16] The speaker of the Massachusetts House in 1820, when the chamber membership was its largest, commented (quoted in Luce 1924, 89), "I am sorry to say it, but such is my opinion, that in no proper sense could it be considered a deliberative body. From the excess of numbers deliberation became about impossible."[17] The problem of a greatly fluctuating membership was not resolved until 1857 when the membership size of the Massachusetts House was set at 240 (Luce 1924, 90), a figure the chamber kept for the next 122 years.[18]

The membership size of many legislatures is still in flux. While the number of members of both the U.S. House and Senate stayed stable from 1960 to 2000 (except in the House for the brief period after Alaska and Hawaii were admitted to the union), as table 2–2 shows, 34 states changed the size of at least one of their legislative chambers. Some, but not all, of these changes were triggered by the Supreme Court's 1964 decision, *Reynolds v. Sims,* which forced many state legislatures to alter the way they apportioned one or both houses. But others were done to make the legislature more efficient or more representative. Over these four decades, only one state senate was cut in size (Idaho), while 20 others increased their number of seats. Just over half of the lower houses that changed in size, however, suffered a reduction. The cuts in several lower houses were dramatic. In 1979, for example, the number of seats in the Massachusetts House of Representatives was reduced to 160 from 240, and in 1983, the Illinois House of Representatives experienced a one-third cut in the number of seats, to 118 from 177. Changes in membership size continue to occur. The Rhode Island legislature downsized both chambers of its legislature by 25 percent in 2003 as mandated by the voters several years earlier.[19] A handful of states (Nevada, North Dakota, and Wyoming) often change the number of members in their legislatures following each Census. North Dakota, for example, downsized both chambers of its legislature in 2003 as a result of its redistricting process, going to 47 senate districts and 94 house districts from 49 senate districts and 98 house districts the decade before.[20] Redistricting also prompted New York to add a seat to its upper

TABLE 2–2 Change in Membership Size by State and Legislative Chamber, 1960 and 2000[a]

State	Senate 1960	Senate 2000	House 1960	House 2000
AL			*106*[b]	*105*
AZ	28	30	*80*	*60*
CT			*279*	*151*
DE	17	21	35	41
FL	38	40	95	120
GA	54	56	*205*	*180*
ID	*44*	*35*	59	70
IL	58	59	*177*	*118*
LA			101	105
ME	33	35		
MD	29	47	124	141
MA			*240*	*180*
MI	34	38		
MN			131	134
MS	49	52	*140*	*122*
MO			157	163
MT	56	60	94	100
NE	43	49		
NV	17	21	*47*	*42*
NJ	21	40	60	80
NM	32	42	66	70
NY	58	61		
ND			*113*	*98*
OH			*139*	*99*
OK	44	48	*121*	*101*
PA			*210*	*203*
RI	44	50		
SD			*75*	*70*
UT	25	29	64	75
VT			246	150
WA			*99*	*98*
WV	32	34		
WI			*100*	*99*
WY	27	30	56	60

Sources: *The Book of the States 1960–61*, page 37, and *The Book of the States 2000–2001,* page 70.

[a]The following states did not change in size between 1960 and 2000: AK, AR, CA, CO, HI, IN, IA, KS, KY, NH, NC, OR, SC, TN, TX, and VA.

[b]Italics indicate a reduction in the size of a chamber's membership.

TABLE 2–3 Membership Size and State Population Correlations, 1960 to 2000

	Number of Members of Upper Chamber	Number of Members of Lower Chambers	Total Number of State Legislators
All States ($N = 50$)	0.239	0.131	0.168
States with No Change in Size, 1960 to 2000 ($N = 16$)	0.164	-0.074	-0.056
States That Changed in Size, 1960 to 2000 ($N = 34$)	0.383*	0.440**	0.478**

*$p < 0.05$, two-tailed test; **$p < 0.01$, two-tailed test.

house in 2003, bringing the total number to 62.[21]

Generally speaking, there is no relationship between state population and legislative membership size. This has always been the case, as Madison (Madison, Hamilton, and Jay 1961, 341–42) observed at some length in the *Federalist 55.* Correlations between state population and legislative chamber membership size in 2000 are given in table 2–3. Among all state legislative chambers, there are small positive correlations between chamber membership sizes and state population, but the relationships are not statistically significant. Perhaps the most interesting finding is that the relationship between upper house size and state population is stronger than that for the lower house—usually deemed the more representative chamber—and state population. But we find some evidence that among the 34 states that changed the size of at least one of their legislative chambers from 1960 to 2000 there is a strong positive correlation between chamber size and state population. No such relationship obtains among the 16 states that failed to change their number of state legislators.

