

# 101 CHAMBERS

*Congress, State Legislatures, and the  
Future of Legislative Studies*

PEVERILL SQUIRE | KEITH E. HAMM

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For the pioneers of comparative legislative research,  
Mac Jewell, Jerry Loewenberg, and Pat Patterson

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## INTRODUCTION

The legislative studies subfield of political science is thriving. More than 650 articles dealing with legislatures appeared in ten leading political science journals between 1995 and 2000 (Hamm 2001).<sup>1</sup> Much of this work is among the most methodologically advanced and theoretically sophisticated in the discipline. In our view, however, the study of legislative politics suffers from one glaring weakness: a lack of truly comparative, cross-institutional research. This is surprising because comparative research is central to the scientific enterprise. Those who study state legislatures typically conduct comparative analyses in their research, with almost 90 percent of the 70 or so state legislative articles published between 1995 and 2000 focusing on more than one institution. The remainder of the subfield, however, tends to focus on a single institution.<sup>2</sup> Research on the U.S. Congress is the obvious example. In approximately 95 percent of the more than 280 published articles in which Congress was a case, it was the only case. Indeed, typically only one of its two houses was examined. Only very occasionally was Congress compared with another national legislature such as the British Parliament or Japanese Diet. Direct comparison between Congress and state legislatures was even less frequent (Hamm 2001).

What accounts for the typically exclusive nature of legislative research? One explanation can be traced to the apparently widely held belief that both houses of Congress are unique, and therefore cannot be easily compared to each other, much less to other legislative institutions. This notion of institutional exceptionalism is unfortunate because it limits the way researchers approach testing many interesting and compelling theories of legislative organization and behavior. But even if we accept the idea that the Congress differs so much from most legislative bodies found outside the United States that comparison is futile, this singular concentration ignores the research possibilities that comparison with the other 99 American legislative chambers offers.<sup>3</sup> State legislatures provide enormous variation along almost every dimension of interest to scholars. As Price (1975, 20) observed over a quarter of a century ago, “For anyone interested in the variety of historical patterns of organization presented by the House and Senate in the nineteenth century, the current range of state legislative practices have quite a familiar look. One does not need to go, like Darwin, to the Galapagos Islands to rediscover long missing species of legislative operation.” Indeed, as Price intimates, legislatures operating along the lines of the long vanished House of speakers Reed and Cannon can still be found today in some states. State legislatures, however, do not simply mimic the structures and rules employed at some point by Congress; they have in many cases developed completely different ones as

well. Thus, to promote more legislative research of a truly comparative nature, we offer this primer on comparing and contrasting Congress with the American state legislatures.

We think this is an important undertaking because state legislatures are suitably compared with Congress for many reasons. In at least three fundamental ways the two sorts of institutions are remarkably similar. First, they arise out of the same culture, the same political history, and the same republican ideals. This sameness allows legislative scholars to sidestep the thorny problems faced by those comparing legislative systems arising out of very different cultures and histories. Second, the electoral context of the two sorts of legislatures is the same. Most state legislatures elect their members using single-member plurality districts, as do the U.S. House and Senate. Indeed, members of both institutions face some of the same voters at the same elections. And, although there are some differences across the states, the basic political party system is the same. Finally, and perhaps most importantly, at a macro level the functions and roles that the two sorts of legislative institutions play are the same. In Polsby's (1975) terms, state legislatures, like both houses of the U.S. Congress, are "transformative" bodies, fully capable of initiating, debating, and passing legislation. Moreover, with the exception of trade and defense issues, state legislatures and Congress consider the same sorts of legislation regarding taxation, spending, and the like. And, in addition, legislators in both sorts of institutions engage in oversight of the executive and bureaucracy and provide services for their constituents. Thus, none of the methodological problems found when comparing a presidential system legislature with parliamentary system legislatures arise when comparing Congress and the state legislatures.

But while there are great similarities there are, of course, important differences between the two sorts of institutions. These differences provide legislative scholars leverage for rigorously testing important theories. We intend to compare and contrast Congress with state legislatures to identify organizational structures and rules that do and do not lend themselves to comparative analysis. Specifically, we compare and contrast Congress and the state legislatures on their histories, fundamental structures, institutional characteristics, organizational characteristics, and members. One of our goals is to highlight the viability of using state legislatures to better test many of the theories currently confined to the congressional realm, while occasionally raising a caution flag where difficulties may be encountered.

The methodological advantages of testing theories on multiple bodies rather than on just one body are obvious. It is hard to argue against providing more cases and more variation on variables of interest. Indeed, it is important to note that state legislatures provide impressive variation both cross-sectionally *and* longitudinally. More significantly, as Price implies, looking at state legislatures often provides scholars counterfactuals for studying Congress (e.g., what if Con-

gress was unicameral, or nonpartisan, or larger, or smaller, or more centralized or more decentralized, etc.). It seems profitable, then, to explore the differences and similarities among state legislatures and the U.S. House and Senate.

Thus, we would like to help build bridges between the study of Congress and the study of state legislatures by identifying the points of comparison and contrast between the two sorts of institutions. As suggested earlier, one of our goals is to highlight possible opportunities to liberate the development and testing of theories of legislative organization and behavior from shackles imposed by a singular fixation on Congress, and on the U.S. House in particular. Truly generalizable theories should be portable from one American legislature to another. If theories prove not to be portable, at least their limitations will be illuminated in the effort. Another compatible and not so subtle objective of our effort is to encourage the study of state legislatures by introducing legislative scholars to (or, more likely, reminding them of) the vast array of organizational schemes and behavioral patterns evidenced in state legislatures. The potential for the combined study of American legislatures, as opposed to the separate efforts of Congressional and state legislative scholars, is too great to leave unexplored.

We start in chapter 1 by examining the historical evolution of American legislatures, establishing their common roots in colonial assemblies and the original state legislatures. By pointing out the fact that Congress and the state legislatures started out with great similarities, we raise important and interesting questions about how and why their evolutionary processes differed over the next two centuries.

In the second chapter we examine the fundamental structures of American legislatures to begin to suggest how and why different evolutionary processes arose. We explore issues of organizational design by looking at constitutional dictates and the choices made about the number of houses, membership size, membership qualifications, constituency size, terms of office, and term limits. More than just making a series of cross-sectional comparisons, we emphasize how legislative characteristics change over time.

Chapter 3 offers an analysis of legislative professionalization over time and in comparison across American legislatures. In particular, we assess limitations on sessions and session lengths, member pay and pensions, and staff and facilities. We propose and test a theory that links professionalization with state wealth, demonstrating that legislative evolution is in part driven by the resources available to the institution to exploit. And we explore why the notion of professionalization is central to the study of the evolution of legislative organizations.

The focus in chapter 4 is on organizational characteristics of American legislatures. We offer a comparative analysis of organization and rules, including leadership, political parties, legislative committees, and legislative procedures. We give particular attention to the use of filibusters and discharge petitions across chambers. We argue that, given the current centrality of rules and procedures in

the field of legislative studies, many of our most compelling theories need to be tested outside the confines of the U.S. House, something that is achievable because of the rich variation provided by state legislatures.

We shift attention away from institutional characteristics in favor of an examination of members and legislative careers in chapter 5. Here we provide both cross-sectional and temporal comparisons between state legislatures and Congress in terms of who serves and for how long. The relationship between member careers and organizational characteristics of legislatures is explored.

We conclude by offering a summary of the advantages and problems in trying to expand the pool of legislative institutions being examined. We think the payoff for expanding the scope of legislative studies is stronger theories. There is no doubt of the importance and central place of the U.S. Congress, and it is not surprising that the study of it has dominated legislative studies. But the U.S. House and Senate each represent just one configuration of organizational rules and structures. Additional configurations are found in the other 99 chambers in the United States, and we think that theories that can explain features or behaviors across all 101 chambers ought to be our collective goal.

## The Lineage of American Legislatures

When we look at American legislatures today, we usually emphasize their differences. Congress is seen as contrasting greatly with state legislatures. And, in turn, the considerable differences among state legislatures are noted. These divergencies across legislative institutions are real, yet our focus on them often obscures their substantial similarities. In this chapter we explore the common heritage shared by American legislatures, highlighting their evolution from the same ancestral colonial assemblies.

The evolutionary line is actually quite straightforward. All of the 13 colonies that became the original states had colonial legislatures, and almost all of these assemblies provided their citizenries with extensive backgrounds in representative government. The assemblies produced substantial familiarity with legislative structures and processes in the colonies, at both the elite and popular levels. These experiences proved invaluable in the institutional designs of the legislative branches in the emerging American democracies. As Donald Lutz (1999, 49) observed,

The relationship between Congress and its Anglo-American ancestors is a profound one for the simple reason that the U.S. Congress more or less smoothly evolved from these earlier institutions. Those who sat down to organize the First Congress did not start *de novo*, but drew on their collective experience in the Continental Congresses and early state legislatures. Those who sat down in the First Continental Congress and newly independent state legislatures drew on their collective experience in colonial legislatures.

Thus, in a very real sense, understanding today's American legislatures requires an understanding of their direct evolution from earlier representative assemblies.

We begin our investigation of the American legislative development by examining the rise of representative assemblies in the colonies. We then document how almost all of these rudimentary assemblies became bicameral bodies, and came to share other characteristics as well. Indeed, we show that colonial assemblies evolved along the same lines the U.S. House would later follow (Polsby 1968) by adopting more complex and sophisticated rules of procedure, creating standing committee systems, and coming to experience stable memberships and leadership structures.

