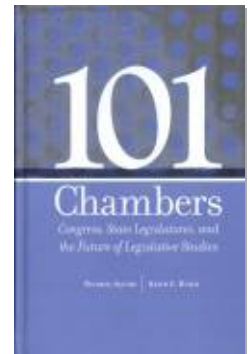




## Notes

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## NOTES

### *Notes to Introduction*

1. The 10 journals consulted were *American Journal of Political Science*, *American Political Science Review*, *British Journal of Political Science*, *Comparative Political Studies*, *Comparative Politics*, *Journal of Legislative Studies*, *Journal of Politics*, *Legislative Studies Quarterly*, *Political Research Quarterly*, and *World Politics*.

2. Among the non-state legislative articles, roughly three in four articles examine behavior or processes in a single institution.

3. Kiewiet, Loewenberg, and Squire (2002) argue for the necessity and plausibility of cross-national testing of congressional based theories.

### *Notes to Chapter 1*

1. By American colonies we mean the 13 future American states and the colonies incorporated into them. Representative assemblies were, of course, established in other North American British colonies (in chronological order of establishment: Bermuda, Barbados, St. Kitts, Antigua, Montserrat, Nevis, Jamaica, the Bahamas, Nova Scotia, and Prince Edward Island). See Kammen (1969).

2. It is important to note, however, that their institutional survival was not inevitable. The federal assembly created in the Leeward Islands in 1682, for example, disappeared from the political scene by early in the eighteenth century (Higham 1926).

3. In East Jersey the initiative for moving to a bicameral system appears to have come from the seven councilors who feared during their first meeting in 1668 that they would be outvoted by the ten representatives (Moran 1895, 27–28).

4. Kukla (1985, 289) suggests that Virginia's legislature became bicameral in 1643, "At the next meeting of the assembly in March 1643, the elected members organized themselves, for the first time in any English colonial assembly, as a lower house meeting separately from the governor and the councilors."

5. Kammen (1969, 22) observes that a "silly dispute over a stray sow produced a permanent separation and bicameralism." The conflict arose over the question of control over local affairs and involved a law passed in 1631 (Morey 1893–1894, 207), "that all swine found in any man's corn shall be forfeited to the public . . ." and another law passed in 1633, "that it shall be lawful for any man to kill any swine that comes into his corn." Thus, as Pole (1969, 68) notes wryly regarding the advent of bicameralism in America, "The process . . . began as early as 1644 in Massachusetts after the deputies and the assistants differed over the celebrated case of Widow Sherman's sow, a beast which surely deserves to rank with [General Robert E. Lee's horse] Traveller in the animal contributions to American history." See also the discussions in Moran (1895, 11–12); Moschos and Katsky (1965, 255–59); and Wright (1933, 172–73).

6. Because the development of bicameral systems is somewhat nebulous, different sources will suggest different paths. Thus, according to Barnett (1915, 451), "over half of

the American colonies began the representative system with single legislative chambers. . . . Although the single chambers persisted in some of the colonies longer than in others, only one such legislature, that of Pennsylvania, was left at the end of the seventeenth century.” He goes on to claim that Georgia and Vermont had reverted back to unicameral legislatures by the time the constitutional convention met. Luce (1924, 24–25) argues that unicameral legislatures were less common during the colonial period than Barnett suggests. In a sense, both claims can be argued to be true.

7. By the mid-1750s, the South Carolina Council’s lack of political independence led to a substantial decline in its political power and public standing. Indeed, notable South Carolinians refused to accept appointment to the body. As the Council’s reputation declined, the House’s reputation climbed (Sirmans 1961, 390–91; Weir 1969, 491).

8. Of the legislative bodies established in the other British colonies in North America during the seventeenth century, Antigua, Montserrat, Nevis, and St. Kitts evolved into bicameral bodies from unicameral origins, and Barbados and Jamaica were initially created as bicameral legislatures. Only the legislature in Bermuda stayed unicameral. See Kammen (1969, 11–12).

9. The number of constituents per assembly member was, however, rising in many of the colonies, particularly in Maryland, New Jersey, New York, and Pennsylvania, as the growth in assembly membership size failed to keep up with population increases (Greene 1981, 461; 1994, 28).

10. A history of the right to petition in America is given in Higginson (1986).

11. We calculated the average number of days in session for the New York Assembly using data in Bonomi (1971, 295–311).

12. It should be noted that one Pennsylvania speaker, John Kinsey (1739–49), clearly took seniority into account in making committee assignments (Ryerson 1986, 119).

13. The committee was empowered to initiate investigations (Miller 1907, 72). In 1742 and 1756 the House of Burgesses further standardized procedures to be followed in resolving disputed elections (Pargellis 1927a, 143, 145).

14. According to Hitchcock and Seale (1976, 7), providing separate assembly and council chambers on opposing sides of a central hall was a standard feature of colonial statehouses.

15. Hitchcock and Seale (1976) say the Assembly first met in the new facilities in 1746.

16. In the 1730s committees in South Carolina also met in taverns and private homes (Frakes 1970, 66).

17. Not all assemblies were fortunate to have their own facilities. The Georgia Assembly, for example, met in houses in Savannah; the Assembly met downstairs while the Council met upstairs (Corey 1929, 111). The governor of North Carolina built a large government building in the early 1770s, but he only used it to house the governor and the Council. The Commons House was left out (Hitchcock and Seale 1976). Cook (1931, 258) says the Assembly got to use a room in one wing of the building.