Why focus on membership size? Size raises a number of different issues. One simple problem driven by membership size is how to accommodate members in the legislative chamber. Here, of course, large chambers face different problems than do small chambers. And, of course, how seating is arranged is a matter of considerable interest because it can influence how members interact and how the legislative process flows (Wheare 1963, 7–19). Maintaining decorum is also more of a problem in larger chambers than in smaller ones. In 1842, for example, disorder in the 233 member U.S. House helped prompt a vote to decrease the number of seats, because, as one representative observed, having too many members created (Shields 1985, 373), "mob government, by confusion, crowing like cocks, braying like asses, shuffling with feet, coughing, and other similar expedients now pursued in the House of Commons."[22]

Perhaps even more important, as suggested in regard to the differences between the U.S. House and Senate, it seems reasonable to hypothesize that size influences organizational structures and rules. Francis (1985, 249), for example, in a study of decision making in 99 state legislative chambers, found that party caucuses are more important in smaller chambers while in larger chambers party leaders are more important. More generally, Rosenthal (1981, 132–34; see also Davidson and Oleszek 2002, 28; and Jewell and Patterson 1986, 85–86) observed:

> Size has its effects on the following: the atmosphere, with more confusion and impersonality in larger bodies and friendlier relationships in smaller ones; hierarchy, with more elaborate and orderly rules and procedures and greater leadership authority in larger bodies and informality and collegial authority in smaller ones; the conduct of business, with a more efficient flow and less debate in larger bodies and more leisurely deliberation and greater fluidity in smaller ones; the internal distribution of power, with more concentrated pockets possible in larger bodies and greater dispersion of power in smaller ones.

Thus, we would expect that as legislatures add and subtract seats organizational structures and rules and member behavior would be affected. Drawing on the congressional literature we might, for example, expect power to become more centralized as a legislature increases in size, and more decentralized as a legislature decreases in size. Or, we might anticipate that shirking is more apt to occur in larger chambers than in smaller chambers because of higher monitoring costs (Parker 1992, 75–76). Larger chambers may also experience greater problems with free riders as more legislators pursue constituency services and the like, leaving the legislative work to a few colleagues (Crain and Tollison 1982; Rogers 2002). And it may be that effective representation hinges on the size of the legislature, with smaller legislatures actually being more representative than larger ones (Stigler 1976). There also appears to be a link between size and fiscal policy; larger upper houses have been found to spend more money than smaller upper houses (Gilligan and Matsusaka 1995; 2001). The problem is, however, that without examining such questions across a number of chambers over time we cannot be sure what the effects of membership increases or decreases, or large or small chambers, might be. Much more systematic work on the importance of membership size needs to be conducted.

Membership Qualifications

Who is allowed to serve in a legislature is a fundamental question of institutional design. As noted in chapter 1, membership qualifications for legislative office

were part of the colonial experience and were incorporated into both the original state and federal constitutions. At the national level, the three constitutional qualifications for service in Congress—age, state inhabitancy, and years of citizenship—have remained unchanged.[23] Qualifications for office at the state legislative level have changed over time, but only a little.

Perhaps the most obvious qualification to impose is a minimum age for service, something found in all legislatures around the world (Loewenberg and Patterson 1979, 79). As noted in chapter 1, colonial assemblies and the original state legislatures set age requirements—sometimes explicitly, sometimes implicitly—requiring members to be at least 21 years old. Several of the original state senates were to be populated with more mature members through the establishment of older age minimums. The federal Constitution followed that general pattern, although members of the House with a minimum age of 25 years were to be a bit older than their state counterparts, and senators were required to be older still at a minimum of 30 years old.

Age qualifications in the states have changed only infrequently over time. Delaware, for example, set the minimum age for membership in its lower house at 24 (a number chosen for unknown reasons) in 1792 and has not changed it since. Kentucky and Missouri also adopted a 24-year-old age minimum when they became states, and they too have kept it (Luce 1924, 209–10). A few states, such as Illinois, South Carolina, and Virginia, experimented with different ages during the nineteenth century (Luce 1924, 210). The period of greatest change in age requirements, however, occurred during the 1970s, as the minimum age for service was lowered to 18 years old in a number of states in response to the Twenty-sixth Amendment giving people that age the right to vote in federal elections. Overall, however, age requirements have been reasonably stable across the states and over time.

Current age qualifications for American legislatures are given in table 2–4. In lower houses, minimum age requirements range from 18 years old in 13 states, to 25 years old in three states as well as in the U.S. House. The range in upper houses is even greater, from 18 years old in 13 states, to 30 years old in the U.S. Senate and five state senates. The age requirement is the same for both chambers in 27 states. In the other 22 bicameral states and the U.S. Congress, different age qualifications are imposed on the two houses, but always with the older qualification being put on the upper house. The greatest gap in age minimums is in New Hampshire, where a member of the lower house may be only 18 years old, but an upper house member is required to be at least 30 years old. No state mimics the exact age requirements for the U.S. Congress in both houses.

The courts have upheld challenges to minimum age qualifications. In a 1990 case, a federal appeals court held that Missouri's minimum age of 24 years for service in the lower house was constitutional because it, "serves Missouri's interest in insuring that its legislators have some degree of maturity and life experience

TABLE 2–4 Age Qualifications for Election to American Legislative Office, 2003

		Minimum Age in Lower House			
		18 years	21 years	24 years	25 years
Minimum Age in Upper House	18 years	CA, HI, KS, LA, MA, MT, NY, ND, OH, RI, VT, WA, WI			
	21 years		CT, FL, ID, IL, MI, MN, NE, NV, OR, SD, VA		
	25 years	WV	AL, AK, AR, GA, IN, IA, ME, MD, MS, NC[a], NM, OK, PA, SC, WY		AZ, CO, UT
	26 years		TX		
	27 years			DE	
	30 years	NH	NJ, TN	KY, MO	**U.S.**