The second part of the evolutionary story is structured by the events of 1776. By the time of the Revolution, the colonists had enjoyed anywhere from 21 years to 157 years of experience with governance by representative assemblies. With the move for independence, each of the colonies was given the opportunity to rethink its government structure as it adopted new rules for governing itself. We examine the original state constitutional provisions regarding the legislature and show the substantial continuity between the colonial assemblies and the state legislatures that replaced them. More important, perhaps, we then demonstrate the robust lineage between the original state legislatures and the Congress later created by the Constitution. Thus, from our perspective, the Congress under the Articles of Confederation was something of an evolutionary mutant, one that had remarkably little influence on the later development of American legislatures. Legislatures of the sort we see in the United States today are rooted in the colonial assemblies and the original state legislatures.

## **The Rise of Representative Assemblies in America**

Historians have long examined the rise of legislatures in the American colonies.<sup>1</sup> These representative assemblies were notable in part because they developed in all British colonies in North America (except for Quebec, which was under French control for most of its history prior to the American Revolution) despite the fact that the colonies were settled and populated by different people at different points in time for different reasons. Yet, within a decade or two of coming under English control, representative assemblies emerged in each of the future American states (Kammen 1969, 11–12). Legislatures arose for different reasons in different colonies. In Virginia, for example, a representative assembly first met in 1619 because the commercial directors of the colony in London saw it as a mechanism that would promote economic stability (Bosher 1907, 734–35; Kammen 1969, 13–15; Kukla 1985, 284.) Assemblies in Maryland, Massachusetts, and Connecticut were rooted in their early charters, but the initiative for their development came from the colonists themselves (Kammen 1969, 19). The establishment of colonial assemblies during the 1660s later came at the behest of external proprietary boards that saw them as essential structures for the develop-

ment of successful societies (Kammen 1969, 32).

A chronology of the emergence of representative assemblies in the American colonies is provided in table 1–1. It is important to note that assemblies were established throughout the seventeenth century and into the eighteenth century. Thus, they were not, in some simple sense, modeled on the English governmental system, because English government itself, particularly in regard to Parliament’s role in the system, evolved dramatically over this time period (Kammen 1969, 54–55). Indeed, the legislative systems that arose in America bore more in common with the English system of the Tudor period than with that of the time after the Glorious Revolution (Huntington 1968, 109–21). Yet, despite the fact that the colonial assemblies emerged at different times for different reasons, and

**TABLE 1–1** American Colonial Assemblies

Colony	Year of First Meeting of Assembly	Number of Representatives at Initial Meeting	Year Assembly Became Bicameral	How Upper House Filled
Virginia	1619	22	Pre-1660 <sup>a</sup>	Appointed
Massachusetts Bay	1634	24	1644	Elected by Lower House <sup>b</sup>
Connecticut	1637	12	1698	Elected
Maryland <sup>c</sup>	1638	24	1650	Appointed
Rhode Island	1647	24	1696	Elected
North Carolina	1665	12	1691	Appointed
South Carolina	1671	20	1691	Appointed
East Jersey <sup>d</sup>	1668	10	1672	Appointed
West Jersey	1681	34	1696	Appointed
New Hampshire	1680	11	1692	Appointed
Pennsylvania <sup>e</sup>	1682	42		
New York	1683	18	1691	Appointed
Delaware	1704	18		
Georgia	1755	18	1755	Appointed

Sources: For Delaware, Bushman, Hancock, and Homsey (1986); Conrad (1908, 78–79), Greene (1981, 461), and Munroe (1979, 72); for Georgia, Jones, Jr. (1883, 463–65) and Gosnell and Anderson (1956, 14); for New Jersey, Moran (1895, 33–34); on the colonies in general, see Kammen (1969, 11–12) and Frothingham (1886, 18–21); on colonial upper houses specifically, see Main (1967).

<sup>a</sup>Kukla (1981, 10; 1985, 289) holds that Virginia’s legislature became bicameral in 1643; Walthoe (1910, 1) a bit earlier; Bailey (1979, 28) in the 1650s; Billings (1974, 234), Frothingham (1886, 19), and Miller (1907) not until the 1680s.

<sup>b</sup>After 1691, members of the upper house were elected by the lower house.

<sup>c</sup>Maryland might have had an assembly as early as 1635.

<sup>d</sup>New Jersey was separated into East Jersey and West Jersey in 1676. The two parts were reunited as New Jersey in 1702, and the first assembly met in 1703 with twelve representatives from each part.

<sup>e</sup>Pennsylvania was bicameral from its first assembly in 1682 until a new charter in 1701 instituted a unicameral system.

that their distant parent government was at best a moving target in its capacity as a model, they relatively quickly came to resemble one another in important ways (Andrews 1944, 40; Greene 1961, 453–54; Kammen 1969, 58, 69). In their almost universal struggles to assert their independent power from the governor, the assemblies took on most of the same responsibilities across the colonies. As Kammen (1969, 58) observed of the power assumed by the evolving assemblies, “In all of them . . . the time-honored clichés about counsel and consent, advice and assent, taxation and representation have astonishing validity.” By the end of the seventeenth century the assemblies were permanent components of existing colonial governmental structures, and had become recognizable legislative organizations (Kammen 1969, 57).<sup>2</sup>

Beyond their similar powers and duties, the colonial assemblies also came to look alike structurally. As table 1–1 shows, over time almost all of them, save for Pennsylvania and its offspring, Delaware, became bicameral bodies. In simple terms the original governmental form for the early colonies consisted of a governor, a council, and a general assembly (Morey 1893–1894, 204). The Crown in all but two cases—Connecticut and Rhode Island—appointed the governor and councilors, while the general assembly consisted of the colony’s freemen. Each of these governing units—the governor, the councilors, and the assembly—was a distinct entity. But they were for all intent and purposes undifferentiated in terms of power. The units, in what was usually referred to as the “General Court,” collectively made most important decisions. The general assemblies, however, rapidly evolved into representative bodies as it became geographically impracticable for all freemen to participate in their regular sessions (Haynes 1894, 22–23; Morey 1893–1894, 206–9; Young 1968, 154). Thus each of the towns came to elect one, two, or occasionally three representatives to speak on their behalf in the general court.

In general, bicameral legislatures emerged from what looked like unicameral bodies in the colonies because of the original distinctions inherent in their colonial systems between councilors as agents of the Crown or proprietors, and representatives as agents of the freemen of the colonies.<sup>3</sup> The council and the general assembly first became unmistakably separate chambers in Massachusetts (Kammen 1969, 22–23; Morey 1893–1894, 212).<sup>4</sup> Their process of becoming bicameral was to some extent inchoate. Through the early 1630s, the councilors and the members of the assembly developed different interests and concerns, and these differences led to conflict between them. The most prominent policy dispute between the two groups involved the legal disposition of a case involving a wandering sow.<sup>5</sup> Their disagreement was so great that it led directly to a split. In 1636 a working arrangement was reached between the two groups, the language of which strongly suggests the glimmerings of separate chambers and a bicameral legislature (Morey 1893–1894, 212–13):

Whereas it may fall out that in some of these General Courts to be holden by the magistrates [councilors] and deputies [representatives], there may arise some difference of judgment in doubtful cases, it is therefore ordered, that no law, order, or sentence shall pass as an act of the court without the consent of the greater part of the magistrates on the one part and the greater part of the deputies on the other part; and for want of such accord the cause or order shall be suspended; and if either party think it so material, then there shall be forthwith a committee chosen the one half by the magistrates and the other half by the deputies, and the committee so chosen to elect an umpire, who together shall have the power to hear and determine the cause in question.

The division between the councilors and the representatives became permanent by law in 1644. At that point it was agreed that the two bodies would sit apart and that laws proposed and passed by one body would be sent to the other body, and both bodies would have to agree for a bill to become law (Kammen 1969, 22–23; Morey 1893–1894, 213).

The movement toward bicameralism in the other colonies did not follow the same course of events as in Massachusetts. In Rhode Island, for example, it took almost 50 years of agitation on the part of the colony's freemen to gain a bicameral legislature (Moran 1895, 22). The first intimations of bicameralism came when representatives asked for and were given permission to meet separately for 30 minutes during sessions to discuss important issues (Moran 1895, 25). As late as 1672 attempts were made to keep the councilors and representatives meeting together. In that year, for example, the colonial treasurer was authorized to spend public funds for a dinner (Moran 1895, 25), "ffor the keepinge of the Magistrates and Deputies in love together, for the ripeninge of their consultation, and husbandinge of their time." There is evidence that by then the two chambers already thought of themselves as being separate. Their partition, however, was not formalized until 1696 (Moran 1895, 26).

