

–The Union Indissoluble: Suffrage, Federalism, and Antebellum Constitutional Stability”

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Since 1791, the federal Constitution has been amended only 17 times, while the 146 state constitutions have been amended 5,900 times. What explains the federal Constitution’s stability relative to the states? Scholars suggest judicial review and popular constitutional reinterpretation postpone or prevent federal amendment, while the state constitutions’ low thresholds to amendment invite revision. Instead, this paper points to constitutional decentralization. Demographic shifts force national constitutional controversies, cutting across the national parties. The parties devolve these issues to the states. Local reformers use these issues to split, unseat, and replace parties in the state legislature, and to entrench their new power by revising or replacing the old state constitution. Widespread state constitutional revision often resolves national constitutional crises, preempting federal amendment, and quieting national inter-branch conflict. This paper defends the claim with an original dataset of all 314 proposed state constitutions from 1776-2016 and a case study of devolution and resolution of antebellum suffrage controversies. In sum, devolution of controversies to the states stabilizes the federal Constitution while upsetting the state constitutions.

Nearly 230 years old, the America’s federal Constitution is the world’s oldest national constitutional document, while the American state constitutions undergo generational revision, lasting on average 63 years.¹ The federal government has had a single constitution with seventeen amendments since 1791, while the states have proposed at least 314 constitutions and passed 146, which have been amended 5,900 times since 1776. What explains the difference? Why is the federal Constitution so stable relative to the state constitutions?

The federal Constitution is stable for a few well-known reasons. Article V requires a proposed federal amendment receive a two-thirds majority in both congressional houses or in two-

¹ The federal Constitution is also the tersest and perhaps steadiest written constitution in the world, too extreme an outlier to represent national constitutions. While the American state constitutions resemble national constitutions in textual specificity, rights protections, and duration (Versteeg and Zackin 2014), hinting at determinants of national constitutional stability, this work does not speculate on constitutional duration in other nations.

thirds of the state legislatures, and then pass three-fourths of the state legislatures or ratifying conventions. Of the 11,000 proposed federal amendments, only 27 have cleared these hurdles.²

American constitutional change occurs not only through amendment, but also through judicial reinterpretation. The Constitution's brevity and ambiguity allows activist judges to fundamentally reinterpret the document and to overturn congressional statutes. But judges rarely use this power. The president and Congress can predict nominees' preferences, and avoid appointing hostile or activist judges. The Supreme Court usually legitimizes the constitutional and statutory status quo (Dahl 1957). The president and Congress also constrain the Court's jurisdiction and strategically defer politically divisive issues to the courts, knowing judges can dismiss or slow appeals, quiet constitutional controversies, preserve the balance between reigning parties, and prevent amendment (Graber 1993).³ Strategic deference to the judiciary quarantines controversies and preempts change.⁴ And even an activist judiciary cannot unilaterally enforce its decisions (Rosenberg 2008). So the courts usually use their interpretive power to resolve or preempt constitutional disputes that might otherwise force constitutional amendment or crisis, easing America's eighteenth-century Constitution into new contexts.

² Vile calculates Congress proposed at least 11,143 federal amendments between 1788 and 2002 (Vile 2003, 540–59).

³ Dahl downplays the Court's independence by excluding the activist late New Deal and Warren Courts (Casper 1976), so the question is not *whether* the judiciary follows the executive and legislature, but *when*. Whittington suggests presidents decide when coalitions defer to the courts (Whittington 2009). Reconstructive presidents that lead new, unified national coalitions can seize constitutional interpretation from the courts, while presidents leading waning, fracturing coalitions shift interpretation of divisive constitutional controversies to the courts. Per Dahl and Funston, the Court, appointed by the old regime, lags behind and opposes a reconstructive president or congress until these bodies appoint new, allied justices and shift the Court (Dahl 1957; Funston 1975). Adamany agrees the Court may initially oppose realignment coalitions, stripping new presidents and congresses of constitutional legitimacy (Adamany 1973, 820–5). This may be why realignment presidents like Jackson, Lincoln, and Franklin Roosevelt claimed sole authority to interpret the constitution, to the exclusion of the Court. Gates adds that the Court's resistance varies across realignments (Gates 1989).

⁴ The Court does not always quiet controversies. Lasser notes three cases in which constitutional controversy pushed reactionaries on the Court to issue a decision exacerbating national polarization and the need for realignment (Lasser 1985). *Dredd Scott* is one such example. Gates confirms controversial cases polarize justices (Gates 1989).