18. Assemblies in Maryland, North Carolina, Rhode Island, and South Carolina were of moderate size, with between 51 and 81 members (Greene 1981, 461). It should also be pointed out that membership sizes within each chamber fluctuated over time. In Georgia, for example, the first assembly had 19 members, the second 14 members, and the fourth 25 members (Corey 1929, 112). Growth in the Virginia House of Burgesses was driven by population growth. In 1752, for example, the House had 94 members—two from each of

the 45 counties and one from each of the four boroughs. In 1774 the number of counties had increased to 61, increasing the House's total number of members to 126 (Griffith 1970, 18).

19. Both colonies were content with their existing governmental structures and the charters that created them (Wright 1933, 178–79). Connecticut added a new preamble to its charter declaring its independence, and Rhode Island simply substituted the phrase, “The Governour and Company of the English Colony of Rhode Island and Providence Plantations” wherever the name of the king appeared in oaths and appointment powers in the charter (Adams 1980, 66–67, see also Morey 1893–1894, 219). Connecticut did not write a state constitution until 1818, Rhode Island not until 1842.

20. Biographical data on the signers of the Constitution were gathered from the National Archives and Records Administration webpage (<http://www.nara.gov/education/teaching/constitution/signers.html>). The signers who had served in colonial assemblies were: George Washington (VA), John Blair (VA), George Mason, George Wythe (VA), Benjamin Franklin (PA), Thomas Mifflin (PA), James Wilson (PA), Charles Cotesworth Pinckney (SC), John Rutledge (SC), Roger Sherman (CT, both houses), William Samuel Johnson (CT, both houses), Daniel of St Thomas Jenifer (MD, Council), John Dickinson (DE and PA), George Read (DE), Alexander Martin (NC), Elbridge Gerry (MA), Nathaniel Gorham (MA), William Livingston (NJ), and John Langdon (NH).

Signers of the Constitution with prior service in state legislatures were James Madison (VA), George Clymer (PA), Thomas Mifflin (PA), Gouverneur Morris (PA), Robert Morris (PA), Alexander Hamilton (NY), John Lansing, Jr. (NY), Charles Cotesworth Pinckney (SC, both houses), John Rutledge (SC), Daniel Carroll (MD Senate), Daniel of St Thomas Jenifer (MD, Senate), John Francis Mercer (VA, although MD convention delegate), Richard Bassett (DE, both houses), Gunning Bedford, Jr. (DE), Jacob Broom (DE), George Read (DE Legislative Council), William Blount (NC), William Richardson Davie (NC), Alexander Martin (NC, Senate), Richard Dobbs Spaight, Sr. (NC), Hugh Williamson (NC), Elbridge Gerry (MA), Nathaniel Gorham (MA, both houses), Rufus King (MA), Caleb Strong (MA), Jonathan Dayton (NJ), William C. Houston (NJ), William Patterson (NJ, Legislative Council), Abraham Baldwin (GA), William Few (GA), William Leigh Pierce (GA), and John Langdon (NH, both houses).

21. Scholars have long made this observation. Morey (1893–1894, 202) noted, “The chief historical significance which attaches to the first State constitutions rests in the fact that they were the connecting links between the previous organic law of the colonies and the subsequent organic law of the Federal Union. They grew out of colonial constitutions; and they formed the basis of the Federal Constitution, and furnished the chief materials from which that later instrument was derived.” Similarly, Binkley (1962, 5) observed, “The framers of the Constitution did not have to cross the sea to find models for a plan of national government. These were close at hand in the governments of the thirteen states that has so recently made the transition from colonies. John Adams, who knew more about such matters than any of his contemporaries, even went so far as to say that it was from the constitutions of Massachusetts, New York, and Maryland that the Constitution of the United States was afterwards almost entirely drawn. Most of the others, of course, contributed something and none of them represented a sharp break with the government of the colony from which it had evolved.”

22. An initial proposed constitution was rejected in 1778. A constitutional convention met in 1779 and 1780 and produced the document that was accepted. Authorship of the

constitution is credited to John Adams. Massachusetts was the first state to both use a special convention to draft the constitution and put the final product to the voters for their approval (Lutz 1980, 45).

23. According to Kenyon (1951, 1092), Franklin and Paine were the leading proponents of unicameralism at the time.

24. Luce (1924, 24) argues that Georgia's council played a significant role in the legislative process and thus the legislature was not really unicameral.

25. North Carolina did not change the name of its lower house to House of Representatives from House of Commons until its 1868 constitution (Luce 1924, 23).

26. Colvin (1913, 31) writes of New York's 1777 constitution, "This tendency to keep existing forms is shown in preserving the legislative system practically as it was established in 1691."

27. A few constitutions provided explicit membership sizes for their new legislative chambers, but most have to be calculated using the number of counties in each state at the time the particular constitution was adopted. Thus, the exact membership size in many chambers is subject to debate. The relative size is correct.

28. New Hampshire changed the name in 1784, Delaware in 1792, and New Jersey not until 1844. Rhode Island initially used the name "Upper House" and then tried to employ House of Magistrates. The latter name did not, however, take, and by 1799 it too was labeled the senate (Luce 1924, 21–22).

29. Religious qualifications could have powerful effects. In Maryland in the first decades of the eighteenth century, Richard Bennett never held legislative or other office, even though he was one of the richest men in the colonies and a member of a politically powerful family—his grandfather was a governor of Virginia, his father a Maryland assemblyman, his stepfather the speaker of the assembly, and his half brothers were members of the upper house. Bennett could not hold office because he was Catholic while the rest of his family was Protestant (Hardy 1994, 204).

30. Weir (1969, 477) supplies a similar answer in his analysis of South Carolina politics, "Economic independence promoted courage and material possessions fostered rationale behavior. In addition, a large stake in society tied a man's interest to the welfare of the whole. Wealth enabled him to acquire the education believed necessary for statecraft. Finally, the influence and prestige of a rich man helped to add stature and effectiveness to government."