In Connecticut few substantial conflicts arose between the councilors and the representatives, but a process of separate consideration of legislation evolved over the last quarter of the seventeenth century. In 1698 a law was passed designating the council as the "upper house" and the assembly as the "lower house" and requiring that all laws have the approval of both chambers (Morey 1893–1894, 213–14). Similar processes unfolded in North Carolina and Maryland. The legislature in North Carolina was created as a unicameral body in 1665, but over time councilors and assemblymen began to consider legislation separately and they were formally recognized as distinct chambers in 1691 (Bassett 1894, 55–58). In Maryland, by 1642, after only a few years of the legislature's existence, representatives already sensed a critical difference in perspective from the councilors. In that year one representative said publicly that he (Jordan 1987,

26–28), “in the name of the rest desired that the house might be Separated & the Burgesses [representatives] to be by themselves and to have a negative.” The governor refused to grant the request at that time and it took until 1650 for a formal separation of the two bodies to occur. Even then unicameralism returned briefly in the mid-1650s and only from 1660 on was Maryland’s assembly permanently bicameral (Falb 1986, 46–59; Jordan 1987, 26–33). A weak commitment to bicameralism also surfaced in South Carolina, but with a different twist. In the mid-1740s—a half-century after the advent of two houses in that colony—the lower house changed its name to General Assembly from House of Commons and attempted unsuccessfully to deny the upper house any part in the legislative process (Sirmans 1961, 384–85; Weir 1969, 490–91). Overall, then, the evolution to a bicameral system varied across the colonies, and in some cases the process was murky and tentative.<sup>6</sup>

Once the freemen successfully asserted the right for their representatives to initiate legislation, a bicameral system was virtually inescapable (Kammen 1969, 54–55; Morey 1893–1894, 214–15). It must be noted, however, that Pennsylvania went against the tide, starting with a bicameral legislature in 1682 and switching to a unicameral system with the institution of a new charter in 1701. (The Delaware Assembly, which spun out from the Pennsylvania Assembly shortly thereafter, was unicameral throughout its colonial period.)

It is critical to emphasize that the emergence of bicameral legislatures in the colonies was not the result of colonists or the Crown consciously choosing to imitate the British system, although colonial representatives often cited Parliament’s two houses to justify their desire for a similar system (Moran 1895, 13, 26; Johnson 1938, 21), and colonists saw the obvious parallels between the two systems (Lokken 1959, 574). American bicameralism was fundamentally different from the British version in two ways. First, the historical reasons behind the split between the House of Commons and the House of Lords were not the same reasons that drove the colonies to develop separate legislative chambers. Bicameralism arose in England over questions of representation of different classes in society (Taswell-Langmead 1946, 169–71; see also Loewenberg 1995, 737). In a real sense, the movement toward bicameralism in America was triggered by policy disagreements between differently appointed groups, initially one over a wayward pig. The policy differences between the colonial councils and assemblies were not class based in the same way. Second, the House of Lords was in the main a hereditary body, and thus politically independent of both the Crown and the people. In contrast, the upper houses in most of the colonies consisted of political appointees of the Crown or in the case of Maryland the proprietor and thus politically dependent on them (Luce 1924, 47–50; Main 1967, 3, 199–200; Pole 1969, 68; Sirmans 1961 387).<sup>7</sup> As Weir (1969, 492) notes of colonial South Carolinians, “Everyone recognized that the composition of the upper house did not reflect a separate stratum of society comparable to that of the British Lords.”

And, of course, as table 1–1 reveals, upper house members in Connecticut and Rhode Island were elected by the freemen of the colony, while in Massachusetts they were elected by members of the lower house. Thus bicameral systems in the colonies developed in response to local conditions and problems.<sup>8</sup>

As the colonial assemblies became discrete chambers, they moved from being subordinate to the governor and council to eventually becoming dominant. Greene (1961, 454) identified three phases of legislative development in the colonies. In the first phase during the seventeenth century, the assemblies asserted their autonomy from the councils and established their right to initiate money bills and other legislation. Early in the eighteenth century, the assemblies moved to the second phase, assuming political power equal to that of the governor and council. By 1763, most of the colonial assemblies achieved the final phase, one of political supremacy, setting the stage for their ultimate challenges to the parent British government.

The rise of legislative power was not, however, uniform across the colonies. The assemblies in Connecticut and Rhode Island were always dominant in their government systems because of the favored position granted to them by their charters. Among the other assemblies, those in Massachusetts and Pennsylvania were the most powerful, followed closely by their counterparts in New York and South Carolina (Greene 1961, 454–55). Assemblies in New Jersey, North Carolina, and Virginia lagged behind. Among the older assemblies, only those in Maryland and New Hampshire failed to become the dominant political institution in their colony by the time of the revolution (Greene 1961, 456–57).

Beyond their generally successful challenge of the governor and council for political preeminence, during the eighteenth century the colonial assemblies developed into institutions organized to respond to the demands of their constituents (Olson 1992; Rainbolt 1970, 422). Arguably, the colonial assemblies had closer ties to their constituents than did the British Parliament because the assemblies in New Hampshire, New Jersey, New York, North Carolina, Rhode Island, and South Carolina, for example, had approximately one member for every 1,187 constituents while the House of Commons had one member for every 14,362 constituents (Clarke 1943, 268; Pole 1962, 638; see also Greene 1981, 461).<sup>9</sup> Much of the assemblies' time was consumed dealing with petitions, which had become vehicles for individuals and groups to call for legislative action on problems of interest.<sup>10</sup> Petitions also functioned as an import source of information for legislators about the problems and concerns of their constituents (Higginson 1986, 153–55). Through the 1700s the number of petitions in most assemblies climbed significantly (Bailey 1979, 62; Leonard 1948b, 376–80; Olson 1992, 556–58; Purvis 1986, 179). Their importance increased as well. Olson (1992, 556) estimates that approximately half of all laws passed by the colonial assemblies during the eighteenth century originated as petitions, a conclusion supported by data on New Jersey (Purvis 1986, 178), Pennsylvania (Tully

1777, 99), and Virginia (Bailey 1979, 64). And legislators clearly responded to local concerns through the introduction of legislation. Richard Bland, a mid-seventeenth century member of the Virginia House of Burgesses, for example, introduced (Rossiter 1953, 41), “a Bill, To prevent Hogs running at Large in the Town of Port Royal,” and “a Bill for destroying Crows and Squirrels in the County of Accomack.”

In many respects the colonial assemblies in the eighteenth century institutionalized along the same lines Polsby (1968) observed in the U.S. House in the nineteenth century. Increased demands on the assemblies forced them over time to become more efficient organizations, essentially through increasing their internal complexity.

Legislative sessions generally became longer over time. In Virginia, for example, the first House of Burgesses in 1619 met for only five days in July—the burgesses adjourned earlier than anticipated because they were too hot and too sick to continue (Bosher 1907, 737). Over time the House came to meet in longer sessions. According to Pargellis (1927b, 156) the burgesses met for an average of 89 days prior to 1728, 157 days from 1728 to 1749, and 176 days in the final period. Similar numbers are found in New York. There the Assembly met for an average of 76 days annually from 1691 to 1727, and 108 days from 1728 to 1775.<sup>11</sup>

Standing committees were established in most colonial assemblies as a means to handle recurring matters of importance (Bushman, Hancock, and Homsey 1986; Cook 1931, 266; Corey 1929, 123; Frakes 1970; Greene 1959; Harlow 1917, 1–23; Jameson 1894, 261–67; Jillson and Wilson 1994, 24–38; Leonard 1948a, 237–38; Pargellis 1927a, 84–86; 1927b, 143–45; Ryerson 1986, 114). Indeed, assemblies in Pennsylvania and Virginia even employed subcommittees (Olson 1992, 560). The committee system in Virginia was particularly well developed and functioned much like committee systems in American legislatures today. Harlow (1917, 14) observed of standing committees in Virginia’s House of Burgesses, “they were vigorous, hard-working groups, actively engaged in legislative work.” These committees were even empowered to frame and amend legislation before it was sent to the chamber’s floor (Harlow 1917, 16–17). Referral procedures were so well established that by 1750 petitions presented to the House of Burgesses were quickly sent to the appropriate standing committees (Bailey 1979, 29; Harlow 1917, 14–15). And the House added standing committees to respond to societal problems. The Committee on Religion, for example, was established in 1769 at the height of mounting tensions over religious issues (Longmore 1996, 780).

Virginia’s standing committee system surpassed the others in terms of its development, although South Carolina’s also reached an impressive level of institutionalization, becoming the primary centers of legislative power by the middle of the eighteenth century (Frakes 1970, 84). And both standing and ad hoc committees in almost all of the colonial assemblies came to engage in serious efforts

to gather and analyze information, through, among other devices, holding hearings and traveling to conduct investigations (Olson 1992, 562; Miller 1907, 109; Zemsky 1971, 14).

Colonial assemblies evolved in other important ways as well. More complex and sophisticated rules and procedures were adopted. Olson (1992, 559) observes, "The loose organization, informal procedure, and lax approach to law making that had characterized legislatures at the beginning of the [eighteenth] century gradually gave way to tighter organization, better managed debates, more professional drafting of laws, more substantive laws, and more publicity for the laws." In Maryland, for example, Jordan (1987, 173) notes "the general development of a more effective internal organization within the lower house" leading to "the slow but sure establishment of influential precedents contributing to achievement of the delegates' objectives." Precedents also accumulated slowly over time in Virginia (Kukla 1981, 13–15). But although they built up slowly, rules and procedures accrued in considerable numbers. Examining legislative procedures in the Virginia House of Burgesses, Pargellis (1927a, 83) marvels at the "contrast between the few quaint orders of 1663 and the long complete list of 1769." In substantively important ways legislative procedure became more detailed. The House of Burgesses, for example, followed British parliamentary tradition by requiring all bills to be read three times. The initial reading was in essence preliminary. Serious consideration of the measure followed the second reading (Pargellis 1927b, 148–49):

A bill might then be referred to a committee of the whole house, to a standing committee, to the committee that prepared it, or to a special group varying in size from four to twelve. . . . After the committee report, it might be re-committed, amended, engrossed or rejected. Debate and amendment could follow the third reading, and the ample opportunity for thorough understanding of the amendments was ensured by the practise of reading them as many times as the bill itself had been read. The house of burgesses used more sparingly than certain other colonial assemblies that principal of coercion embodied in the modern "rider" . . . though in the closing years of the period several references to "riders" occur. Another late development, to which the house did not often resort until the 1760's, was the use of the power to amend to reverse entirely the meaning of the original bill or question, and thus evade an expression of opinion upon the main subject.