Advocates of popular constitutionalism hope the public might reinterpret the Constitution. Bruce Ackerman describes America as a “dualist democracy,” with entrenched representatives passing ordinary statutes and the people infrequently electing radicals to amend or reinterpret the Constitution to legally bind these entrenched representatives.⁵ For example, the Reconstruction Republicans, like later New Dealers, “provoked a fundamental reworking of constitutional identity,” through the Reconstruction Amendments and Social Security Act (Ackerman 1998, 8).⁶ These parties won landslide election during times of unusual crisis, gaining the massive legislative majority needed to revise the Constitution. But these coalitions are by definition exceptional. Alternately, Larry Kramer trusts popular mobs to circumvent legislators, judges, and formal amendment and assert new, informal interpretations of the Constitution (Kramer 2004). But this rarely results in formal amendment. National popular constitutionalism, circumventing ordinary politics, is reserved for crises and moments of exception. So it is rare, explaining national constitutional stability. Further, most ordinary Americans subscribe to the same core constitutional commitments, shying from rejecting these hallowed values for radical new constitutional readings.⁷

These are the dominant explanations for the Constitution’s stability, and they only focus on the national branches and parties. But the state constitutions defy and complicate the federal model. American scholars largely neglect the 314 proposed state constitutions for the federal

⁵ Reformist congressmen can circumvent Article V’s high bar for constitutional amendment with extralegal politicking. For example, Northern voters elected a Republican majority to the Thirty-Ninth Congress, which in December of 1865 excluded representatives from all Confederate states, save Tennessee. This granted Republicans four-fifths of congressional seats, enough to score the 13th and 14th Amendments, constraining subsequent conservative Democratic congresses. Though procedurally legal, this violated Article V’s spirit of consensual revision, and the antebellum Constitution’s commitment to slavery (Ackerman 1998, 15–7, 99–119).

⁶ Unlike Jacobsohn, Ackerman does not assert revising core commitments changes constitutional identity. This leaves Ackerman’s idea of identity murky. See (Finn 1999)

⁷ Americans interpret these shared values in diverse and sometimes conflicting ways, but rarely escape them.

one, missing much of American constitutional politics.⁸ These documents, with their tens of thousands of obscure, provincial provisions and amendments are dauntingly long, unpolished, and unwieldy, so discussion of American constitutionalism disregards the state documents for the federal one, misunderstanding both.⁹

This is a problem. The federal and state constitutions evolve interdependently, so ignoring the latter misinterprets the former. Much of federal constitutional politics begins with the states. Popular, grassroots organizing usually grows from state politics and constitutions (Wolin 1990; Miller 1988; Dinan 2006; Zackin 2013), as do citizens' identities and cultures (Elazar 1972; Elazar 1982), municipal regulations, and some public ideologies, like American republicanism (Wood 1972; Wood 1992). Against previous readings, state constitutions are not parochial, but spark national reform, not particularistic, but reflect reasoned convention debate, not ill-designed and contradictory, but often functional (Scalia 1999, 3–47; Dinan 2006; Zackin 2013, 18–35).

When Americans missed this point, the British Lord Bryce instructed:

the State constitutions furnish invaluable materials for history. Their interest is all the greater because the succession of constitutions and amendments to

⁸The state constitutions literature is sparse. Most accounts are narrow and descriptive, shying from explaining constitutional development and endurance.⁸ Historians and lawyers chronicle particular eras, like the Revolution (Wood 1972; Wood 1992; Lutz 1980; Kruman 1997; W. P. Adams 2001), particular states, regions, and cultures, like the South (Elazar 1972; Elazar 1982; Fehrenbacher 1989; McHugh 2003), particular ideas, like republicanism (Wood 1972; Wood 1992; Scalia 1999; Henretta 2009; Onuf 2009), or particular policy issues, like positive rights (Hershkoff and Loffredo 2010; Hershkoff 2001; Hershkoff 1999). In isolating eras, regions, ideas, and policies, these scholars miss how the interaction of these orders drives American political development. Others trace the interaction of these ideas, policies, regions, and levels of government over state constitutional history (Sturm 1982; Friedman 1988; Tarr 1998; Dinan 2006; Hall 2009; Versteeg and Zackin 2014). For example, Julie Novkov and Emily Zackin argue that state constitutionalism shapes national debates over family and marriage regulation and over positive rights (Novkov 2008; Zackin 2013). But these accounts focus on a single issue area in which states have affected federal policy, and they many miss cases when state revision preempts federal change, systematically understating the state constitutions' effect on the federal one.

⁹Early American political science described laws and institutions, including state constitutions (Jameson 1887; Dodd 1910; Dodd 1915; Dodd 1920; Green 1930). The *American Political Science Review* regularly published updates on state constitutional development, but turned to political behavior in the mid-twentieth century, neglecting the institutions and constitutions that shape this behavior (Lutz 1982, 27–31; Beienburg 2014). Many legal scholars overlook the states, genuflecting to the federal Constitution (Levinson 2012, 15–7), which exceeds the state documents in power, gravitas, and stability (Tarr 1998, 1–3). For a history of this neglect, see (Lutz 1982, 27–31; Friedman 1988, 33–5; Tarr 1998, 1–5; Dinan 2006, 1–6; Williams 2009, 1–11; Onuf 2009, 388–90; Levinson 2012, 1–32; Zackin 2013, 1–36; Beienburg 2014).

constitutions from 1776 till to-day enables the annals of legislation and political sentiment to be read in these documents more easily and succinctly than in any similar series of laws in any other country. They are a mine of instruction for the natural history of democratic communities (Bryce 1908, 450).