31. Vestrymen, however, were not disqualified from legislative service, and many of them became legislators. In Virginia, for example, well over 60 percent of members of the House of Burgesses were vestrymen, giving the church considerable influence in legislative affairs (Spangenberg 1963).

32. Ministerial disqualification also appeared in constitutions in Florida, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Texas (Swem 1917, 76–77).

33. A federal district court tossed out Maryland's disqualification clause in 1974 (*Kirkley v. Maryland*, 381 F. Supp. 327). The Supreme Court held Tennessee's disqualification to be unconstitutional four years later (*McDaniel v. Paty*, 435 U.S. 618). A discussion of the legal issues raised in the Maryland and Tennessee cases can be found in Wood (1977).

34. Madison uses that exact phrase at the beginning of *The Federalist No. 53*. In a 1776 letter to John Penn, John Adams used the phrase (Luce 1924, 110), "where annual elections end, there slavery begins." The latter version is mentioned in Adams (1980, 243).

35. This term limit was rooted in Pennsylvania history. Penn's Charter of Libertie of April 25, 1682, held in regard to members of the Provincial Council, "THAT-After the First Seven Years every one of the said Third parts that goeth yearly off shall be incapable of being Chosen again for one whole year following that so all may be fitted for the Government and have Experience of the Care and burthen of it." These limits were discontinued in 1696 (Luce 1924, 346).

36. Benjamin Franklin, a proponent of unicameral legislatures, apparently said nothing in their favor at the Constitutional Convention (Galloway, 1961, 1). The Constitution implicitly accepts bicameralism as the norm in Article 1, section 2: "and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

37. There is evidence that the electoral college system for selecting Maryland state senators was the inspiration for the similar system adopted for presidential selection in the federal Constitution (Slonim 1986, 38).

38. The constitutional clauses that provide that the legislature "shall" make its own rules may imply more freedom than those that say "may" make its own rules, although the importance of this difference probably hinges on the existence of a voter initiative process in the constitutional process (Castello 1986, 528). Constitutional provisions providing legislative rulemaking powers give legislatures considerable protection from judicial interference in their procedures (Miller 1990). In a 1905 decision, the California State Supreme Court went so far as to say (*French v. Senate of State of California*, 80 P. 1031, at 1032), "The Constitution provides that the Senate 'shall determine the rules of its proceedings . . .' If this provision were omitted, and there were no other constitutional limitations on the power, the power would nonetheless exist, and could be exercised by a majority." More recent court decisions along the same lines come from Rhode Island (*National Association of Social Workers v. Harwood*, 69 F.3d 622) and Arizona (*Dauids v. Akers*, 549 F.2d. 122). In 2003, however, the Supreme Court of Nevada ruled during a severe budget impasse that the legislature's constitutional duty to balance the state budget and fund education overrode a voter imposed constitutional provision requiring tax increases to be passed by a two-thirds vote in each chamber. See *Governor Guinn v. Nevada State Legislature*, Supreme Court of Nevada Docket No. 41679 and Whaley and Vogel (2003a). A few days after the court's decision, however, both houses of the legislature passed the budget with two-thirds majorities (Whaley and Vogel 2003b).

39. According to Jennings (1957, 254–55), in practice the Parliament is governed by a rule first adopted in 1706 and made permanent in 1713 that requires taxation must be introduced by a minister on behalf of the Crown.

40. Only Vermont in 1793 and Illinois in 1818 created a shared veto power along the lines of the New York model. All three states later shifted to giving the governor the sole veto power, New York in 1821, Vermont in 1836, and Illinois in 1848 (Fairlie 1917, 477).

## Notes to Chapter 2

1. That earlier state constitutions influenced later state constitutions needs to be emphasized so as to not give undue credit to the influence of the federal Constitution. The original Tennessee constitution of 1796, for example, was drawn largely from the North Carolina and Pennsylvania constitutions, with its provisions on the legislature

taken mainly from the latter (Barnhart 1943; 546–47). Along the same lines, Bancroft (1888, 296) noted that in drafting California’s original constitution, “There was a good deal of ‘slavish copying’ of the constitutions of New York and Iowa.”

2. The original Wisconsin state constitution adopted in 1848, for example, mandated that banking legislation had to be passed by referenda, not by the legislature (Stark 1997, 7).

3. Among the constitutional restrictions noted by Bryce (1906) were rules specifying the size of majorities required to pass appropriations bills, specified time intervals between various readings of bills, committee referral procedures, bill amendment limitations, and germaneness rules. See also Reinsch (1907, 134–47).

4. Note that direct voter influence on legislative organization and procedures is not a recent phenomenon. Among the measures adopted by voters in 1917 and 1918, for example, were (Kettleborough 1919, 431–32), “An amendment proposed in Colorado, and ratified by an overwhelming majority, [that] . . . reduce the period during which bills may be introduced from the first 30 to the first 15 days of the session. . . . A Massachusetts amendment authoriz[ing] the recess of the legislature during the first 60 days of the session; [and] another [that] restricts the appointment of legislators to office, and their compensation for service upon recess committees.”

5. The Rhode Island Supreme Court makes this point in its decision, *In re: Advisory Opinion to the Governor*, 732 A.2d 55 (1999). Analyses of the Court’s advisory opinion are given in Kogan and Robertson (2001) and Topf (2000). Rhode Island is one of eight states with constitutional provisions providing for advisory opinions (Topf 2000, 389), another indication of the complexity of determining the separation of powers across the states.