Legislative procedures in Virginia evolved to the point that by 1750 at least four different devices existed by which a legislator could strategically delay consideration of a measure: a motion to adjourn during a debate, moving that the orders of the day be read, moving the previous question, and offering amendments (Pargellis 1927b, 152–53). Indeed, rules developed in colonial assemblies to govern debate. The Virginia burgesses had "almost limitless opportunities for

debate,” but members could speak only once during the same debate (Pargellis 1927b, 151). The other assemblies also limited members to speaking only once during a debate, save for Delaware which allowed members to speak three times. Pennsylvania even devised a cloture rule to cut off limitless debate: If four members stood and requested that a speaker conclude his speech, he had to do so (Clarke 1943, 177–78).

Institutional assistance increased over time. Colonial assemblies acquired clerks who, in turn, were later allowed to hire assistants, all of which contributed to better record keeping (Cook 1931, 264; Falb 1986, 127–130; Leonard 1948a, 235; Olson 1992, 561–62). At the beginning of the eighteenth century, legislative records were remarkably poorly kept. They were stored in (Olson 1992, 547), “taverns, homes, and college rooms and in Pennsylvania, in one small trunk that seems to have been carried from place to place.” Fifty years later the situation was much improved. The assemblies were sufficiently staffed so that clerks could notify the public about the legislative schedule in advance and keep much more detailed minutes of assembly business. Over the course of the eighteenth century colonial assemblies started publishing their journals and codifications of the laws they passed (Cook 1931, 264; Leonard 1948b, 394; Olson 1992, 562–64).

The assemblies also became more bounded. When the assemblies were to meet and their terms of office became regularized over time. Initially, the assemblies were open ended, but the strong trend over time was for definite session lengths. Consequently, terms of office were established, typically one-year in the New England colonies and Pennsylvania, and two- or three-years in the others (Luce 1924, 103–8). Membership turnover in the colonial assemblies declined from 1696 to 1775. Most assemblies experienced very high turnover rates at the end of the seventeenth century, but these figures were dramatically lower in most chambers by the time of the Revolution (Greene 1981). Indeed, there is evidence that the memberships of colonial assemblies were as politically experienced as their counterparts in the British Parliament (Kukla 1985, 296–97). Leadership patterns also stabilized over time. As table 1–2 reveals, over time colonial speakers came to serve longer apprenticeships within the chamber before achieving the highest post. In Massachusetts, for example, every speaker held numerous important committee assignments before gaining the top job (Zemsky 1969, 504). And once in the speakership they came to serve longer tenures (Wendel 1986, 175).

Finally, there is evidence that universalistic standards evolved in at least some assemblies. Initially, colonial assemblies were highly status-conscious organizations. The men who served in them were from their colony’s social and economic elite (Main 1966). Moreover, within lower house chambers, an elite of the elite dominated. In Georgia (Corey 1929, 124), Maryland (Jordan 1987, 175), Massachusetts (Zemsky 1969), New Jersey (Purvis 1986, 106), Pennsylvania (Tully 1977, 96), and Virginia (Greene 1959), for example, committee assignments

**TABLE 1-2** The Rise of the Institutionalized Speakership in Colonial Assemblies

Year	Average Years in Assembly Prior to Becoming Speaker	Average Years Serving in Speakership
1700	2.3	5.5
1725	6.6	7.6
1750	8.5	11.3

Source: Adapted from Wendel (1986, 175).

were doled out unequally, with just a handful of assembly members getting most of the posts, and consequently making most of the important decisions. But, at least in Virginia, which came to rely heavily on standing committees, power became more decentralized over time. Committee membership sizes grew throughout the eighteenth century, allowing more members to be given positions (Bailey 1979, 33–34; Pargellis 1927a, 84–85), a trend also witnessed in Pennsylvania (Ryerson 1986, 116). According to Greene (1959, 486), in 1736:

twelve burgesses—one-sixth of the total membership—occupied more than half of the committee seats. Until 1742 it was not uncommon for as many as one-third to one-half of the burgesses to serve on no committee at all. . . . Beginning in 1748, the speaker adopted the practice of giving each member at least one post on a standing committee . . .

Moreover, the House of Burgesses developed a custom of adding members to standing committees over the course of a session. In 1774, for example, the Committee on Propositions and Grievances started with 37 members but had 73 members by the end of the session (Harlow 1917, 13). Expanding committee sizes, of course, gave more members the opportunity to exercise influence within the chamber.

The use of seniority in allocating positions of power was rare. Seniority came to play a significant role in the committee assignment process in South Carolina (Frakes 1970, 21–27). But committee assignments in Massachusetts (Zemsky 1969, 506), Pennsylvania (Ryerson 1986, 130) and Virginia (Pargellis 1927a, 86) appear to have been made without much, if any, reference to how long a member had served in the assembly.<sup>12</sup>

But even without the existence of an explicit seniority rule of the sort found in the modern U.S. House, there is evidence to suggest that seniority mattered in colonial assemblies and that its importance increased over time. Greene (1963, 463–92) devised a measurement scheme based on committee assignments and leadership positions to determine first-rank and second-rank leaders in the southern colonies from 1688 to 1776, a measure subsequently used by Purvis (1986, 255–58) for New Jersey. Using their rankings we looked to see if

**TABLE 1-3** The Importance of Seniority in the Leadership of Four Colonial Assemblies, 1688–1775

Colonial Assembly	Years Leaders First Elected to Assembly	Number of Leaders	Mean Years to First Reach Second Leadership Ranks	Mean Years to First Reach First Leadership Ranks
Virginia	1668–1699	44	2.5	5.2
	1700–1730	35	2.7	5.9
	1731–1772	90	4.3	6.3
South Carolina	1692–1698	22	2.1	2.5
	1700–1728	80	1.5	2.3
	1731–1772	95	1.7	3.3
North Carolina	1697–1730	16	1.6	1.6
	1731–1775	53	2.4	4.6
New Jersey	1703–1730 <sup>a</sup>	36	2.5	4.1
	1731–1772	31	5.0	4.6

Source: Calculated by authors from data on Virginia, South Carolina, and North Carolina presented in Greene (1963, 463–92), and on New Jersey presented in Purvis (1986, 255–58).

<sup>a</sup>If previous experience in the East Jersey and West Jersey assemblies is included in the calculations, the mean number of years to reach the second leadership rank is 2.9 and the mean number of years to the first leadership rank is 4.8.

seniority mattered in determining which legislators made it into the leadership ranks, and if the importance of seniority changed over time. The results of this analysis are presented in table 1–3. In each time period save for two, first-rank leaders were, on average, more senior than second-rank leaders. More interestingly, the importance of seniority in both leadership ranks increased over time, except for the second time period in South Carolina. By the 1730s, leaders, particularly those in the first rank, had acquired significant seniority before first gaining a position of prominence. These data are clearly suggestive of institutionalization.

Colonial assemblies also came to control decisions over contested elections for their seats, and the existing evidence suggests that they developed mechanisms and rules pushing them toward deciding such disputes on their merits (Clarke 1943, 132–50; Greene 1963, 189–99). Once a dispute was brought to an assembly, most assigned a committee to investigate it. Virginia was the first to use a committee for such a purpose, starting in 1663.<sup>13</sup> Most other assemblies followed suit: Maryland in 1678, Pennsylvania in 1682 (the assembly's first meeting), South Carolina in 1692, New York in 1699, New Jersey in 1710, North Carolina in 1739, and Georgia in 1755 (the assembly's first meeting) (Clarke

1943, 145–46). Only the New England assemblies failed to employ committees; instead, they used other mechanisms to investigate elections disputes. In Massachusetts, for example, a joint committee composed of lower and upper house members met to make an inquiry (Clarke 1943, 144–45).

The available evidence suggests that investigations of disputed elections by colonial assemblies were thorough. By 1760, for example, the elections committee in North Carolina was empowered to call for persons, papers, and records in order to gather information for their decisions (Cook 1931, 277). More generally, across the colonial assemblies (Clarke 1943, 146–47),

The committee on elections frequently investigated such petitions at length, heard witnesses, and listened to arguments by the legal advisors. . . . Sometimes a petition was declared frivolous and vexatious, and was dismissed without ceremony. But if evidence upheld the petitioner's contention, the decision would be in his favor.

The observation that outcomes could be changed based on the evidence is an important one that Kolp (1992, 656) also makes.