With Congress polarized and gridlocked, the states, often operating under functional, single-party governments, have resolved constitutional issues over healthcare and same-sex marriage that the federal branches could not. Especially now, the state constitutions matter for national politics. Myopic focus on the federal Constitution, designed for inflexibility and permanence, exaggerates the stability of civic inclusion, constitutional reform, and American constitutionalism as a whole.

This project recognizes three factors unique to the state constitutions that explain their relative instability. First, Madison worried that a long, mutable constitution could not compel subjects' obedience, and would collapse. The state constitutions are exceptionally specific, packed with politically motivated, contentious provisions, and are easy to amend, tethered to sudden swings in state coalition politics. This may explain their instability. Second, Madison claims widespread veneration preserves a constitution. While the federal Constitution commands broad public respect, most Americans ignore or denigrate their state constitution and have few reservations with state constitutional revision. Finally, the state and federal Constitutions evolve jointly. But scholars describe national judicial review, national popular constitutionalism, and state constitutionalism in isolation, and misread each. Since state constitutional revision stabilizes the federal Constitution, ignoring the state constitutions, as most scholars do, misunderstands the federal Constitution. The aim of this article is to integrate accounts of state and national constitutional change to show how these sorts of change interact.

This article proposes a new determinant of American constitutional change – constitutional decentralization. National parties defer divisive cross-cutting issues to the

states. Opportunistic state radicals use these wedge issues to split the dominant state coalition, seizing power and easily redrafting the state constitutions. They may resolve the controversy. Further, state constitutional reform is slow, piecemeal, and at times unsuccessful, sometimes killing issues. Resolved or trapped at the state level, the national issue quiets, stabilizing national constitutional politics. States usually vent national controversies. Thus the thesis: national coalitions devolve controversial issues to the states, destabilizing state coalitions and constitutions, which usually stabilizes the federal Constitution. The state constitutions guide the timing, nature, and scope of American constitutional and political development.

There are three implications to this. National coalitions defer controversies not only to the courts, but also to the states. Armed with unique, plenary constitutional powers, the states affect national constitutional policy in ways courts cannot. For example, the delaying function that some scholars attribute to the judiciary may also work through the states. Second, in postponing or resolving national disputes, the states may quietly temper conflict between the national branches. Neglecting the states risks misunderstanding national constitutional conflict. Third, states guide national constitutional realignments. States do not always lag behind national realignments, but sometimes lead. Additionally, constitutional devolution postpones change, explaining the periodicity of American constitutional realignments.

This paper proceeds in four parts. First, it introduces model of American constitutional federalism. Second, the paper offers preliminary data on state and federal constitutional development and third, a case study of devolution of antebellum suffrage disputes, before concluding with the model's implications.

I. Devolution of National Constitutional Controversies

This paper argues decentralization of national constitutional controversies stabilizes the national Constitution while destabilizing the state constitutions. Specifically, national coalitions devolve controversies to the states (1), realigning state coalitions, which revise constitutions (2). These revised constitutions may resolve the controversy, preventing national coalition and constitutional realignment, stabilizing the federal Constitution (3). Rarely, state revision may exacerbate the issue, realigning the national coalition and the Constitution.¹⁰

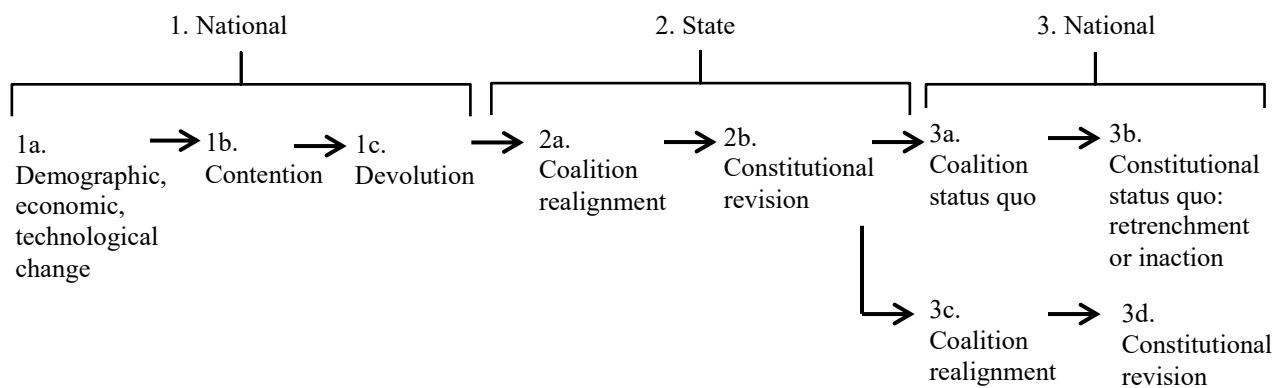


Figure: The States' Role in American Constitutional Realignment

With demographic, economic, and technological change, new populations grow, organize, and, if excluded from legal and citizenship privileges, petition for legal reform (1a). Workers form trade associations, immigrants cluster by community, abolitionists canvas, women petition for the vote, and same-sex couples litigate. But the national Constitution by design entrenches law against reform. Like all constitutions, it is to some degree a tool for civic