6. Alabama, Colorado, Delaware, Idaho, Indiana, Kentucky, Minnesota, New Jersey, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, and Wyoming are states using “bills for revenue raising” language. A slightly different phrase, “bills for raising a revenue” is used in Maine, while “money bills” is found in Massachusetts and New Hampshire, and “all revenue bills” is employed in Vermont. The relevant origination language in Georgia and Louisiana covers revenue and appropriations measures. Montana had an origination clause in its 1889 constitution but did not include one in its 1972 constitution (Medina 1987, 208).

7. Other formal theories lend themselves to empirical testing using American legislatures. Notions about the relationship between bicameralism and stable and undominated outcomes (a core), for example, could also be tested with empirical evidence from 50 different American bicameral legislatures to supplement the experimental studies done by Miller, Hammond, and Kile (1996) and Bottom, Eavey, Miller, and Victor (2000).

8. Among U.S. territories and possessions, Guam and the U.S. Virgin Islands have unicameral legislatures; American Samoa, Northern Mariana Islands, and Puerto Rico have bicameral legislatures.

9. Carroll (1933) conducted analysis of this sort, using the Vermont experience. He compared the performance of the Vermont legislature ten years prior to and ten years after the switch to a bicameral system. He also compared the Vermont legislature over the last ten years under unicameralism to the performance of its neighboring legislature in New Hampshire over the same time period.

10. Vermont is claimed to have abandoned joint committees in 1917 because they were thought to invalidate bicameral principles (Luce 1922, 137). The suggestion that the existence of joint committees and other joint actions raises questions about bicameralism as a discrete concept was noted by a roundtable of legislative scholars in the early 1920s

(see Dodds 1924). As far as we know, the question has yet to be fully investigated.

11. Perhaps the classic analysis along these lines is Froman (1967, 7–15).

12. While political scientists may well see the range of sizes of American legislatures as impressive, economists see the differences as relatively small (Stigler 1976, 19).

13. Membership size in state legislatures is generally established in each state constitution. Some constitutions, such as Alaska's (Article 2, section 1) are very specific: "The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty." Other state constitutions allow somewhat more flexibility. The New Hampshire Constitution (Part Second, article 9), for example, states, "The whole number of representatives to be chosen from the towns, wards, places, and representative districts thereof established hereunder, shall be not less than three hundred seventy-five or more than four hundred." The state senate, however, is given a definite size (Part Second, article 25), "The senate shall consist of twenty-four members." The Wisconsin constitution (Article IV, section 2) provides the legislature great flexibility in establishing the size of the lower house: "The number of the members of the assembly shall never be less than fifty-four nor more than one hundred." The size of the upper house, however, is tied to the size of the lower house: "The senate shall consist of a number not more than one-third nor less than one-fourth of the number of members of the assembly." Perhaps the most flexible limitation on size is Montana, which allows the legislature to establish its own size within a limited range by statute (Montana Constitution, Article 5, section 2), "The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members." Occasionally legislative size is set outside the state constitution. For example, the current configuration of the Alabama state legislature with 35 upper house seats and 105 lower house seats was selected by a three-judge panel of the United States District Court for the Middle District of Alabama, Northern Division in 1972. Previously the lower house had 106 seats. See *Sims v. Amos*, 336 F. Supp. 924 (1972), affirmed by the Supreme Court, *Amos v. Sims*, 409 U.S. 942 (1972).

14. Luce (1924, 86–97) provides an interesting historical discussion of membership size in a number of different legislatures.

15. In 1911 Congress fixed the number of seats in the House at 435 following admission of Arizona and New Mexico as states in 1912. The number of seats was not frozen at 435, however, until an act of Congress in 1929 (Kromkowski and Kromkowski 1991, 133). The House was 437 members from 1959 to 1963.

16. Towns could be fined for not sending their delegates, but it appears few fines were actually imposed. Some towns elected representatives but barred them from attending the session because their cost had to be borne by the town. In addition, men from outlying areas were reluctant to serve because of the difficulty of travel and the fact that many of them did not enjoy Boston. Finally, some towns had a great deal of difficulty identifying candidates for office who met the property and wealth requirements (Banner 1969, 281).

17. Madison (Madison, Hamilton, and Jay 1961, 342) anticipated such problems in the *Federalist* 55, "In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."

18. Massachusetts was not alone in experiencing wild swings in legislative membership size. The size of the Nevada state legislature, for example, changed 16 times between



1864 and 1919. The range in membership sizes was substantial, from 45 legislators (15 senators and 30 assembly members from 1893 to 1899) to 75 legislators (25 senators and 50 assembly members from 1875–1879, and 22 senators and 53 assembly members from 1913 and 1915). See Davie (2003).

19. As required by Article 7, section 1 and Article 8, section 1 of the Rhode Island Constitution, the House of Representatives was reduced to 75 seats from 100 seats, and the Senate to 38 seats from 50 seats. The chair of the commission that recommended creating a smaller, better paid legislature in Rhode Island stated (Fitzpatrick 2002), “The goal of the downsizing was to increase responsibility and give individual legislators an opportunity to influence decisions and be more effective in representing their constituents.”

20. Cost savings to the state were the rationale behind the reduction in the number of seats. It appears that a majority of legislators actually favored a plan to increase the number of seats, arguing that it would better enable rural areas to be represented. But the Republican leadership in both houses and the Republican governor backed the reductions and were able to push their redistricting bill through the legislature. See Cole (2001) and Heitkamp (2001).

21. Adding a seat allowed the GOP majority to avoid eliminating a seat upstate and to draw districts in New York City that gave their party a competitive chance (Perez-Pena 2002).