Over time, legislative life in colonial America became more routinized. Colonial assemblies acquired improved facilities. The seventeenth century Virginia House of Burgesses, for example, initially met in churches, taverns, and private homes (Pargellis 1927a, 74). Later in that century they met in several successive statehouses in Jamestown (Daniel and Daniel, 1969, 135). The burgesses moved into the more famous “Capitoll” in Williamsburg in the early 1700s. As Pargellis (1927a, 74–75) describes the building, “The west wing was set apart for the use of the general court and the council, the east wing was for the hall of the burgesses and their committee rooms, while the room over the porch was used for conferences between the council and the burgesses.”<sup>14</sup> A similar story unfolded in Pennsylvania. The Assembly moved into a new capitol in the 1730s (Olson 1992, 562).<sup>15</sup> Prior to that they met in various places, among them the Bank Meeting House, Thomas Makin's schoolhouse, and the Widow Whipain's house, the last being a particular favorite because it had a “great ffront Room” (Leonard 1948a, 221). Assemblies in several other colonies also enjoyed statehouses. New York moved into one in the first decade of the eighteenth century, Massachusetts in the second, Delaware in the third, and Rhode Island in the fourth (Daniel and Daniel 1969; Hitchcock and Seale 1976). South Carolina moved into its first capitol in 1753 (Lounsbury 2001). Maryland was in the midst of constructing its capitol when the Revolution started. Ultimately, most legislative business came to be conducted in official settings. Committees in Massachusetts' lower house, for example, initially met over a meal at a tavern on the colony's tab.<sup>16</sup> In 1741 members of the House questioned the ethics of such arrangements. By the early 1750s most committees were convening in special meeting rooms in the Court House attic (Zemsky 1971, 13). Along the same lines, a wing was later added to

the Pennsylvania statehouse to accommodate committee meetings; prior to that they met in courthouses and the Coffee Shop (Leonard 1948b, 386).<sup>17</sup> Olson (1992, 562) notes that in Virginia during the 1740s, “all the committees began shifting their meeting sites from taverns and homes to accommodations in the capitol buildings.”

More broadly, the assemblies (Andrews 1926, 227–28), “regulated membership, conduct, and procedure; ruled against drinking, smoking, and profanity, against unseemly, unnecessary, and tedious debate, against absence, tardiness, and other forms of evasion.” Rules typically adopted across the colonies required a member to stand with his head uncovered when he spoke and to address his remarks to the speaker. In Georgia, Maryland, Pennsylvania, and Virginia members were expressly prohibited from naming other members when speaking in opposition to their proposals. Speaking without first being recognized by the speaker brought a shilling fine in Connecticut; similar rules were adopted in Georgia, Maryland, New Hampshire, Pennsylvania, and Virginia. Members of the Maryland Assembly were not allowed to bring swords or guns onto the floor starting in 1648. Being drunk on the floor brought a stiff fine of 100 pounds of tobacco in Virginia; ironically, smoking or chewing tobacco on the floor was against the rules (Clarke 1943, 177–81). Ultimately, the colonial assemblies controlled legislative behavior to a greater degree than did the British Parliament (Andrews 1926, 227).

Structurally, what did the colonial legislatures look like on the eve of the Revolution? The popularly elected assemblies varied in size, from small chambers of 18 to 36 members in Delaware, Georgia, New Hampshire, New Jersey, New York, and Pennsylvania, to much larger chambers with 118 to 138 members in Connecticut, Massachusetts, and Virginia (Corey 1929, 112; Greene 1981, 461; Harlow 1917, 63; Main 1966; Lutz 1999, 65–66).<sup>18</sup> The councils were much smaller. Typically, they had twelve members (Main 1967, 3). Although the councils’ importance declined as the assemblies’ power ascended, they still contributed to colonial governance in significant ways (Main 1967, 96):

The council in most colonies was an extremely active legislative body, in many cases originating bills, passing resolutions, considering and acting upon petitions. In others, it served primarily in a revisory capacity, reviewing and improving legislation. Since the councillors were men of better education, wider experience, and, as a rule, greater intelligence than the representatives, they proved to be exceedingly valuable.

Thus, by the time the break with Great Britain became irreparable, the colonists had considerable experience with and faith in legislatures, particularly those with two chambers. And the legislatures had themselves evolved into efficient law-making and representative institutions.

## The Original American State Legislatures

As the movement toward independence caused the colonies to assume the standing of states, each new polity was afforded the opportunity to consider anew its form of government. In a sense, the writing of constitutions—an activity in which all but Connecticut and Rhode Island engaged—presented the new states with the possibility of starting with clean slates in terms of governmental structures.<sup>19</sup> That they chose not to wipe them clean and instead preserved many of their existing forms and structures is not surprising. After all, as colonies the states had enjoyed considerable experience with self-government, and many of their institutions had evolved in response to local conditions and demands, making them American in nature rather than simple imitations of British government. Particularly in regard to legislatures, the states had existing institutions with which they were comfortable. Moreover, many of the leading political lights in the age of independence had served in colonial assemblies. As Greene (1961, 470) notes,

In the decades before Independence there appeared in the colonial statehouses John and Samuel Adams and James Otis in Massachusetts Bay; William Livingston in New York; Benjamin Franklin and John Dickinson in Pennsylvania; Daniel Dulany the younger in Maryland; Richard Bland, Richard Henry Lee, Thomas Jefferson, and Patrick Henry in Virginia; and Christopher Gadsden and John Rutledge in South Carolina.

Indeed, of the 39 men who signed the U.S. Constitution in 1787, 18 had served in colonial legislatures. One of them—John Dickinson—had been a member of both the Delaware and Pennsylvania assemblies. Even more impressive is the fact that 32 of the signers had served in the new state legislatures, among them James Madison, Alexander Hamilton, and Gouverneur Morris.<sup>20</sup> Thus many of the men who helped write and who governed under the Articles of Confederation and the new state constitutions, and who were to write the federal Constitution, were intimately familiar with existing American legislative structures and practices. Not surprisingly, many of the features of the new state legislatures later appeared in the Congress created in 1787.<sup>21</sup>

Following the recommendation of the Continental Congress, between 1776 and 1777, ten of the thirteen new states adopted constitutions asserting their independent standing. These documents were, in many ways, quick and dirty efforts (Nevin 1924, 125–26). Colvin (1913, 30–31) notes of the effort to write New York's first constitution,

It was not a group of wise men who, after research and deliberation were trying to utilize the accumulated experience of the centuries in framing their new form of government. Rather, it was a group composed of mostly young men surrounded by

the activities of war, in frequent fear of capture, compelled to change their meeting place half a dozen times, who were setting up a government to meet the needs of the immediate situation.

Thus Selsam's (1936, 183) observation about the Pennsylvania constitution of 1776 holds true for the other nine early ones: "The constitution was the hurried and necessarily imperfect work of actual revolution . . ."

The first two constitutions to be adopted, New Hampshire's and South Carolina's, were intended to be provisional (Nevin 1924, 126; Wright 1933, 176–77). South Carolina's was replaced with a permanent constitution in 1778 (Adams 1980, 71–72). New Hampshire's proposed replacement in 1778 failed to be adopted. A new constitution was finally ratified in 1784. The other early constitutions were written to be permanent, but eventually all of them were replaced as well, some relatively quickly (Georgia in 1789, Pennsylvania and South Carolina in 1790, and Delaware in 1792), the others more slowly (New York in 1822, Virginia in 1830, New Jersey in 1844, Maryland in 1851, and North Carolina in 1868). Among the eleven states writing constitutions during the revolution, only Massachusetts was truly deliberative, taking until 1780 to adopt one. Not surprisingly, perhaps, it is the only original state constitution still in effect among the initial 13 states, albeit having been subsequently amended over 100 times.<sup>22</sup>

The main features of the new constitutions as they pertained to legislative design are given in tables 1–4 and 1–5 (see pages 22–25). The relevant provisions from the Articles of Confederation and the federal Constitution also are included, for the purpose of comparison and to allow us to discern patterns of constitutional evolution. The first thing to note is that nine of the eleven states writing new constitutions opted for bicameral legislatures. (In addition, both Connecticut and Rhode Island maintained their bicameral systems.) In most states, there was relatively little serious discussion given to the number of houses since they were simply maintaining the current bicameral system. Moreover, bicameralism was the prevailing legislative theory of the time (Selsam 1936, 184). The topic was, however, given considerable debate in several places. Notably, the question of the proper number of houses was raised in two important revolutionary publications. In *Common Sense*, Thomas Paine wrote in favor of unicameral legislatures in the states. In response, John Adams penned *Thoughts on Government*, arguing in favor of bicameral legislatures. Adams (quoted in Main 1967, 206; see also Luce 1924, 25) made the case that unicameral bodies tended to be

productive of hasty results and absurd judgments. And all these errors ought to be corrected and defects supplied by some controlling power. . . . A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents.

In essence, supporters of bicameral systems argued that unicameral legislatures were to be feared because they would be unchecked and therefore too powerful and they would act too quickly without sufficient deliberation (Adams 1980, 264–65). John Adams’ argument was persuasive in Massachusetts, but in Pennsylvania, Benjamin Franklin’s position in favor of maintaining that state’s unicameral system carried the day (Fisher 1897, 80; Selsam 1936, 185–86; Stourzh 1953, 1108–9).<sup>23</sup> Franklin asserted that a bicameral legislature was like putting one horse in front of a cart and another horse behind it, with the end result being that each horse pulls the cart in the opposite direction (Selsam 1936, 186). Pennsylvania’s constitution was particularly influential on those subsequently adopted in Georgia and Vermont (which adopted a constitution in 1777, but was not admitted as a state until 1791), both of which also created unicameral legislatures (Moran 1895, 53). In each unicameral system, however, an executive council performing some of the functions associated with upper houses also was created (Webster 1897, 74).<sup>24</sup> The other colony with a unicameral legislature, Delaware, switched to a bicameral system in its 1776 constitution.