¹⁰The model applies only to American constitutionalism, and only imperfectly. The figure illustrates a single constitutional realignment over a single issue. In a particular context, this process may occur partially or completely, once or repeatedly, for one issue or for many. Devolution may kill some national controversies, preempting national realignment at the third stage. Other issues begin at the second stage, emerging in the states before inciting national realignment. Some issues take multiple cycles to resolve: state realignment may prompt unsuccessful national realignment and renewed federal devolution.

exclusion, legally and inflexibly bounding the polity.¹¹ Fringe and reform groups often fall short of the national coalition required for a federal amendment under Article V.

Reformers may instead seek congressional legislation. Sometimes congressional parties co-opt outsiders. Jacksonian Democrats, the party of workingmen, welcomed and enfranchised the immigrants who staffed the mills and factories of antebellum America, while Whigs were proud nativists. Sometimes reformers become a threatening fringe in one or both national parties. Antebellum abolitionist wings of the Democratic and Whig Parties threatened to split both groups. Some issues cut across party lines, internally fragmenting both national parties, preventing cooption by a single party. These issues are especially contentious to national congressional parties, which are united by practical concerns and vague ideological commitments (1b). Cross-cutting controversies may come as civic debates over the gap between the ideal, unrealizable textual people and the actual, embodied people,¹² or between dueling interpretations of the same constitutional value or provision,¹³ or between separate and opposed constitutional commitments or traditions may clash.¹⁴ Outsiders can strategically and intentionally use these rising issues, ideas, and rhetoric, especially over civic membership, to bridge allies and to split rivals (Lieberman 2002, 702; Parsons 2010, 130–1).

¹¹ Liberal constitutions are inflexible rules, binding citizens to a common contract to punish lawbreakers and secure the shared good. But liberal constitutions also constitute and bound the polity, creating a body politic capable of democratic deliberation and autonomy. As the informal people change and grow, they seek to revise or amend these stable constitutional rules. Thus the old dilemma in constitutional law – does legitimacy lie in democratic constituent power, or the formal constitution? Put alternately, constitutions exacerbate the boundary problem by legally excluding some members of the polity, who, to gain legal inclusion, must be constitutional members. For a description of the problem, see (Whelan 1983). This essay does not tackle these important questions.

¹² As the constitutional text gradually fails this ideal, the actual people seize authority and legitimacy as authors of new constitutional texts and interpretations (Norton 1988). Constitutions, burdened with special public scrutiny and the unique role of constituting the people face much greater public pressure than ordinary citizenship statutes. The embodied American people, bound by civic exclusion, chase the inclusive textual ideal through cyclical constitutional rewriting, but can never achieve full inclusion, doomed to permanent cyclical reconstitution.

¹³ For example, the Fifth Amendment Due Process Clause simultaneously protected slaveholders' property in slaves and slaves' liberty. For more see (Tribe 1987; Jacobsohn 2006, 380–2).

¹⁴ On the tension between constitutional liberalism, republicanism, and ascription, see (R. M. Smith 1993; R. M. Smith 1997).

National parties can devolve these threatening issues to the states (1c), isolating debate to silence national third parties and radicals.¹⁵ Put differently, national coalitions remain stable by controlling the scope of constitutional conflict (Schattschneider 1975; Graber 1993). Censoring ideas and rhetoric preserves some coalitions and disarms others, quietly setting the rhetorical agendas that shape policymakers' preferences (Lieberman 2002, 702; Parsons 2010, 130–1).¹⁶

Federal devolution also allows opportunistic state radicals to force debate on previously neglected topics, sometimes realigning state coalitions (2a).¹⁷ The national Constitution has widespread popular support and is difficult to amend. National reformers, thwarted by these barriers to national constitutional reform, further pressure state coalition moderates.¹⁸ Or state reformers, with special Tenth Amendment legal prerogatives over health, safety, morals, and welfare can initiate change, even without the aid of national radicals.

State coalition realignment incites state constitutional realignment (2b). State constitutions, with their low barriers to amendment, are exceptionally easy to change. Since few Americans venerate their state constitutions, ordinary people can reinterpret the meaning of their state constitution. State judges can do the same, though they are often constrained by state amendments that narrow their jurisdiction, and by the national Constitution's Guarantee and Supremacy Clauses. Most state constitutional change instead happens through formal

¹⁵ For example, when abolitionism split both Democrats and Whigs, these parties overcame their differences to jointly gag Congress' antislavery minority, prohibiting floor debate over abolition in 1837 and devolving the issue to the states through popular sovereignty. The two parties jointly governed the country for two more decades. Monetary policy split Populist-era Republicans and Democrats. Race did the same in the mid-twentieth century. For a full discussion and list of cross-cutting constitutional issues see (Sundquist 1983; Burnham 1975).