22. The representative was Joseph Underwood, a Whig from Kentucky.

23. The constitutional qualifications for federal office may be more ambiguous than they appear. There are, for example, credible arguments that the three qualifications establish minimum standards and that states may, as they did at earlier points in time, add to them, such as by creating a district residency requirement. See the discussions in Eastman (1995) and Price (1996).

24. *Stiles v. Blunt*, 912 F.2d 260 (8<sup>th</sup> Cir. 1990), page 266, *cert. denied*, 499 U.S. 919 (1991).

25. See *The Oregonian* (2002). The groups actively opposed to the measure were the Parents Education Association Political Action Committee, and the Oregon Family Council.

26. We can offer two examples from the 2002 election cycle and another from 2003. The first case is from Wyoming in 2002 (*Casper Star-Tribune* 2002). A retiring state senator recommended that Dr. Sigsbee Duck be nominated to run as his replacement. Dr. Duck’s candidacy, however, was declared invalid when it was learned that his home was 150 feet outside the district. The doctor promised to become a candidate sometime in the future, “when I figure out where I live.” The second 2002 case is from West Virginia (*Charleston Gazette* 2002). A House of Delegates candidate learned that he did not live in the district in which he was running—as required by state law—when his opponent raised the issue during a debate. The opponent worked for the candidate’s mother, prompting the unlawful candidate to observe, “so he knew exactly what part of the county I lived in more than me.” Like his counterpart in Wyoming, this candidate also promised to run again in the future, noting, “as a first-time candidate, I’ve learned a political lesson . . . research.” The 2003 case was a candidate for the Mississippi state Senate who was found to be living outside the district in which she was running after she was arrested and had to give police her current address (*Clarion-Ledger* 2003).

27. Interestingly, formal residency requirements were first instituted in England by an act passed during the reign of Henry V. The expectation that representatives would be closely tied to those they represented continued through the Elizabethan period, but slow-

ly withered away thereafter. Parliament removed the residency requirement in 1774 (Huntington 1968, 106–7).

28. *Reynolds v. Sims*, 377 U.S. 533 (1964).

29. This represents some change over time. New Hampshire's first House of Representatives had 87 members, each representing 100 families.

30. Research along these lines has typically been conducted at the local government level.

31. Jacobson (2001, 15) notes briefly that, "The purely physical problems of campaigning in or representing constituencies differ greatly and can be quite severe." We agree and think studies need to be conducted to document the representational and policy consequences.

32. The following gives the year the lower house of the state legislature changed from a one-year to two-year term after the end of the Civil War (Luce 1924, 113, Zimmerman 1981, 124): Michigan (1868), Vermont (1870), Pennsylvania (1873), New Hampshire (1877), Maine (1880), Wisconsin (1881), Connecticut (1884), Rhode Island (1911), Massachusetts (1918), New York (1938), and New Jersey (1947).

33. North Dakota extended its term of office for the lower house to four years in 1996. Four-year terms were adopted by Louisiana in 1879, in Mississippi in 1890, in Alabama in 1901, and in Maryland in 1922 (Luce 1924, 113). Among states with four-year terms for both houses, North Dakota is the only one that staggers its elections, with half of the seats in each house up for election every two years. In Alabama, Maryland, Mississippi, and Louisiana, all seats are up for election on the same four-year cycle. State legislative elections are held in odd-numbered years in both Mississippi and Louisiana, as well as in New Jersey and Virginia. Currently, every state but Louisiana elects its legislators following the national election calendar, the first Tuesday following the first Monday in November. Louisiana holds its legislative elections on the fourth Saturday after the primary, which is held on the second to last Saturday in October. Such uniformity has not always been the case. In 1930, for example, Louisiana held its legislative elections on the first Tuesday following the third Monday in April, and Maine held its legislative elections on the second Monday in September (Toll 1930, 5). It may be, of course, that elections held at odd times are more likely to focus on state and local issues than elections all held on the same day which may give a more national flavor to the proceedings.

34. We are grateful to Tim Storey of the National Conference of State Legislatures for providing us with information and examples on how four-year terms in state legislatures are handled following the decennial redistricting.

35. More recently rotation agreements were used in some state legislatures, particularly in the one-party South, when legislative districts covered more than one county. The occupant of the seat would rotate among the counties in the district. The series of reapportionment decisions handed down by the Supreme Court in the early 1960s effectively ended such agreements. See Cobb (1970) and Jewell (1964, 181–82).

36. The exception is Utah, where legislators imposed term limits on themselves only to beat the voters, who had a more stringent limitation proposal before them, to the punch.