Source: *The Book of the States, 2003 Edition,* pages 118–19.
[a]The minimum age in North Carolina is unclear because of a conflict between two clauses of the state constitution, one which suggests age 18, the other specifying age 21.

before taking office."[24] Missouri college students, who regularly lobby to have the minimum age of service lowered, counter that because younger adults are not allowed to serve, the legislature tends to ignore their interests (*Jefferson City News Tribune* 2002). Voters, however, may not agree with the students' position. In 2002, Oregon voters were asked to amend the state constitution to lower the minimum age to serve in the legislature to 18 from 21. The amendment was placed on the ballot by overwhelming votes in both houses of the state legislature after the Oregon secretary of state was asked by a Portland Community College student why 18 year olds could run for offices such as secretary of state and attorney general, but not for the legislature. Unexpected organized opposition to the measure surfaced in the form of fundamentalist Christian groups that interpreted the Bible as holding that ruling positions should be held only by those age 30 or older. In the end, the constitutional amendment to lower the minimum age for legislative service failed, getting only 27 percent of the vote.[25]

Legislative chambers that allow younger people to serve do occasionally have younger people elected to them. In 2000, for example, an 18-year-old high school senior won election to the Ohio House of Representatives. Where nontrivial numbers of younger people serve, they can influence the legislative agenda. In Maine a sufficient number of young legislators sat in the lower house in the late 1990s

TABLE 2–5a Residency Requirements for Election to American Lower Houses, 2003

State Residency Requirement	District Residency Requirement	Lower House
	Resident	CT, KS, MI, NM, SC, WA
	1 year	CO, MA, OR
Resident	None	**U.S.**
Resident	6 months	OK
Resident	1 year	ID, NC, OH, WY
Resident	2 years	IL
30 days		RI
1 year	Resident	ND, VA, WI
1 year	30 days	NV
1 year	60 days	IA
1 year	3 months	ME
1 year	6 months	MD, MN, MT
2 years	Resident	FL, NH, SD,
2 years	1 year	AR, GA, IN, KY, LA, MO, NJ, TX, VT
3 years	Resident	HI
3 years	6 months	UT
3 years	1 year	AL, AK, AZ, CA, DE, TN
4 years	1 year	PA
4 years	2 years	MS
5 years	1 year	NY, WV

Source: Adapted from data in *The Book of the States, 2003 Edition,* pages 118–19.

TABLE 2–5b Residency Requirements for Election to American Upper Houses, 2003

State Residency Requirement	District Residency Requirement	Upper House
	Resident	CT, KS, MI, NM, SC, WA
	1 year	CO, OR
Resident	NA	**U.S.**
Resident	6 months	OK
Resident	1 year	ID, NE, OH, WY
Resident	2 years	IL
30 days		RI
1 year	Resident	ND, VA, WI
1 year	30 days	NV
1 year	60 days	IA
1 year	3 months	ME
1 year	6 months	MD, MN, MT
2 years	Resident	FL, SD,
2 years	1 year	AR, GA, IN, LA, *NC*, VT
3 years	Resident	HI
3 years	6 months	UT
3 years	1 year	AL, AK, AZ, CA, DE, *MO*, TN
4 years	1 year	*NJ*, PA
4 years	2 years	MS
5 years	Resident	*MA*
5 years	1 year	NY, WV, *TX*
6 years	1 year	*KY*
7 years	Resident	*NH*

Source: Adapted from data in *The Book of the States, 2003 Edition,* pages 118–19.
Note: States in italics have different requirements for the upper house than for the lower house.

to form what its members called the Kids Caucus. Caucus members pursued favored policies on campaign finance reform, higher education, and women's issues among other issues, and played an active role in House decision making (Teicher 1999).

In addition to age minimums, state constitutions also impose state and district residency requirements for legislative service. The federal Constitution is relatively relaxed on this score; members of the House and Senate are only required to be inhabitants of the state from which they are elected. (It is only by tradition that representatives are expected to reside in the district they represent.) Moreover, residency standards for federal office are remarkably loose; one only has to live in a state at the time of the election to qualify. In contrast, state residency requirements are much stricter.

A comparison of the residency requirements incorporated in the original state constitutions (tables 1–4 and 1–5) with the current requirements presented in tables 2–5a and 2–5b reveals some changes over time. Every state now has some residency standards in place. To serve in six state lower houses, a candidate need only be a resident of the district at the time of the election. Most states, however, use more stringent standards, requiring district residency anywhere from 30 days in Nevada, to two years in Illinois and Mississippi. And state residency of anywhere from a single year to five years is required in addition to district residency in over half the states.

Residency standards are even higher for service in several state senates. Every state requires residency in the senate district, although the time needed to establish that fact varies from a loose day-of-the-election standard to, again, two years in Illinois and Mississippi. State residency requirements also are stringent. At the most extreme, the state residency standard to qualify for service in the New Hampshire state Senate is seven years.