¹⁶ Still, the process is inexact. Broad public philosophies, including ideas of identity, can shift preferences without any policymakers intending or perceiving the process (Mehta 2010). Words and identities are flexible, unreliable instruments that may backfire, be co-opted, or ossify through path dependence.

¹⁷ State coalitions do not defer these controversial issues to the courts. There are two explanations for this. First, as Graber suggests, variation between states is greater than variation within states, so states' relative homogeneity and small size unify state coalitions. This blunts wedge issues, so state coalitions rarely need to defer to the judiciary, and only do on especially divisive issues like abortion (Graber 1993, 40, 56–9). However, state politics is more contentious than Graber admits, so it is more likely that entrepreneurial state coalition outsiders strategically use these issues to unseat moderate coalition leaders.

¹⁸ See (Dinan 2006; Dinan 2012; Beienburg 2014).

amendment or replacement. Hence, attempted state constitutional amendment or replacement should increase during periods of national partisan contention.

State constitutional revision attracts reformers who want to entrench their policy aims. More durable and legitimate than a statute, a state constitutional amendment or wholesale constitutional replacement can invalidate past constitutional provisions and past statutes, can constrain statutory lawmaking and judicial interpretation and litigation, can set institutional powers, and can extend rights, citizenship, and the franchise to allies and seize them from opponents, building a voting base and a body politic. Amendments matter because they set the rules of the game and determine who plays.

Still, state constitutional revision is an imperfect tool for entrenching policy. State constitutions are vulnerable to ongoing revision for two reasons. First, the state constitutions exceed the federal one in textual flexibility and specificity.¹⁹ States' flexibility – their low bars to amendment and replacement – tethers state constitutions to swings in popular coalition politics (Lutz 1994; Tarr 1998).²⁰ States with smaller legislatures can coordinate amendment passage more easily, may be dominated by a single party that clears amendments' supermajority requirement (Dixon and Holden 2012). In most states this is a two-thirds supermajority, but fifteen states require only a simple majority to propose an amendment. Failing this, in eighteen

¹⁹ Conceptually, flexibility and specificity are distinct, such that a flexible constitution could be brief and vague. Historically, flexible state constitutions have been long and specific (Lutz 1994; Hammons 1999; Dixon and Holden 2012), so this essay treats these two concerns together. So too have constitutional theorists. For example, James Madison accused the state constitutions of a prolixity and "luxuriancy of legislation" that failed "to mark with precision the duties" of American citizens, and worried their easy, flexible revision muddled their text, confusing citizens and preventing the veneration and cooperative enforcement that preserves constitutions (Madison 1999, 75). More recently, Congleton and Rasch affirm unstable texts confuse the terms of coordination against the sovereign, deflating subjects' confidence in the pact (Congleton and Rasch 2006).

²⁰ Relatedly, state elites cannot often erect high barriers to state constitutional amendment to shield state constitutions from popular revisionists. For a general theory of elite constitutional entrenchment, see (Hirschl 2009). Conversely, flexible constitutions may survive by adapting to exogenous shocks and violations by the sovereign (North and Weingast 1989; Weingast 1997; Weingast 2006; Mittal and Weingast 2013). Empirically, enduring national constitutions tend to be moderately flexible, while exceptionally mutable or inflexible ones quickly collapse (Elkins, Ginsburg, and Melton 2009).

states one can amend the constitution through an initiative. One can propose an initiative with as little as 3% of the number of votes cast in the last election.²¹ Failing a state amendment, one can call a statewide convention with a simple majority in fifteen states, to a two-thirds majority in others, affirmed in all states by a simple majority popular vote.²² Fourteen states require such votes at least once every 20 years. Relatedly, state constitutions are long and specific. Their average length is 26,000 words, though Alabama's 1901 Constitution is 220,000 words. The federal Constitution, at 7,400 words, is shorter than every standing state constitution (Hammons 1999, 840).²³ These long, quasi-statutory state constitutions include contentious provisions like regulation of crime, education, or finance, inviting revision (Friedman 1988, 36; Lutz 1994, 357–9; Tarr 1998, 20–3), while the brief national Constitution earns public respect, dissuading potential reformers, and allows judges the leeway in judicial review that preserves the constitution.²⁴

Second, state constitutions are easy to revise because they get little respect. While the federal Constitution enjoys near religious devotion, only half of Americans are aware state constitutions exist (Tarr 1998, 2). The handful of New England constitutions resemble the national document in endurance and popular admiration, but most state constitutions are closer to the Southern model – overtly partisan, ignored by their populations, and short-lived.²⁵ To the

²¹ In Massachusetts, a proposed initiative must receive a number of signatures over 25,000 and equal to or greater than 3% of the total votes cast in the preceding gubernatorial election. This is a lax requirement in such a populous state.