37. The case was *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

38. See *Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997), cert. denied, 118 S.Ct. 1302 (1998).

39. State courts in Massachusetts, Oregon, Washington, and Wyoming tossed out term limit measures passed by the voters.

### Notes to Chapter 3

1. See, for example, the essays in Zeller (1954).
2. Alabama did not change to biennial sessions until 1939 (Powell 1948, 356).
3. In 2000 Kentucky voters passed an amendment allowing for annual sessions and in 2001 the state legislature instituted the new schedule, making it the 44<sup>th</sup> state to meet every year. The states still employing biennial sessions are Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas. Among the annual session legislatures, six—Connecticut, Louisiana, Maine, New Mexico, North Carolina, and Wyoming—have sessions of limited scope in one of the years. The sessions are limited to budget matters to varying degrees of strictness. The limited-scope session occurs in the even year in each limited session state except for Louisiana, which moved to the odd year starting in 2004.
4. A similar situation had unfolded a decade earlier in Nevada. In 1958, 59 percent of the voters approved a constitutional amendment to move to annual legislative sessions. The regularly scheduled session in 1959 was productive, but the 1960 session—the first annual session—produced little in the way of legislation. News reports on the lackluster session swayed public opinion against annual meetings and later that year 58 percent of Nevada voters approved an amendment to revert to biennial sessions (Diggs and Goodall 1996, 79–80.)
5. These data are tabulated from *The Book of the States 2003 Edition*, pages 109–12, and the National Conference of State Legislatures, “Legislative Sessions” (<http://www.ncsl.org/Programs/Legman/about/sesslimits.htm>).
6. Alaska’s constitution originally allowed for annual sessions of unlimited length, but in 1984 voters imposed a 120 day limit because (McBeath and Morehouse 1994, 121), “They were frustrated by the amount of time legislators were taking to divvy up oil revenues.”
7. Campbell (1980, 45–46) notes that in the late nineteenth century, even though Iowa, Illinois, and Wisconsin had no formal limits placed on the length of their legislative sessions, informal norms forced them to keep sessions short. The power of per diem limitations to curb session lengths is suggested by the experience in Arkansas. During the first decade of the twentieth century the legislature was always in sessions for more than 100 days. In 1912 a constitutional amendment passed at the polls limiting the payment of per diems to no more than 60 days. For the next couple of decades the legislature rarely met for longer than 60 days. Only after the Constitution was amended again in 1958 to require legislators to be paid for each day in regular session did the legislature again regularly meet for more than 60 days (Kellams 2003).
8. In these states voters imposed split sessions and later abolished them. Zeller (1954, 92) reports that Alabama, Georgia, New Jersey, and Wisconsin used variants of the split session and that Massachusetts was constitutionally authorized to employ it. The variation employed in Alabama allowed the legislature to meet for a ten-day organization session in the January following a November election. This brief session was held to judge member qualifications, settle disputed elections, select leaders, and make committee appointments. The regular session where legislative business could be conducted was convened in May (Powell 1948, 356).
9. The following information on pay practices is drawn from *The Book of the States 2003 Edition*, pages 125–26.
10. See the New Hampshire Constitution, Part Second, article 15, as amended in 1889:

“The presiding officers of both houses of the legislature, shall severally receive out of the state treasury as compensation in full for their services for the term elected the sum of \$250, and all other members thereof, seasonably attending and not departing without license, the sum of \$200,” and the Texas Constitution, Article 3, section 24(a), “Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars (\$600) per month, unless a greater amount is recommended by the Texas Ethics Commission and approved by the voters of this State in which case the salary is that amount.” The procedure involving the Ethics Commission recommendation followed by a public vote has never been used.

11. Rhode Island Constitution, Article 6, section 3: “Commencing in January 1995, senators and representatives shall be compensated at an annual rate of ten thousand dollars (\$10,000). Commencing in 1996, the rate of compensation shall be adjusted annually to reflect changes in the cost of living, as determined by the United States government, during a twelve (12) month period ending in the immediately preceding year.”

12. See Part the Second, Art. CXVIII: “The base compensation as of January first, nineteen hundred and ninety-six, of members of the general court shall not be changed except as provided in this article. As of the first Wednesday in January of the year two thousand and one and every second year thereafter, such base compensation shall be increased or decreased at the same rate as increases or decreases in the median household income for the commonwealth for the preceding two year period, as ascertained by the governor.”

13. In nine of those states there are some relevant constitutional provisions.

14. A penalty for being absent was imposed in many colonies. In a few colonies tardiness was also fined (Cook 1931, 266–67; Clarke 1943, 181–82). Unexcused absences in Georgia brought a formal rebuke by the speaker in front of the assembly (Corey 1929, 118).

15. The following examination of salaries in California is drawn from Driscoll (1986, 79–80).

16. Legislative salaries in New York also fluctuated a great deal over time. According to Zimmerman (1981, 125) “The 1777 constitution was silent relative to legislative salaries, and the 1821 constitution allowed the legislature to determine the salaries of members. Reflecting the distrust of the legislature, the 1846 constitution restricted the compensation of members to a maximum of \$3 a day up to a maximum of \$300 . . . The 1894 constitution was the first one to specify an amount—\$1,500—as compensation for legislators. Voters in 1911, 1919, and 1921 rejected a proposed constitutional amendment raising the salary of legislators but approved a 1927 amendment increasing the salary to \$2,500. A proposed 1947 amendment . . . providing the salary of legislators would be ‘fixed by law’ was ratified by the electorate. From that time on New York legislators have remained among the best paid in the country.”

17. The six states without per diems are Connecticut, Delaware, New Hampshire, New Jersey, Ohio, and Rhode Island. In 2001, a large number of members of the U.S. House of Representatives unsuccessfully pushed to establish a per diem to supplement their salary, citing the example of such pay schemes in state legislatures. See Bresnahan (2001) and Eilperin (2001).

18. Data on current state legislative retirement plans are drawn from *The Book of the States 2003 Edition*, pages 136–39, and National Conference of State Legislators, “2001 Retirement Benefits for Legislators Monthly Retirement Benefits & Formula,” (<http://www.ncsl.org/programs/legman/About/Table9b01.htm>).

19. The initiative placed the following language in Article 4, section 1.5 of the California Constitution, "To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed upon the number of terms which may be served." (These directives were actually carried out in more detailed language inserted elsewhere in the constitution.) For Rhode Island, see Rhode Island History, chapter IX: The Era of Reform, 1984–2000 (<http://www.rilin.state.ri.us/studteaguide/RhodeIslandHistory/chapt9.html>).

20. See *The Book of the States 2003 Edition*, pages 156–59.

21. It is important to note that most state legislators leave on their own, rather than through defeat at polls (e.g., Jewell and Breaux 1988).

22. A table with recent data on salary, sessions lengths, staff by state along with the Squire and Kurtz professionalization rankings is provided in Hamm and Moncrief (2004, 158).