Why worry about residency qualifications? There are, of course, questions raised from time to time about whether a candidate or member has met the residency requirements in his or her state.[26] But residency standards raise more interesting questions than simply whether they are met in a specific case. Parliamentary systems generally do not require residency in an electoral unit as a condition to represent it.[27] By mandating residency, the American system places great value on local ties and knowledge of district residents and their opinions and interests. Not surprisingly, most state legislative candidates are long-time district residents when they run for office (Moncrief, Squire, and Jewell 2001, 35). But residency qualifications limit the pool of potential candidates, perhaps leaving some districts with too few capable candidates and other districts with too many. And, it can be argued that they force legislators to become too parochial in their activities and voting behavior as they cater to their constituents (Luce 1924, 225–28). Comparative study of legislatures with and without resi-

dency requirements, or between those with weak requirements and those with stringent ones, may help us understand the real positive and negative consequences of such qualification standards.

Prominent among the qualifications imposed by the original state constitutions were ones for property and wealth. A majority of the original states imposed such requisites for legislative service, in keeping with colonial practices. Wealth and property qualifications for membership in the U.S. Congress were rejected during the Constitutional Convention, although they engendered considerable debate. Support for exclusive qualifications at the state level dissipated following the federal Constitutional Convention. Vermont entered the union with no such membership requirements, as did Kentucky, Alabama, and Maine. Notions about Jacksonian democracy struck a fatal blow to what were seen as elitist membership standards, and most of the states that had property and wealth standards abolished them before the Civil War. Newer states never adopted them. But Rhode Island held on to its wealth and property qualifications until 1888, and Missouri required legislators to have paid county and state taxes well into the twentieth century (Luce 1924, 233–34).

One kind of qualification was added to state constitutions over time. Originally, disqualification for criminal misconduct was indirectly imposed in many states through the requirement for elected officials to be qualified voters. But during the nineteenth century, most states made criminal disqualification explicit in their constitutions and laws. Some disqualifications were broad and covered many offenses; others were more specific, often targeting bribery and dueling (Luce 1924, 258–65). The key distinction regarding disqualification for criminal misconduct today revolves around the question of permanent disqualification. A majority of states permanently bar a person convicted of a felony from ever holding office. A handful of states bar ex-felons only while they are still on parole. Fewer than ten states allow ex-felons to run for office once they are discharged from the prison system (Snyder 1988).

Historically, other qualifications were imposed for state legislative service but later abolished. As discussed in chapter 1, for example, ministers were kept from serving as legislators in many states. And military contractors and others who had business dealings with the state were prohibited from legislative service in most states, although these provisions were generally removed over the course of the nineteenth century. Other occupations were also excluded. Until 1865, Florida barred any bank officer from legislative service. Virginia did likewise from 1850 to 1870, but only for membership in its lower house. Railroad executives were prohibited from serving in the West Virginia legislature from 1872 until well into the twentieth century. And Harvard's faculty and president could not be members of the Massachusetts state legislature until 1877, because of the university's relationship with the state (Luce 1924, 253–54).

Constituency Size

Assuming single-member districts, the number of constituents in a district depends, of course, on the number of districts and a state's population. Because both the number of legislative seats and the number of people living in a state change over time, constituency sizes change as well. In the U.S. House, the Constitution (Article 1, section 2) recommended districts of 30,000 people. That number was arrived at, in part, because George Washington, in his only substantive contribution to the Constitutional Convention, argued in favor of a motion to change the number to 30,000 from 40,000 because he thought the lower figure would generate more popular support for the proposed Constitution (Keller 1993, 23). The first ratio employed was actually 33,000 constituents per representative, a figure that climbed to 47,700 constituents per representative in 1830, and 77,680 constituents per representative in 1840. After that point in time, the number of seats was set in advance of reapportionment, with the number capped at 435 in 1911 (Butler and Cain 1992, 18–19). By 2003, the average district size in the House was approximately 663,000 people. U.S. senators, of course, represent different size constituencies, ranging from fewer than 500,000 people in Wyoming, to 35,000,000 people in California. District populations for all American upper and lower houses in 2003 are given in tables 2–6a and 2–6b.

State legislative district sizes have changed over time as both populations and the size of legislatures have fluctuated. Since the Supreme Court decision in *Reynolds v. Sims* in 1964, all state legislative houses must be apportioned on the basis of population.[28] The range of constituency sizes at the state legislative level is remarkable, both longitudinally and cross-sectionally. Following the 2000 redistricting process, the 40 California state senators represent almost 878,000 people, over 200,000 more constituents than U.S. representatives, and even more constituents than U.S. senators from Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming represent. Members of the Texas state Senate, with 703,000 constituents, also have districts larger than U.S. House districts. At the other extreme, the 400 New Hampshire representatives have districts with just over 3,000 people in them.[29] Overall, state legislative districts in six chambers have fewer than 10,000 people, while ten chambers have districts with more than 200,000 constituents.