The lower house was given different names in different states. The original constitutions referred to houses of assemblies in four states (although New Jersey’s was the General Assembly), houses of representatives in two states, houses of delegates in two states, and a house of commons in North Carolina.<sup>25</sup> South Carolina originally called its lower house the General Assembly in its 1776 constitution but changed its name to the House of Representatives in its permanent constitution two years later. New Hampshire’s 1776 constitution makes an initial reference to “a house of Representatives or Assembly” and the two labels were used interchangeably throughout the rest of the document.

The new constitutions made relatively few structural changes to the lower houses, in large part because their earlier colonial manifestations were already republican in nature (Morey 1893–1894, 220).<sup>26</sup> Perhaps the most noticeable change in almost all lower houses was a substantial increase in the number of seats compared to their colonial predecessors (Harlow 1917, 63; Main 1966; Lutz 1999, 65–66). Increased membership sizes were an effort to make the chambers more representative of the electorate, and most of the new seats came from previously unrepresented towns and inland areas (Main 1966, 404; Zagarii 1987, 42–43). Seats were generally apportioned on the basis of counties and cities as they had been in each colonial assembly. Thus, membership sizes increased as states added new counties and cities. But a few states, notably the largest population states, began to experiment with representation based not on geographic unit, but rather on equal population (Zagarii 1987, 36–46). The smallest chamber was Delaware’s with 21 members. The largest lower house was South Carolina’s with around 200 members.<sup>27</sup>

Changes in the upper houses, were, of course, more dramatic because almost all of them had to be converted to elected bodies from appointed ones. In

**TABLE 1–4** Constitutional Features of Original American Legislatures—  
Lower Houses<sup>a</sup>

	Lower House Name	Initial Membership Size and Apportionment	Member Qualifications	Term of Office
DE 1776	House of Assembly	21 members, 7 from each county	Freeholder, county resident, no current minister or persons having military contracts may serve	1 year
GA 1777	House of Assembly	90 members, 10 from each of 7 counties; 14 from Liberty County, 4 from Savannah, and 2 from Sunbury	Protestant, state resident 1 year and county resident for 3 months, 21 years old, own 250 acres or property worth £250, no clergy allowed	1 year
MD 1776	House of Delegates	80 members, 4 members from each of 19 counties and 2 from Annapolis and 2 from Baltimore	County resident for one year, 21 years old, worth £500, no minister may serve, no current supplier to military may serve	1 year
MA 1780	House of Representatives	Variable, based on number of towns and their populations	Town resident for 1 year, freehold of £100 in town	1 year
NH 1776	House of Representatives or Assembly	Variable, based on number of towns and their populations	None	1 year
NJ 1776	General Assembly	39 members, 3 members from each of 13 counties, subject to change by the legislature but never less than 39 members	County resident 1 year, worth £500 in county	1 year
NY 1777	Assembly	70 members, 70 member minimum, apportioned by county, revised after census in 7 years to be proportional to voters, never more than 300 members	No minister of any denomination may serve	1 year
NC 1776	House of Commons	70 members, 2 members from each of 32 counties and 1 from each of six designated towns	County resident 1 year, possess 100 acres, Protestant, no military officer, no current supplier to military, or clergy may serve.	1 year
PA 1776	House of Representatives	78 members, initially 6 from each of 12 counties and Philadelphia, subsequently to be made proportional to number of taxpayers	Live in county or city for 2 years	1 year, may serve only 4 terms in 7 years

*(Continued)*

**TABLE 1-4** Constitutional Features of Original American Legislatures—  
Lower Houses<sup>a</sup> (*Continued*)

	Lower House Name	Initial Membership Size and Apportionment	Member Qualifications	Term of Office
SC 1776	General Assembly	202 members, apportioned by parish and district with 4 to 30 members from each	Clear of debt. Other qualifications in Election Act (freeman, 100 acres or house worth £60) no military commission except in militia	2 years
SC 1778	House of Representatives	199 members, apportioned by parishes and districts with 3 to 30 members from each, made proportional to number of white inhabitants and taxable property in 7 years and every 14 years thereafter	Protestant, state resident 3 years, live and own property in district and be clear of debt, or non-resident with estate worth £3,500, no minister within last 2 years may serve	2 years
VA 1776	House of Delegates	126 members, 2 members from each of 62 counties and from the district of West - Augusta and 1 from Williamsburg and Norfolk and such other cities as legislature designates	Live in city, county, or district as freeholders, no minister may serve	1 year
U.S. 1777	Congress	Variable, 2 to 7 members per state, elected by state legislature, recallable by state legislature	None	1 year, may serve only 3 terms in 6 years
U.S. 1787	House of Representatives	65 members, then proportional by population, at least 1 per state	25 years old, 7 years citizen of United States, resident of state	2 years

Sources: See Constitution of Delaware, 1776; Constitution of Georgia, February 5, 1777; Constitution of Maryland, November 11, 1776; Constitution of the Commonwealth of Massachusetts, 1780; Constitution of New Hampshire, 1776; Constitution of New Jersey, 1776; Constitution of New York, April 20, 1777; Constitution of North Carolina, December 18, 1776; Constitution of Pennsylvania, September 18, 1776; Constitution of South Carolina, March 26, 1776; Constitution of South Carolina, March 19, 1778; Constitution of Virginia, June 29, 1776; The Articles of Confederation and Perpetual Union; The Constitution of the United States. Additional information was gleaned from Adams (1980); Bolles (1890, 462); Leonard (1978); Lutz (1980, 87–92); McCormick (1964); Morey (1893–94); Scharf (1879, 282) and *The Book of the States 2000–2001*.

<sup>a</sup>CT continued to operate under the colonial charter of 1662 until 1818. RI continued to operate under the colonial charter of 1663 until 1842.

**TABLE 1-5** Constitutional Features of Original American Legislatures—  
Upper Houses<sup>a</sup>

	Upper House Name	Initial Membership Size and Apportionment	Member Qualifications	Term of Office
DE 1776	The (Legislative) Council	9 members, 3 from each county	Freeholder, resident in county, no current minister or persons having military contracts may serve	3 years—staggered annually, 1 seat from each county
GA	<i>Unicameral</i>			
MD 1776	Senate	15 members, 9 from western and 6 from eastern shore, elected by 2 electors from each county and 1 elector each from Baltimore and Annapolis	25 years old, live in state 3 years, worth £1,000, no minister may serve, no current supplier to military may serve	5 years
MA 1780	Senate	40 members, elected by districts (district number proportionate to taxes paid) <sup>b</sup>	Live in state 5 years, live in district, worth £300 freehold, live in district	1 year
NH 1776	Council	12 members, apportioned by county, elected by House of Representatives	Freeholders and state residents	1 year
NJ 1776	Legislative Council	13 members, 1 member from each of the 13 counties	Live in county and be freeholder for 1 year, worth £1,000 in county	1 year
NY 1777	Senate	24 members, elected in 4 electoral districts, revised after census in 7 years to be proportionate to voters, never more than 100 members	Freeholder worth £100 clear of debt, no minister of any denomination may serve	4 years—staggered annually
NC 1776	Senate	32 members, 1 from each county	Live in county 1 year, possess 300 acres, Protestant, no military officer, no current supplier to military, or clergymen may serve	1 year
PA	<i>Unicameral</i>			

(Continued)

**TABLE 1–5** Constitutional Features of Original American Legislatures—  
Upper Houses<sup>a</sup> (*Continued*)

	Upper House Name	Initial Membership Size and Apportionment	Member Qualifications	Term of Office
SC 1776	Legislative Council	13 members, elected from and by membership of General Assembly	Clear of debt and other qualifications in Election Act (freeman, 100 acres or house worth £60), no military commission except in militia	2 years
SC 1778	Senate	30 members, 1 from each parish and district, except 2 each from District of Saint Philip and Saint Michael's Parish, and Charleston, made proportional to number of white inhabitants and taxable property in 7 years and every 14 years thereafter	Protestant, 30 years old, live in state 5 years, and own freehold estate in parish or district worth £2000, or non-resident with freehold estate worth £7,000 in district, no minister or public preacher within last 2 years may serve	2 years
VA 1776	Senate	24 members, 1 from each electoral district	Live in district and be freeholder, 25 years old, no minister may serve	4 years—staggered annually
U.S. 1777	<i>Unicameral</i>			
U.S. 1787	Senate	26 members, 2 per state, elected by state legislatures	30 years old, 9 years citizen of United States, resident of state	6 years—staggered biennially

Sources: See Constitution of Delaware, 1776; Constitution of Georgia, February 5, 1777; Constitution of Maryland, November 11, 1776; Constitution of the Commonwealth of Massachusetts, 1780; Constitution of New Hampshire, 1776; Constitution of New Jersey, 1776; Constitution of New York, April 20, 1777; Constitution of North Carolina, December 18, 1776; Constitution of Pennsylvania, September 18, 1776; Constitution of South Carolina, March 26, 1776; Constitution of South Carolina, March 19, 1778; Constitution of Virginia, June 29, 1776; The Articles of Confederation and Perpetual Union; The Constitution of the United States. Additional information was gleaned from Adams (1980); Bolles (1890, 462); Leonard (1978); Lutz (1980, 87–92); Main (1967); McCormick (1964); Morey (1893–94); Scharf (1879, 282); and *The Book of the States 2000–2001*.

<sup>a</sup>CT continued to operate under the colonial charter of 1662 until 1818. RI continued to operate under the colonial charter of 1663 until 1842.

<sup>b</sup>In Massachusetts, senators could be elected only with a majority of the vote. If there was no majority winner in a district, the members of the House and those senators who won election would select a senator from among the candidates who ran.