23. Data on congressional days in session are drawn from Congressional Quarterly (1993, 483–87) and Ornstein, Mann, and Malbin (2000, 154–57).

24. Note that this time frame is consistent with Price's (1975) argument that the professionalization process in the U.S. House began in the late nineteenth century.

25. State legislative salaries were collected from several different sources. The 1910 data were calculated from information in the *Official Manual of Kentucky*, 1910, page 147. The 1931 data were calculated from Schumacker (1931, 10). Salary data for 1960, 1981, and 1999 were calculated from data in *The Book of the States* for the appropriate years. Note that data for Alaska and Hawaii are not included in our analyses. Data on congressional pay are taken from the Dirksen Congressional Center's CongressLink webpage: <http://www.congresslink.org/sources/salaries.html>.

26. Data on days in session were collected from various sources. Keith Hamm and Ronald D. Hedlund gathered the data for 1909 as part of a larger project on state legislative committees funded by the National Science Foundation (SBR-9511518). The data for 1926 to 1929 were reported in Christensen (1931, 6). The data for the later years were taken from the appropriate volumes of *The Book of the States*. Data on congressional days in session are drawn from Congressional Quarterly (1993, 483–87) and Ornstein, Mann, and Malbin (2000, 154–57).

27. The numbers used to produce Figure 3–4 do not include those for New Jersey's state legislature, because it reported being in session every day in 1958 and 1959.

28. The election pairs we used were 1904–08, 1924–28, 1952–56, 1972–76, and 1992–96.

29. We also tested a measure using Mayhew's (1986) traditional party organization score, with the expectation that more highly organized states would be more supportive of professionalized legislatures. The measure performed very poorly both statistically and substantively in almost every equation. We do not report those results in this work.

30. In the 1910 equations, state population is substituted for total state income because the data for the latter are not available before 1929. This creates little problem, however, because as noted above, the two variables are highly correlated. State population in 1930, for example, correlates with total state income in 1931 at .95; state population in 1910 correlates with state income in 1931 at .91. Substituting one variable for the other does not change our findings, either statistically or substantively.

31. During the earlier time periods, the correlations between Democratic party support level variable and both the South dummy variable and the Traditionalistic dummy variable are very high. This raises the strong possibility of collinearity problems. Dropping the political culture variables from the equations does not, however, boost the Democratic party support variables to statistically significant levels.

32. It must be noted that early studies of professionalization split on the question of its impact on policy outcomes. Some studies found little relationship with the policy content of legislation, notably Karnig and Sigelman (1975), LeLoup (1978), and Ritt (1973). Others found stronger effects, among them Carmines (1974) and Roeder (1979).

### *Notes to Chapter 4*

1. Impeachment provisions appeared in Delaware, Georgia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, and South Carolina (Hoffer and Hull 1979, 75).

2. See *The Book of the States 2003 Edition*, pages 197–98.

3. The numbers are taken from Davidson and Oleszek (2002, 162, 174). The positions in the House include the speaker, majority and minority leaders and whips, campaign committee chairs, conference and caucus chairs and vice chairs, and the steering and policy committee chairs. In the Senate the positions include president pro tempore, majority and minority leaders and whips, campaign committee chairs, conference chairs, GOP committee on committees chair and policy committee chair, and the Democratic policy committee chair and steering committee chair.

4. The following data are drawn from *The Book of the States 2003 Edition*, pages 121–23, and state legislative web pages. See also Rosenthal (1998, 247–48).

5. The leadership positions are president pro tem, majority leader, chief deputy president pro tempore and majority caucus chair, two deputy presidents pro tempore, chief deputy majority leader, two deputy majority leaders, majority caucus whip, chief assistant president pro tempore and federal relations liaison, assistant president pro tempore, chief assistant majority leader, assistant majority leader, minority leader, minority leader pro tempore, two chief deputy minority leaders, deputy minority leader-at-large, four deputy minority leaders, four assistant minority leaders, and two minority whips. All 15 members of the minority party held leadership positions.

6. Galloway (1958, 459–60) reports that one standing committee—the Committee of Elections—was created in the First Congress.

7. Galloway (1958, 460) gives an example of the state legislative experience with legislative committees informing the behavior of members of the First Congress.

8. A more discursive examination of the relative powers of committees, caucuses, and party leaders in four state legislatures in the 1950s that documents similar diversity can be found in Wahlke, Eulau, Buchanan, and Ferguson (1962, 52–66).

9. Note that with no limits, as the number of committees in a legislature changes over time, the average number of committee assignments per member also changes, sometimes dramatically. In the Illinois House, for example, members had an average of three committee assignments in 1877. As committee numbers burgeoned, the average number of committee assignments ballooned to seven by 1897, and twelve by 1911 before declining again to five assignments in 1915 (Reinsch 1907, 162–63; Smith 1918, 610–11).

10. A thorough discussion of the committee appointment procedures formally used in the South Carolina Senate can be found in Graham and Moore (1994, 128–29).

11. Calculated from ASLCS and NCSL (1998: Table 96–4.13).

12. Calculated from ASLCS and NCSL (1998: Table 96–4.13).

13. Many legislators expressed reservations about the introduction of conference committees in New York. One of the first chairs of a conference committee in New York complained (Fisher 1995), “We’re following the example of the Federal government, which is notorious for not getting anything done. We don’t need this process.”

14. This practice is of long standing. At the beginning of the twentieth century Reinsch (1907, 179–80) reported that both houses sent equal numbers of members—typically three—to conference committees. A couple of decades later, Winslow (1931, 26) reported some variation across the states, but with three members from each chamber composing the most common conference committee.