²² Six states do not fully specify the procedure for calling a convention. Historically, even fewer states specified the means of constitutional change (Lutz 1994, 356; Tarr 1998, 35), allowing frequent, extralegal popular conventions and amendments.

²³ Berkowitz and Clay, with a wider set of observations, put the figure at 28,000 words (Berkowitz and Clay 2005, 69)

²⁴ Christopher W. Hammons objects that longer state constitutions, stocked with pork barrel provisions, have more beneficiaries and backers in the state legislatures, and greater endurance (Hammons 1999). But with the election of new legislators, this coalition wanes. These detailed, particularistic constitutions are more rigid, and gradually lose support in the state legislatures, growing vulnerable to replacement. Consequently, longer state constitutions are replaced or amended more frequently (Berkowitz and Clay 2005; Cayton 2015).

²⁵ For variation between state constitutional cultures, see (Stephanopoulos and Versteeg 2015).

extent states have a political culture, it is one of revision – Louisiana, with a French civil law tradition, has had eleven lengthy documents, enough to for a Louisiana lawyer to quip that –Constitutional revision in Louisiana, whether in conventions or by amendment, has been sufficiently continuous to justify including it with Mardi Gras, football, and corruption as one of the premier components of state culture.”²⁶ Since state constitutions are not buttressed by a local civic culture, they are vulnerable to revision.²⁷

State revision may resolve a national controversy, preserving the national coalition (3a). This may eliminate the need for federal constitutional reform (3b).²⁸ For example, in the early nineteenth century, Congress, backed by federal courts, devolved suffrage, morality, temperance, lottery, and criminal justice regulation to the states, precluding federal action on these controversial constitutional issues. Some states resolved this issue with further devolution and county-by-county regulation, as in the case of dry counties, or local legal prostitution in Nevada. This yields federal constitutional inaction. Or state constitutional experimentation may resolve the national issue, offering a positive or negative model for federal reform. The dominant coalition can retrench its constitutional platform by imitating state innovations.

The short, vague Tenth Amendment does not specify which issues are subject to state police powers regulation, so the political construction and interpretation of the Tenth

²⁶ Quoted in (Tarr 1998, 142–3; Dinan 2006, 12). For an account of state constitutional culture, see (Elazar 1972; Elazar 1982; McHugh 2003).

²⁷ There is good theoretical grounding for this claim. If constitutions are pacts enforced by their citizens (Ordeshook 1992; Hardin 1989; North and Weingast 1989; Weingast 2006), then consent to or admiration for the constitution should preserve the document. Relatedly, there is some empirical evidence to suggest that inclusive national constitutions (those with participatory drafting processes, elections, and wide distribution of goods) last longer (Elkins, Ginsburg, and Melton 2009, 76–93). This may be true of inclusive state constitutions (Friedman 2014).

²⁸ Relatedly, some state issues have sectional but not national traction and never prompt national reform. Water rights regulation is a source of conflict in the constitutional politics of Western states, but is less significant nationally (Bridges 2008).

Amendment, and of states' powers, determines which national issues the states can quiet.²⁹ For example, current interpretation of the Tenth Amendment allows states nearly exclusive oversight over divisive issues like lottery and alcohol regulation and much of citizenship law, stabilizing federal constitutional policy. The broader the interpretation of the Tenth Amendment, and related clauses like the Elections Clause, the more effective the states can be at killing national controversies.

Alternately, under three conditions, state revision may exacerbate national controversies, requiring federal action. First, devolution can insulate and incubate constitutional debates in some states. First, under the Tenth Amendment, states can introduce new policies and laws that federal courts and the Congress cannot consider.³⁰ This state experimentation could arm national coalition radicals with new, viable, tested constitutional platforms, which they can turn against national coalition moderates.³¹ Or, second, state politicians might see their constitution undermined by a neighboring state, and pursue national constitutional reform to strong-arm their neighbors.³² Third, when the national constitutional controversy aligns with sectional tensions, devolution can exacerbate these regional divides and further inflame the issue. Acting in their

²⁹The few policy areas from which states are explicitly excluded, like monetary and military policy, are also politically constructed, usually in response to states' failure to regulate these areas effectively. For example, Revolutionary-era states could constitutionally coin money, but could not coordinate coinage, forcing federal constitutional revision in 1787 that stripped this power from the states. The states' legal authority is shaped, but is also shaped by the politics of constitutional federalism.

³⁰ These are the police powers over health, safety, morals, and welfare. Additionally, states have special legal prerogative over elections and citizenship law. For example, Novkov shows state constitutional and statutory citizenship regulation affected the development of national citizenship regulations (Novkov 2008).

³¹ If, as Graber claims, state coalitions "spend little energy constructing policies that might satisfy constitutional standards," then they would not offer viable solutions to federal policy debates (Graber 1993, 58). However Zackin rebuts Graber, showing state coalitions draft and implement successful solutions to federal constitutional problems, especially on positive rights (Zackin 2013). For more on state constitutional experimentation and consequent effect on the federal Constitution see (Burgess and Tarr 2012, 18–21).