The effect of constituency size on legislative behavior is a relatively unexplored area. Research comparing the electoral and representational effects of constituency size has been conducted using the U.S. Senate (e.g., Hibbing and Brandes 1983; Hibbing and Alford 1990; Krasno 1994, 39–58). Little attention, however, appears to have been given to the variable in studies of the U.S. House. We do not know, for example, how, if at all, member behavior has changed as the number of people represented in a district climbed from 30,000 to 663,000. We

TABLE 2–6a Constituency Size by American Lower House Chamber, 2003

State	Lower House Seats	District Population	State	Lower House Seats	District Population
NH	400	3,188	MA	160	40,174
VT	150	4,111	KY	100	40,929
ND	94	6,746	LA	105	42,692
WY	60	8,312	AL	105	42,729
ME	151	8,573	GA	180	47,557
MT	100	9,095	NV	42	51,750
SD	70	10,872	WI	99	54,962
RI	75	14,263	TN	99	58,558
AK	40	16,095	OR	60	58,692
WV	100	18,019	PA	203	60,764
ID	70	19,159	IN	100	61,591
DE	41	19,692	WA	98	61,929
KS	125	21,727	CO	65	69,331
CT	151	22,917	NC	120	69,335
MS	122	23,539	VA	100	72,935
HI	51	24,410	AZ	60	90,941
NM	70	26,501	MI	110	91,368
AR	100	27,101	IL	118	106,785
IA	100	29,368	NJ	80	107,379
UT	75	30,883	OH	99	115,366
SC	124	33,122	NY	150	127,717
OK	101	34,591	FL	120	139,276
MO	163	34,801	TX	150	145,199
MN	134	37,461	CA	80	438,950
MD	141	38,710	**U.S. House**	**435**	**662,917**

Source: Calculated by authors using U.S. Census Bureau data for 2002.

TABLE 2–6b Constituency Size by American Upper House Chamber, 2003

State	Upper House Seats	District Population	State	Upper House Seats	District Population
ND	47	13,492	MD	47	116,131
WY	30	16,623	OR	30	117,384
MT	50	18,189	IN	50	123,181
VT	30	20,553	WA	49	123,857
SD	35	21,745	AL	35	128,186
RI	38	28,151	CO	35	128,758
AK	20	32,189	GA	56	152,863
NE	49	35,289	MA	40	160,695
ME	35	36,985	WI	33	164,885
ID	35	38,318	NC	50	166,403
DE	21	38,447	MO	34	166,841
NM	42	44,168	TN	33	175,675
HI	25	49,796	AZ	30	181,882
WV	34	52,996	VA	40	182,339
NH	24	53,127	IL	59	213,570
MS	52	55,227	NJ	40	214,758
IA	50	58,735	PA	50	246,702
KS	40	67,897	MI	38	264,485
OK	48	72,786	NY	62	308,992
MN	67	74,921	OH	33	346,099
AR	35	77,431	FL	40	417,829
UT	29	79,871	TX	31	702,577
SC	46	89,287	CA	40	877,901
CT	36	96,125			**Entire State—498,703 to 35,116,033**
NV	21	103,500	**U.S. Senate**	**100**	
KY	38	107,708			
LA	39	114,940			

Source: Calculated by authors using U.S. Census Bureau data for 2002.

can observe that members became more electorally secure as the number of people they represented increased, but the mechanism to explain that process has yet to be identified. Moreover, as the number of people (and, we would assume, number of organizations and differing interests) in a district increases, more demands are made on a legislator. How do they cope? Little light is shed on these questions by the state legislative literature, beyond learning that constituent contacts with legislators decline with increased district size (Squire 1993, 485). Such questions can be addressed both cross-sectionally and longitudinally by looking at the U.S. Senate and state legislatures. The U.S. House can, of course, only be used for over-time studies on these sorts of questions.

Currently, most American legislators are elected from single-member districts. This has not always been the case. Earlier in American history the multi-member district was the norm. Reliance on multi-member districts was imported into the colonies from England. The original development of multi-member districts was a response to the practical realities of medieval English political life. According to Klain (1955, 1111–12), "In the thirteenth century roads to London were lonely, rough, and bandit-ridden—two or three men would afford each other company and protection. Besides, once the men were safe in London the arrangement might best serve constituents—the men could watch and check each other." When the Virginia House of Burgesses was founded in 1619, it followed the districting practices of the mother parliament, and accordingly a call was issued for two burgesses to be sent from each plantation. During the colonial period most assemblies used multi-member districts, some of which were particularly large. In New Jersey, for example, both Burlington and Gloucester counties elected 20 at-large assemblymen (Klain 1955, 1112).

Multi-member districts and at-large districts were used in the past to elect members of the U.S. House, even as recently as the 1960s (Calabrese 2000). Indeed, they were prominent electoral configurations during much of the nineteenth century. At the state level the use of multi-member districts was even more pronounced, particularly in lower houses. In the 1950s, for example, 39 of the 48 states used multi-member districts to elect at least some members of their state legislatures (Klain 1955, 1106–7). In the 1990s multi-member districts were still employed, at least for some seats, in four state senates and eleven state lower houses (Jewell and Morehouse 2001, 219). In the current decade, multi-member districts are found in two state senates and eleven state lower houses. As shown in Table 2–7, at least 90 percent of all legislators are elected from multi-member districts in nine of these thirteen chambers, while the figure is greater than 50 percent in another three chambers. All told, roughly 22 percent and 3 percent of all legislators serving in the lower houses and senates respectively are currently elected from multi-member districts.