15. There may even be another layer of complexity to confuse scholars. Winslow (1931, 27) found that in Nevada and, as noted earlier, Washington, the first conference committee on a measure was limited to the points in contention between the two houses, but if they failed to resolve the differences any subsequent conference committee would be unlimited.

16. Some are easier to trace. The rules for both houses of the Confederate Congress, for example, were lifted almost completely from the rules governing the U.S. Congress (Jenkins 1999, 1149–1150).

17. One of the filibusterers was Henry B. Gonzalez, then a first-term state senator. He went on to serve in the U.S. House for 38 years.

18. See 77<sup>th</sup> Session Rules, article IV, rule 4.03 and editorial notes.

19. See Rules of the Senate, Rule 15. The ability to filibuster in South Carolina was not reduced when the GOP took control of the Senate in 2001, even though they worked to impose party rule by abolishing the seniority rule for committee chairs (Hoope 2001).

20. See Rules of the Nebraska Unicameral, Rule 7, section 10, cloture. See also Hambleton (2002). Note that, as in the Nebraska case, rules governing the filibuster within a chamber can change over time. In 2004, for example, the Democratic party majority in the Maryland state Senate passed a rule reducing the cloture requirement to a three-fifths majority (29 of 47 members) from a two-thirds majority (32 members). See Craig (2003) and Penn (2004).

21. Beth (2001) reports that from 1931 to 2000, discharge petitions were filed on 551 measures. The House adopted only 26 discharge motions (5 percent), although 41 other measures made their way onto the House floor through alternative means.

22. The thirteen states were Alabama, Colorado, Idaho, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, Ohio, Pennsylvania, and Tennessee.

23. See Article III, section 22.

24. Such arguments still resonate with legislators. In 2003, the Kentucky House of Representatives failed to get a bill to redefine the legal status of fetuses pulled from a committee, falling four votes short of the required majority. The House majority leader had encouraged a no vote on the discharge petition by asking members to respect the committee system (Lexington *Herald-Leader* 2003).

25. No doubt strategic considerations are at the heart of the decision to make discharge procedures more difficult to invoke. In 2004, the Mississippi House voted largely on party lines to change the required vote for discharging a bill to two-thirds of those present and

voting from the long-standing majority of those present and voting (House Resolution 39 as adopted by House, March 3, 2004). Although the discharge procedure had rarely been used, the majority Democrats feared the minority Republicans would successfully pull two controversial bills out of committee, thus prompting the desire to change the rule. See Kanengiser (2004).

26. A more recent example of this occurred in the Kentucky House of Representatives early in 2004. A discharge petition signed by 26 members of the minority party Republicans was submitted to pull a proposed constitutional amendment banning gay marriages out of a committee that was refusing to report the measure. The GOP whip stated (Loftus 2004a), "I believe the vote on the discharge petition will give everyone a pretty good idea of how the whole body will vote [on the amendment]." The Democrats managed to avoid a vote on the discharge petition through a parliamentary procedure withdrawing the proposed amendment from consideration on the floor (Loftus 2004b).

### *Notes to Chapter 5*

1. Curiously, just as in 1899, not a single lawyer served in the Delaware General Assembly in 1986 (Bazar 1987; Hirsch 1996).

2. These numbers were calculated by the authors from data in Wooster (1969; 1975).

3. By 1901 lawyers already outnumbered farmers in the Pennsylvania state legislature (Farmerie 1967, 34).

4. Occupation data were collected by Keith Hamm and Ronald D. Hedlund as part of their study of the development of state legislative committee systems throughout the twentieth century. The project was funded by the National Science Foundation (SBR-9511518). Rice University provided some funding for collecting the 1999 data. Including data we have for additional chambers for 1949 and 1999 changes the numbers presented in table 5-1 remarkably little. Moreover, the numbers reported for 1999 in table 5-1 are entirely consistent with the results of a survey of state legislators that asked their occupations conducted by the The Pew Center on the States in 2003.

5. The highest percentages of self-identified legislators in 1995 were found in Pennsylvania (82 percent), New York (76 percent), Massachusetts (55 percent), and Wisconsin (51 percent).

6. These data are drawn from National Conference of State Legislatures, "Former State Legislators in the 107<sup>th</sup> Congress."

7. The first woman in the Senate, Rebecca L. Felton, a Georgia Democrat, was in office for only a single day. The first woman to serve in the Senate in a substantial way was Hattie W. Caraway, a Democrat from Arkansas who took her late husband's seat in 1931 and served until 1945.

8. Cox (1994, 12) reports that 78 percent of women turned out compared to 56 percent of men.

9. Once in the majority the first power play pursued by the women was to commandeer the biggest bathroom off the chamber floor from the men (Ammons 1999, 23).

10. Women speakers were found in Colorado, Connecticut, Missouri, North Dakota, and Oregon.

11. The first African American to serve in a legislative body in America might have been Mathias de Sousa, who served in the Maryland Assembly in 1642 (Bogen 2001). But



de Sousa's heritage is remarkably unclear. Different sources refer to him as Portuguese, African, Jewish, and Catholic. See King, Chaney, and Ford (2001).

12. These data are from the National Conference of State Legislatures, updated as of 29 December 2003. See also Bositis (2002, 18).

13. Data from the National Conference of State Legislatures, updated as of 29 December 2003, reveal three fewer Hispanics in lower houses.

14. Over the same time period the percentage of first-term members in the state senate dropped to 50 percent from 84 percent (Shull and McGuinness 1951, 473–74).

15. State courts in Oregon, Massachusetts, Washington, and Wyoming tossed out voter passed term limits. Legislators in Idaho and Utah repealed term limits.