³² For example, in 1776 Maryland and Virginia allowed slavery, but Pennsylvania Quakers abolished slavery in 1780, attracting runaways. Southerners, including Marylanders and Virginians, passed the Fugitive Slave Act of 1850, forcing federal and local agents to return runaways, reforming the laws of Pennsylvania and other free states. Free states like Wisconsin and Vermont abrogated the Act, worsening the controversy. Devolution of slavery regulation aggravated sectionalism, forcing the 1850 Act, which further split the Democratic and Whig parties, forcing the Civil War and constitutional realignment.

short-term interest, national party leaders may continue to devolve the issue to the states, even though this promises eventual discord. Antebellum congressional devolution of fugitive slave laws and territorial slave policy is one such example. Unresolved conflict destabilizes national coalitions (3c), allowing partisan realignment and reinterpretation or amendment to the federal Constitution (3d).³³

National constitutional realignment destabilizes national politics generally.³⁴

Constitutions undergird ordinary politics, statutory legislation, enforcement of laws, civic culture, and political legitimacy, so constitutional instability affects citizens' very beliefs and safety. National realignment also affects the states, as the federal Supremacy Clause, congressional enabling acts, and judicial review force lagging states to match these federal reforms. Devolution initially quiets national conflict but may eventually backfire, provoking

³³Is it possible for a new national coalition (3c) to fail to realign the federal Constitution (3d), and instead maintain the constitutional status quo (3b)? That is, can a mass partisan realignment occur without a constitutional realignment? It is possible, but rare. A new coalition wants to revise the Constitution to entrench its platform. A national realignment coalition holds an exceptional majority of Congress, likely meeting the two-thirds supermajority of a national convention or of both congressional houses required to propose a federal amendment. These national majorities are often backed by reformist state majorities (2a), which may meet the three-fourths supermajority required for state legislatures or conventions to ratify the proposed amendment. But these are exceptionally high thresholds that may thwart realignment coalitions. Coalitions have other options, like passing quasi-constitutional statutes like the Social Security Act, designed to last generations, or packing the judiciary and revising the federal Constitution through judicial review. Given the difficulty of revising the Constitution, it is unlikely a surviving but waning coalition (3a), falling short of a realignment coalition's supermajority, could realign the Constitution (3d).

³⁴Some suggest political realignment is gradual and continuous, rather than abrupt and periodic (Key 1959; Carmines and Stimson 1989; Mayhew 2002). If parties faithfully and constantly followed demographic changes, this would likely be the case. However, self-interested political parties resist these demographic changes, often through civic and franchise exclusion, creating the pressure that causes sudden critical realignments. And even this incremental model described partisan realignment, it would not describe constitutional realignment. The Constitution, with its extraordinarily high barriers to reform, is designed to resist minor, incremental change. This inflexibility distinguishes constitutional politics from ordinary partisan politics. Constitutions evolve by realigning periodically.

national conflict.³⁵ In a federal system, the subnational units vent controversies, but only briefly.³⁶

II. American State Constitutional Replacement, 1776-2016

This section of the article tests the claim that attempted state constitutional replacement peaks during moments of national partisan contention. The article merges five incomplete lists of state constitutional proposals, checking each against the others.³⁷ In cases of ambiguity or contradiction between the lists, the article looks to the *Reference Guides to the State Constitutions of the United States*, a comprehensive history of the constitutions of every state.³⁸ To resolve any remaining ambiguities, this article refers to primary source documents, including convention and legislative minutes, newspaper articles, and private correspondence, sometimes

³⁵ Similarly, Graber shows legislative deference to the judiciary works in the short run but may eventually backfire (Graber 1993, 65–8).

³⁶ In *The Discourses* Machiavelli lauded the Roman practice of periodically venting popular tensions against elites for the sake of political stability. More recently, Tarr, Burgess, and Marshfield argue federal national constitutions allow constitutional discretion, or “space,” to subnational units for the sake of stability (Tarr 2010; Burgess and Tarr 2012; Marshfield 2010).