Beyond the obvious questions about the electoral ramifications of multi-member districts as opposed to single-member districts, the representational and

TABLE 2–7 States Using Multi-Member Legislative Districts in the 2001–2003 Elections

State	Chamber	Percentage of Members Elected from Multi-Member Districts	Number of Multi-Member Districts	Number of Members Elected per District (Range)	Type of Multi-Member District System
Arizona	Lower House	100.0%	30	2	Plurality[a]
Georgia[b]	Lower House	31.1%	33	2–4	Post or Place[c]
Idaho	Lower House	100.0%	35	2	Post or Place
Maryland	Lower House	85.1%	44	2–3	Plurality
New Hampshire	Lower House	98.5%	82	2–14	Plurality
New Jersey	Lower House	100.0%	40	2	Plurality
North Dakota	Lower House	100.0%	47	2	Plurality
South Dakota	Lower House	100.0%	35	2	Plurality
Vermont	Lower House	55.6%	42	84	Plurality
Vermont	Upper House	90.0%	10	2–6	Plurality
Washington	Lower House	100.0%	49	2	Post or Place
West Virginia	Lower House	64.0%	22	2–7	Plurality
West Virginia[d]	Upper House	100.0%	17	2	Plurality

[a]For example, if voters may vote for 5 candidates, then the top 5 vote getters are declared the winners.
[b]A federal court declared Georgia's legislative redistricting plan unconstitutional in February 2004. A new plan must be adopted for the 2004 elections.
[c]Voters cast more than 1 vote but only 1 for each place, position, or post on the ballot.
[d]In the West Virginia Senate there are 2 members in each of the 17 districts. Terms are staggered, so only 1 member is elected from each district in each election.

behavioral effects of at-large districts and multi-member districts versus single-member districts demand investigation (Hamilton 1967).[30] Institutional effects also need to be explored. Adams (1996), for example, found that political parties in the Illinois House were ideologically more diverse when the chamber was elected using multi-member districts than they were when single-member district elections were employed.

Geographic Size

Another aspect of district size gets remarkably little scholarly attention: the geographic size of the district. Upon reflection, we might anticipate that the act of representing a large district differs from the act of representing a small district. And it is important to understand that legislative districts vary enormously in terms of space. New York Assembly districts in Manhattan, for example, are measured in city blocks. Compare that with the most extreme case in the other direction: Alaska's state Senate District C. That district covers the sparsely populated rural areas of the state and encompasses more than 240,000 square miles, making it almost the same size as Texas. Representing District C is demanding. To visit constituents the state senator has to travel by car, airplane, and ferry, and with bad weather, trips to some communities may take days and even weeks. A few years ago, the incumbent senator tried to visit every town in District C, but after having been gone from home for three months, she had managed to get to only about 75 percent of them. And as the senator observes, once she makes the trek to one of the far-flung communities in her district (McAllister 2002), "They don't expect you to go in and spend 15 minutes and you're out of there. That's rather insulting. They expect you to spend the night."

Alaska's District C may be the most extreme case, but every state in the western part of the country has very large legislative districts representing rural populations. Legislators in such districts realize the problems they face trying to represent the interests of people strewn across vast distances. A Wyoming representative with a huge district, for example, lamented (*Caspar Star Tribune* 2001), "After my first 300-plus mile campaign trip to Jeffrey City, I wondered how someone like me from Rock Springs could fairly represent those ranchers up there. And the answer then was and still is . . . I can't fairly represent those people in Fremont County." Legislators representing districts in more densely populated eastern states have very different experiences. A member in the Rhode Island House, for example, commented to her colleagues (State of Rhode Island and Providence Plantations, 2000), "I learn by listening and I listen to my voters over the fence, at the swimming pool . . . My office is a shopping cart on Sunday afternoon at Stop & Shop." It is hard to imagine many of her colleagues from large districts in the West being able to make the same claims. Although the physical size of representational units has gotten some passing attention in studies of the U.S. Senate (e.g., Krasno 1994), it seems plausible to expect that geography mediates the relationship between the representative and represented in ways that have yet to be explored.[31]

Terms of Office

Term length is thought to influence member behavior, with longer terms allowing

legislators greater freedom from electoral pressures, shorter terms allowing less freedom. As Davidson and Oleszek note (2002, 378) in regard to the U.S. Senate, "Six-year terms, it is argued, allow senators to play statesman for at least part of each term before they are forced by oncoming elections to concentrate on fence mending." The implicit contrast here is, of course, between the two-year House term, and the six-year term for senators, lengths unchanged since 1789.

The experience at the state legislative level is far different. Terms for state legislators have changed over time. As noted in chapter 1, all but one of the original state constitutions gave lower house members a single-year term. Terms in upper houses were more variable; the modal term was a single year, but the terms in the other states ranged from two years to five years. As new states were created and existing states replaced old constitutions with new ones, different patterns emerged. When Tocqueville (1969, 85) observed state legislatures in the 1830s he noted, "senators have a longer term of office than the representatives. The latter seldom remain in office for more than one year, but the former usually for two or three."