Delaware, New Hampshire, New Jersey, and initially in South Carolina, the upper house kept its designation as the council. The other states, following Virginia's lead, chose to call their upper house the senate. Thomas Jefferson first suggested the name in his proposed draft of Virginia's constitution (Luce 1924, 21). Eventually the states referring to their upper houses as councils switched to calling it the senate as well.<sup>28</sup>

The upper house in each state had fewer seats than its lower house counterpart. Their sizes ranged from 9 members in Delaware to 40 members in Massachusetts. Most of the upper houses were apportioned on the bases of counties, regardless of populations. Upper house members in Massachusetts, New York, and Virginia were to be elected from newly designed electoral districts.

Unlike all of the lower houses, and most of the upper houses in the other states, upper houses in New Hampshire and South Carolina in its 1776 constitution were elected by the members of the lower house. In South Carolina, lower house members elected upper house members from their own ranks. The vacancies created in the lower house were then, in turn, refilled through special elections (Green 1930, 87). Massachusetts instituted a variation on that system. In senate districts where no candidate secured a majority, the members of the House and those senators who won election selected the senator from among the top candidates who had run. Maryland created a unique system. Upper house members in that state were elected using an electoral college. Voters elected electors—two from each county and one each from Annapolis and Baltimore—who then elected the 15 members of the senate.

The smaller membership sizes and occasionally different election systems suggest that the new upper houses were intended to retain some of the aristocratic qualities of their council predecessors. Further evidence of this is the difference between the two houses in membership qualifications in most states. By and large, the upper houses were not intended to be democratic institutions (Main 1967, 188). Imposing qualifications, however, was not new; colonial assemblies established standards for residency, age, and religion among other characteristics (Greene 1963, 186–89; Phillips 1921). In Georgia, for example, colonial assembly members had to be (Corey 1929, 110), “free white men twenty-one or more years old . . . [with] a belief in Jesus Christ, a year's residence in the province, and free hold estate of 500 acres.” Potential assemblymen in Pennsylvania had to be qualified voters and subscribe to the anti-Catholic English Tolerance Act (Young 1968, 157).<sup>29</sup> Some of the qualifications were more focused. In Maryland, for example, between 1704 and 1716 tavern keepers were disqualified from legislative service (Clarke 1943, 161).

In the new constitutions, qualifications were almost always set higher for the upper house than for the lower house. The qualification most likely to discriminate among the population at large was one for property or wealth. Such a standard was found in most, but not all, constitutions. Where they did appear they

were higher for the upper house than for the lower house (Lutz 1980, 88–89). The most stringent requirement was in South Carolina’s 1778 constitution: a district resident would only have to own property and be free of debt to run for the lower house, but to run for the senate he would have to own a freehold estate worth £2,000. (Non-district residents could get elected in South Carolina, but for each house they had to meet even higher qualification standards.) Overall, however, property qualifications may not have exerted the discriminatory effect intended. According to Main (1967, 189), “Probably no person who lacked a freehold, and exceedingly few who possessed less than the average amount of property, would have been a serious contender for a seat in an upper house.” This may have been because the new upper houses were conceived to represent landed members of society, while lower houses were to be the province of the commoners.<sup>30</sup> Moreover, there was likely a carryover of the colonial norm of deference, a feeling among the masses that officeholding was best left to a disinterested economic elite (Kirby 1970; Tully 1977).

Age was explicitly included as a qualification in only a few constitutions, but it was to be inferred from the standards set for being a qualified voter in the others. Thus, unless otherwise specified, the minimum age for service was 21 years (Webster 1897, 76), the standard for service in each lower house. But in several states upper house members had to be older than their lower house counterparts: at least 25 years old in Maryland and Virginia, and 30 years old in South Carolina. State and county or electoral district residency requirements typically were established for both houses. Again, South Carolina set the most stringent standards in its 1778 constitution: three years state residency for election to the house and five years state residency for election to the senate.

A few states set other notable qualifications. Military suppliers were disqualified from service in Delaware, Maryland, and North Carolina. Given that the constitutions were written at a time of war, the desire was clearly to prevent the appearance or reality of impropriety in the awarding of contracts for supplying army units raised in these states. Indeed, all of the constitutions written in 1776 save for South Carolina’s generally excluded holders of other governmental positions from serving in the state legislature, in part to keep the taint of corruption from impairing the ability of the new governments to govern with legitimacy, but also to prevent the concentration of power in the hands of relatively few people (Wood 1969, 158–59).

Religious qualifications also appeared in many state constitutions. Legislators were required to be Protestants in Georgia, North Carolina, and South Carolina. But ministers were explicitly disqualified from service in seven states: Delaware, Georgia, Maryland, New York, North Carolina, South Carolina, and Virginia. The prohibition against ministers was rooted in both British parliamentary and American colonial experience, where from time to time they were prevented from serving (Clarke 1943, 161–63; Swem 1917, 74–75, 77–79). Ministers were banned

from serving because there was a desire to keep them from getting too involved in politics and, concomitantly, to also keep them focused on religious matters (Stokes 1950, 622).<sup>31</sup> Although the exclusion of ministers from legislative service under the Articles of Confederation was debated but rejected, disqualification did subsequently appear in a number of later state constitutions (Stokes 1950, 622).<sup>32</sup> Over the nineteenth century most states dropped these provisions, but they lasted almost to the end of the twentieth century in Maryland and Tennessee before the federal courts declared them unconstitutional.<sup>33</sup>

The new constitutions also set term lengths. Almost all of the lower houses followed the New England colonial tradition of one-year terms. There were a few deviations. Connecticut and Rhode Island maintained their six-month terms (Bryce 1906, 147; Webster 1897, 75), while South Carolina granted its lower house members two-year terms in both of its revolutionary constitutions. According to Bryce (1906, 147), a one-year term was maintained because it was, “So essential to republicanism . . . that the maxim ‘where annual elections end tyranny begins’ had passed into a proverb.”<sup>34</sup> One-year terms would allow voters to keep elected officials close to home and if needed to replace them quickly (Adams 1980, 243–44; Luce 1924, 109–110). Indeed, so powerful was the pull of the traditional one-year term that Madison had to devote two *Federalist* papers (numbers 52 and 53) to arguments in support of the two-year term given members of the U.S. House. The only term limits imposed in any state legislature by the first constitutions were in Pennsylvania, where members of its unicameral legislature could serve only four one-year terms in any seven-year period.<sup>35</sup> The Congress under the Articles operated with a similar term limit; members could serve only three one-year terms in any six-year period.

Terms in upper houses were more variable. One-year terms were found in four states, giving both upper and lower house members in those states the same term. South Carolina gave its upper house members two-year terms matching those granted to members of the lower house. In four states, upper house members were given longer tenures. Senators in Maryland were given the longest terms, five years, all on the same electoral cycle. Upper house members in New York and Virginia had four-year terms, and those in Delaware three-year terms. In each of these cases, the terms were staggered, so that seats of one-quarter of the senators in New York and Virginia, and one-third of the council seats in Delaware, were up for election each year.

## The National Legislature

The new American states adopted a number of different legislative structures between 1776 and 1780. Many of their features later appeared in the two national legislatures created by the Articles of Confederation and the Constitution.

Indeed, examination of the structures of the national legislatures presented in tables 1–4 and 1–5 reveals that the design of the constitutional Congress owes more to the state legislatures that preceded it than it does to the Congress under the Articles. Most obviously, the constitutional Congress is bicameral, as were 11 of the original 13 state legislatures.<sup>36</sup> In contrast, the Congress under the Articles was, of course, unicameral. And the two houses created by the Constitution were given the names most commonly found in the states. The great similarity between the two sorts of institutions is actually somewhat ironic because many of the men who wrote the Constitution, most notably James Madison and George Mason, held the state legislatures in very low regard because they thought the legislatures held too much power within state governmental structures (Riker 1984, 2–4).

The initial size of the new House of Representatives was roughly in line with many of the state lower houses. The method of apportionment was very similar to that employed in New York, Pennsylvania, and South Carolina. Like the senates in the states, the new U.S. Senate was considerably smaller than the House of Representatives. And, of course, equal representation by state as used in the Senate was equivalent to the equal representation by county used in state senates in Delaware, New Jersey, and North Carolina. The men who wrote the Constitution explicitly designed the House to be elected by the same people allowed to vote for the lower house of the state legislature. In contrast, the senate was to be elected by the state legislature. Similar indirect elections for the upper house were part of the state legislative systems in Maryland, New Hampshire, and South Carolina under its first constitution.<sup>37</sup>

The qualifications imposed for service in the U.S. Congress were grounded in those found in the original state legislatures—there were no qualifications set for membership in the Congress under the Articles. Age and residency requirements were similar between the constitutional Congress and the original state legislatures, even to the extent of having higher requirements for the upper house than for the lower house. Religious and property standards were, of course, debated but not incorporated into the U.S. Constitution, although they appear in many state constitutions. The Senate was given longer terms than the House, as were the upper houses in four states. U.S. senators were given six-year terms, longer than any upper house in the states. The Senate's terms, however, were three times longer than those for the lower house, as were those for Delaware's councilors compared to members of the Assembly. And, although all but one state legislature had only one-year terms for the members of their lower houses—as the Congress under the Articles did—South Carolina gave its representatives the same two-year terms that members of the U.S. House were later granted.