In general, over the course of the nineteenth century state legislative terms were lengthened (Luce 1924, 113). In Pennsylvania, for example, members of the House of Representatives were elected to one-year terms until the 1874 constitution, when two-year terms were adopted. In that same constitution state senators were bumped up to four-year terms from three-year terms (Kennedy 1999, 2–3). In most states, lower house terms were extended from one year to two years.[32] Typically, upper house terms were extended as well, although the number of years adopted often bounced around. Maryland, for example, started with five-year terms in 1776, changed to six-year terms in 1837, and then settled on four-year terms in 1851 (Luce 1924, 119). A six-year term was also provided to state senators in Texas in 1868, but the term was switched back to the more typical four-year term in 1876 (Luce 1924, 120). Georgia kept changing the term of office for its upper house (Luce 1924, 119):

> Her first senators, provided for in 1789, were to be elected every third year. Annual election was substituted in 1795; this was changed to biennial in 1840 with the adoption of the biennial system; in 1868 the four-year term was substituted; and in 1877 return was made to the two-year term.

New York and Nevada also reduced the term of office for their state senators (Luce 1924, 119–124). By the beginning of the twentieth century, Bryce (1906, 332) noted, "In twenty-nine States [a state senator] sits for four years, in one (New Jersey) for three, in thirteen for two, in two (Massachusetts and Rhode Island) for one year only; the usual term of a representative being two years."

Terms continued to change over the twentieth century, as the current terms of office given in table 2–8 reveal. Although one- and three-year terms no longer

TABLE 2–8 American Legislative Terms, 2003

Legislature	Lower House Term	Senate Term
AZ, CT, GA, ID, ME, MA, NH, NY, NC, RI, SD, VT	2 years	2 years
NJ	2 years	2 years—4 years—4 years
IL	2 years	Three classes: 4 years—4 years—2 years 4 years—2 years—4 years 2 years—4 years—4 years
AK, AR, CA, CO, DE, FL, HI, IN, IA, KS, KY, MI, MN, MO, MT, NV, NM, OH, OK, OR, PA, SC, TN, TX, UT, VA, WA, WV, WI, WY	2 years	4 years[a]
NE		4 years[a]
U.S.	2 years	6 years
AL, LA, MD, MS, ND,	4 years[a]	4 years[a]

Source: *The Book of the States, 2003 Edition,* pages 115–16; and information from the National Conference of State Legislatures.

[a]Many, but not all, states with staggered 4-year terms employ rules to force some legislators to serve a 2-year term at some point during the decade, typically during the first election cycle following redistricting.

exist, there is still substantial variation in terms across the states. None of the terms in the states, however, emulate those in the U.S. Congress. Terms in 30 states come close, with two-year terms in the lower house, and four-year terms in the state senate. But in 12 states members of both houses are given two-year terms, and in five states both chambers get four-year terms.[33] In Illinois and New Jersey, state senators have shifting terms, with one two-year term and two four-year terms to accommodate redistricting every ten years.

Among the states with staggered four-year terms—only ten states do not stagger terms in their upper houses—there is considerable variation in how they cope with the required ten-year redistricting cycle. In one way or another, the states have to either re-stagger their terms or devise a way to assign legislators to districts that wind up with no resident representation following redistricting. In Montana, the state constitution prohibits two-year terms for senators, so following redistricting the 25 holdover senators—those in the middle of their four-year terms—are assigned to districts by the state's redistricting commission. Similarly, in Pennsylvania holdover senators continue to represent the same numbered district even if their residence is no longer in the district once the lines are changed. Delaware employs a system reminiscent of those used in Illinois and New Jersey: half the senate starts with a two-year term followed by two four-year terms, and half are given two four-year terms followed by a two-year term. Many states use district numbers to determine which districts are to be contested in the

first election following redistricting. In Iowa, for example, senators from even-numbered districts run in the first post-redistricting election and senators from odd-numbered districts in the second post-redistricting election. But odd-numbered districts will be contested in the first post-redistricting election if there is no incumbent elected for a term expiring after the second post-redistricting election residing in the district. Hawaii takes a senator's previous experience into account. A senator whose four-year term was reduced to a two-year term in the previous decade's redistricting is automatically assigned a four-year term following the current redistricting. Other senators are given two-year terms following redistricting. In the event that more than twelve senators are assigned two-year terms, the number is reduced to twelve by a random process designated by law. A random process is also employed in Texas, where lots are drawn to determine which half of the senate will serve an initial two-year term. The Reapportionment Commission determines which districts start with a two-year term in Colorado.[34]

All of this variation offers a better opportunity to investigate the effects of different term lengths than looking just at Congress provides. Jumping off from the congressional expectation that longer terms allow legislators greater decision-making freedom, scholars can look to see if the same pattern reveals itself in the 30 states with different terms between their two houses. The flip side of the coin is to examine such questions in the 17 states with the same terms for their two houses, to see if different perspectives are produced by different chambers and district sizes rather than by different term lengths. Perhaps even more interesting would be to investigate the behavior of state senators in Illinois and New Jersey to see if their behavior changes between their two-year term and their four-year terms. Such an analysis would have tremendous methodological advantages over looking for bicameral differences because, of course, the legislators being examined would vary only in their length of term; their constituencies and other important characteristics would remain the same. And in both Illinois and New Jersey legislators can anticipate their terms. In many other states with staggered four-year terms, legislators cannot be certain prior to redistricting whether they will have a two-year or four-year term in the following session. The behavior of those who know their upcoming term lengths can be compared with those who cannot forecast their next term length to see the behavioral consequences, if any, of this form of uncertainty.

Term Limits

One final fundamental difference across American legislatures is the existence in some of them of limitations on the number of terms a member may serve. As noted in chapter 1, the first term limits were imposed on the Pennsylvania legislature in 1776 and on the Confederal Congress a year later. These limits were,

however, dispensed with when new constitutions were adopted, nationally in 1787 and in Pennsylvania in 1790. But the idea of limits on legislative service still held in various places around the country. Usually referred to as the practice of rotation, legislators in many districts were expected to serve only a term or two and then step aside so that someone else could hold the seat. Rotation was relatively common in the U.S. House during the early to mid-1800s (Kernell 1977), and there is evidence that it was also a norm in many state legislative districts during this same time period (Deming 1889, 427; Harrison 1979, 338; Luce 1924, 352–56; VanderMeer 1985, 154, 193; Wooster 1969, 42; 1975, 42–44). Indeed, it was even enshrined in West Virginia's first constitution in 1863. (The provision was not included when a new constitution was adopted nine years later.) And, although the causes for the decline of the rotation norm are not altogether clear, it appears to have vanished from the scene at both the congressional and the state legislative levels at roughly the same time in the last few decades of the nineteenth century (Kernell 1977; VanderMeer 1985, 200).[35]

Term limits were not seriously debated again until the late 1980s, and then they were adopted in over 20 states with astonishing speed. Three states adopted term limits in 1990, followed by more than ten states in 1992. The movement ran out of steam in the late 1990s, in part because the political fervor pushing them dissipated following the Republican party's great successes in the 1994 elections. Indeed, Republican-dominated state legislatures in Idaho and Utah abolished term limits in 2002 and 2003, respectively. But, it should also be noted that voters with one exception imposed term limits on legislators, and almost all the states that afford the citizenry that opportunity have availed themselves of it.[36]

There were, of course, attempts to impose term limits on members of Congress, both from within both houses, and from several states. The Supreme Court, however, held term limits to be unconstitutional at the federal level, because imposing a limit was in essence adding a fourth qualification for service, something which could only be done by constitutional amendment.[37] The Supreme Court has, however, allowed term limits to be placed on state legislators.[38]

Thus, in 2004, 15 state legislatures have term limits, as table 2–9 shows. The other 35 state legislatures and the U.S. Congress do not have them.[39] It is important to note that the term limits that are in place vary significantly one from another. One way they differ is in how many terms can be served, with some allowing as few as six years in a chamber, and others allowing twelve years. Perhaps even more importantly, some states only impose limits on consecutive terms in office, allowing members to return after a term out of office, while others place a lifetime ban on further service once the limit is reached. The differences across the states in the harshness of their limitations is in large part the result of idiosyncratic factors involving the whims of the people and groups that initially proposed the limits. But there is evidence that states where legislators had been serving for longer tenures imposed the most stringent limits (Chadha and Bernstein 1996).

TABLE 2–9 Term Limits in 2004 and Year of Adoption[a]

Term Limit	Consecutive Service	Lifetime Ban
6 Years Lower House 8 Years Upper House		AR (1992), CA (1990), MI (1992)
8 Years Total	NE (2000)[b]	
8 Years Lower House 8 Years Upper House	AZ (1992), CO (1990), FL (1992), ME (1993), MT (1992), OH (1992), SD (1992)	MO (1992)
12 Years Total		OK (1990)
12 Years Lower House 12 Years Upper House	LA (1995)	NV (1996)

Source: Data from National Conference of State Legislatures.

[a]State courts in Massachusetts, Oregon, Washington, and Wyoming tossed out term limit measures passed by their voters. State legislators repealed term limits in Idaho and Utah.

[b]Voters in Nebraska passed term limit measures in 1992 and 1994, but both were ruled unconstitutional by the state supreme court.

Not surprisingly, the imposition of term limits on some American legislatures prompted a number of scholars to investigate their effects. Much of the attention thus far has been devoted to assessing the electoral effects of term limits and how they influence the political career calculations of legislators. Less attention has been devoted to figuring out their effects on legislative organization and procedure, in part because the full impact of term limits has only recently been felt in many chambers. Thus we have yet to sort out how different term limits impact different chambers with different characteristics.

Conclusion

American legislatures were born from common ancestors and shared many similarities at birth. Since the eighteenth century, however, American legislatures have evolved in many different ways. The most obvious contrasts are rooted in differing fundamental organizations of activity. The U.S. Congress has operated under essentially the same Constitution since 1789, one that grants great flexibility in how each house organizes and makes decisions. Almost all state legislatures have been governed by two or more constitutions. Over time, newer state constitutions have hemmed in the legislature, reducing its ability to devise its own structures and decision-making procedures.

There are, of course, other important fundamental differences across American legislatures. Who may serve varies, as does how long they may serve. The number of chambers, number of members in a chamber, the number of districts, and the number of people in a district, all vary, both across legislatures and over time.

In the next chapter we explore how differences in the fundamental organization of activities themselves produce further differences among American legislatures. In particular, we examine legislative professionalization by looking at how American legislatures vary in terms of member pay, session lengths, and staff and resources, and how these differences came to be over time.