Beyond structures, other significant provisions of the U.S. Constitution appear in earlier manifestations in the original state constitutions. One notable example is the provisions allowing each house to adopt its own rules and to select its own leaders. This particular power is of considerable importance in

current explanations of how the modern Congress came to be. Stewart (2001, 67–68), for example, notes,

One matter that entered the Constitution has rarely rated much comment in the histories of the convention but should interest students of Congress greatly: the question of the internal organization of Congress. The Articles of Confederation were largely silent about the internal organization of the Confederate Congress . . . By giving both chambers of Congress the unambiguous power to govern themselves without regard to the special rights of states or minorities within the legislature, the groundwork was laid for a much more independently powerful and coherent legislature in the future.

Rosenthal (1996, 190) also sees legislative control over leaders and procedures as a crucial aspect of institutional independence.

It is significant to note that the Constitutional powers governing the internal organization of Congress were completely grounded in the colonial and early state legislative experiences. Colonial assemblies asserted the right to establish their own rules of procedure and to select their own leaders. Generally, the Crown allowed assemblies to develop their own rules and procedures without much interference (Greene 1963, 216–19). Gaining control over selection of their leaders was more difficult. The Crown never contested appointment of minor officials, such as the sergeant at arms or messengers, but control over the selection of the speaker was occasionally a source of conflict with the executive branch and the Crown. Assemblies usually, but not always, succeeded in getting their own candidates into the speakership without interference from the executive (Greene 1963, 206–07, 429–31; Wendel 1986, 173).

More directly, as table 1–6 shows, ten of the original state constitutions (including South Carolina’s second constitution) explicitly granted the legislature extensive authority to select its own leaders and five to devise its own rules. The latter rulemaking power was first adopted in the Virginia constitution, although there is no record of why it was included (Castello 1986, 529). All of the rulemaking clauses are unicameral in that they apply to both houses. The Massachusetts constitution, however, uses slightly different rulemaking clauses for its two houses, although nothing has ever been made of the difference (Castello 1986, 528). The leadership selection and rulemaking provisions found in the U.S. Constitution are very similar to those found in several of the earlier state constitutions.<sup>38</sup> Indeed, Hines (1909, 156) observed, “There was no debate whatever over the clause of the Constitution which provides that the house shall choose its speaker and other officers. There was very good reason for this. That clause was taken from the State constitutions adopted in 1776 . . .”

A second important provision involves the power to originate tax legislation. The idea that “money bills,” as they were originally called, originate in the lower

**TABLE 1–6** Early American Constitutional Provisions on Legislative Leadership and Procedures (in Order of Adoption)

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**South Carolina Constitution 1776:** “That the general assembly and legislative council shall each choose their respective speakers and their own officers without control.”

**Virginia Constitution 1776:** “each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding”

**New Jersey Constitution 1776:** “That the Assembly, when met, shall have power to choose a Speaker”

**Delaware Constitution 1776:** “each house shall choose its own speaker, appoint its own officers, judge of the qualifications and elections of its own members, settle its own rules of proceedings”

**Maryland Constitution 1776:** House, “their Speaker (to be chosen by them, by ballot)” . . . Senate, “their President (to be chosen by them, by ballot)”

**North Carolina Constitution 1776:** “That the Senate and House of Commons, when met, shall each have power to choose a speaker and other their officers”

**Georgia Constitution 1777:** “and the house shall choose its own speaker, appoint its own officers, settle its own rules of proceeding”

**New York Constitution 1777:** “That the assembly, thus constituted, shall choose their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business in like manner as the assemblies of the colony of New York of right formerly did”

**South Carolina Constitution 1778:** “That the senate and house of representatives shall each choose their respective officers by ballot, without control”

**Massachusetts Constitution 1780:** “The Senate shall choose its own President, appoint its own officers, and determine its own rules of proceeding” [. . .] “The House of Representatives . . . shall choose their own Speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house”

**U.S. Constitution 1787:** “The House of Representatives shall choose their Speaker and other officers” [. . .] “The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. The Senate shall choose their other officers, and also a President pro tempore” [. . .] “Each House may determine the rules of its proceedings”

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house was well rooted in English parliamentary history, with the first assertion of such exclusive authority occurring around 1407 (Taswell-Langmead 1946, 208–09).<sup>39</sup> Colonial assemblies made similar claims for exclusive origination privileges very early in their histories. Most achieved origination rights without much resistance from the governor or the council (Corey 1929, 121; Greene 1963, 51–71; Miller 1907, 157–59).

The majority of the new state constitutions continued the tradition by granting the lower house exclusive rights to initiate tax legislation, with New Hampshire’s being the first to provide that authority in a formal document in America (Fisher 1897, 73). Most, but not all, states followed New Hampshire’s lead, as table 1–7 shows. During the national Constitutional Convention, there was considerable debate over the origination powers (Galloway 1961, 3). As part of the

**TABLE 1–7** Early American Constitutional Provisions on Origination of Revenue Bills  
(in Order of Adoption)

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***New Hampshire Constitution 1776:*** “That all bills, resolves, or votes for raising, levying and collecting money originate in the house of Representatives.”

***South Carolina Constitution 1776:*** “All money-bills for the support of government shall originate in the general assembly, and shall not be altered or amended by the legislative council, but may be rejected by them. All other bills and ordinances may take rise in the general assembly or legislative council, and may be altered, amended, or rejected by either.”

***Virginia Constitution 1776:*** “All laws shall originate in the House of Delegates, to be approved of or rejected by the Senate, or to be amended, with consent of the House of Delegates; except money-bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.”

***New Jersey Constitution 1776:*** “That the Council shall also have power to prepare bills to pass into laws, and have other like powers as the Assembly, and in all respects be a free and independent branch of the Legislature of this Colony; save only, that they shall not prepare or alter any money-bill which shall be the privilege of the Assembly”

***Delaware Constitution 1776:*** “All money-bills for the support of government shall originate in the house of assembly, and may be altered, amended, or rejected by the legislative council.”

***Maryland Constitution 1776:*** “That the House of Delegates may originate all money bills, propose bills to the Senate, or receive those offered by that body; and assent, dissent, or propose amendments” [ . . . ] “That the Senate may originate any other, except money bills, to which their assent or dissent only shall be given; and may receive any other bills from the House of Delegates, and assent, dissent, or propose amendments.”

***South Carolina Constitution 1778:*** “That all money bills for the support of government shall originate in the house of representatives, and shall not be altered or amended by the senate, but may be rejected by them. . . . All other bills and ordinances may take rise in the senate or house of representatives, and be altered, amended, or rejected by either.

***Massachusetts Constitution 1780:*** “All money-bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.”

***U.S. Constitution 1787:*** “All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.”

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Great (or Connecticut) Compromise, exclusive origination powers were granted to the House of Representatives. The next question concerned the ability of the Senate to amend tax bills passed by the House. Most state constitutions forbade the upper house from amending tax bills. The Constitutional Convention, however, opted for the process established in Delaware and Massachusetts, where tax bills originated in the lower house, but the upper house could amend them. Indeed, the language in the U.S. Constitution is virtually identical to that contained in the Massachusetts constitution.

Another important similarity between the Massachusetts constitution and the federal Constitution is the executive veto power. As shown in table 1–8, both gave the executive the right to reject legislation and the legislature the right to override

**TABLE 1–8** Early American Constitutional Provisions on Executive Veto Power  
(in Order of Adoption)

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**South Carolina Constitution 1776:** “Bills having passed the general assembly and legislative council may be assented to or rejected by the president and commander-in-chief. Having received his assent, they shall have all the force and validity of an act of general assembly of this colony.”

**New York Constitution 1777:** “Be it ordained, that the governor for the time being, the chancellor, and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature; and for that purpose shall assemble themselves from time to time, when the legislature shall be convened; for which, nevertheless they shall not receive any salary or consideration, under any presence whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto in writing, to the senate or house of assembly (in which soever the same shall have originated) who shall enter the objection sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, two-thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and, if approved by two-thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays, be it further ordained, that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days.”

**Massachusetts Constitution 1780:** “No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revisal: And if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in which soever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve: But if, after such reconsideration, two thirds of the said Senate or House of Representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor within five days after it shall have been presented, the same shall have the force of a law.”

**U.S. Constitution 1787:** “Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent,

(Continued)

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**TABLE 1–8** Early American Constitutional Provisions on Executive Veto Power  
(in Order of Adoption) (*Continued*)

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together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.”

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the veto with a super-majority vote of two-thirds. This resemblance is of particular interest because only two other constitutions of the original states granted the executive a veto, but in both cases they were of a very different sort (Fairlie 1917, 474–75). The provisional South Carolina constitution of 1776 continued the colonial tradition of an absolute executive veto, one that the legislature could not override. But, when South Carolina adopted a permanent constitution two years later, the executive was not granted any veto power. The veto provided for in the 1777 New York constitution was not the governor’s alone to exercise. Instead, a council of revision composed of the governor, the chancellor, and the judges on the state supreme court was entitled to reject legislation passed by the state legislature. But the legislature could override the council of revision’s veto with a two-thirds vote of all members.<sup>40</sup>

## Conclusion

By 1789, Americans had enjoyed 170 years of experience with legislative institutions. The evolution of colonial assemblies leads directly to the structures and rules adopted by new state legislatures. In turn, the original state legislatures greatly influenced the design of the new Congress under the Constitution. Thus, in most fundamental ways, the Congress under the Constitution was very similar to the legislatures in the original states. The evolution of American legislatures starts from common ancestors.

## 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.

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