³⁷ These five sources are (Browne 1973; Sturm 1970; Sturm 1982; Dinan 2006) and the Constitutions of the World Online: The Rise of Modern Constitutionalism, 1776 - 1849 database. None of the five are complete lists of all proposed state constitutions. First, Browne lists extant records of state constitution-making assemblies between 1776 and 1959, but excludes unrecorded proposals and those made after 1959. The list includes some “limited” commissions that lacked the authority to fully revise or propose a new constitution; this article does not include these commissions as attempts to propose a new constitution. If it is unclear whether the commission listed in Browne (1973) is limited, the article includes the commission. Second, Sturm (1970) lists constitutional proposals between 1938 and 1968, including a thorough list of constitutional commissions. But Sturm (1970) does not include proposals outside of this span. Sturm also lists limited commissions that could study the existing constitution or prepare for a convention, but not propose a replacement constitution (Sturm 1970, 138–53); this article does not include these limited commissions as attempts to propose a new constitution. The article considers a commission limited if the commission’s purpose is a) to revise but not replace a constitution, b) to collect information, or c) solely to prepare for a constitutional convention. Given Sturm’s list spans only 1938 to 1968, there is some risk this article systematically undercounts commissions outside this era. But Sturm, Dinan, and Tarr assert commissions occurred mainly in the mid-twentieth century (Sturm 1970; Sturm 1982; Tarr 1998; Dinan 2006), suggesting that Sturm’s study from 1938 to 1968 captures most commissions. Thus, the article likely does not systematically undercount commissions. Even so, commissions account for only about a tenth of all constitutional proposals, so systematically undercounting commissions would likely not bias the data as a whole. Third, Sturm (1982) lists all proposed constitutions between 1776 and 1981, but not those after 1981. Fourth, Dinan lists all constitutional conventions between 1776 and 2006 (Dinan 2006, 8–28), but excludes proposals not made by convention. Fifth, the Constitutions of the World Online database includes texts of proposed state constitutions up to 1849, but excludes proposals after 1850.

³⁸ This fifty-volume series, previously published by Greenwood Press, has been re-released by Oxford University Press.

obtained through archival research. Given this, the article should include nearly all proposed and ratified American state constitutions.³⁹

Preliminary evidence suggests state constitutional revision spikes during national partisan crises. Consider the following figure, which sorts proposed state constitutions into five year intervals by date of adoption.⁴⁰ On average, in a five year span, the states ratify 6.32 new constitutions, with a standard deviation of 5.86.

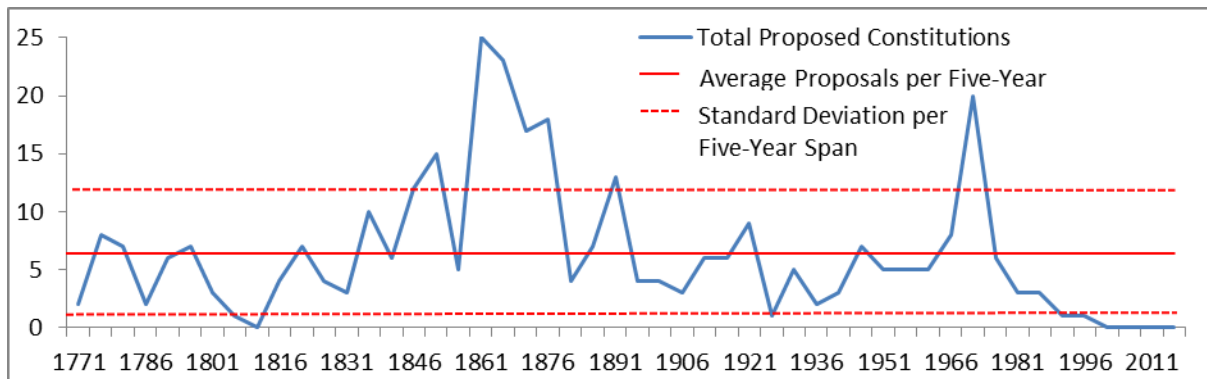


Figure: National Rates of State Constitutional Proposals, 1776-2016

Some five-year intervals exceed this average, several by at least a standard deviation. Most of these intervals coincide with national crises or partisan realignments. Many of these five-year intervals are sequential, suggesting a wave of state constitutional realignments often lasts longer than five years. Intervals exceeding the average are listed below.

³⁹Not all proposals result in the ratification of an entirely new document that is enforced across a state. Some proposals are only partially ratified. Even if fully legally ratified, a constitution may not be the state's sole, legitimate, enforced constitution. Rhode Island had two opposed constitutional conventions and two subsequent governments in 1841, as did Kansas after 1855, as did Civil War border states like Virginia and Tennessee. And some territorial constitutions, though the territory's sole, legitimate government, went largely unenforced. When coding proposed constitutions, this article considers a proposed constitution successfully passed only if it is completely ratified, effectively enforced across a state, and fundamentally changes the constitution. Some conventions, commissions, and legislative committees are "limited," drawn for the specific and declared purpose of passing a single amendment or small set of amendments on a particular subject. Since these bodies usually partially revise an existing constitution, rather than replacing it, this article does not code this sort of revision as a new constitution. When it was unclear whether an assembly was limited or was drawn to fundamentally revise the constitution, this article refers to *Reference Guides to the State Constitutions of the United States* and (Browne 1973) for information on the particular assembly.

⁴⁰ In this histogram, state constitutions are sorted into five-year bins by ratification or proposal date.

Interval Exceeds	Revolution/ Founding	Jacksonian	Antebellum	Civil War and Reconstruction	Progressive/ Jim Crow	Late Progressive	Civil Rights
Mean	1776-86, 1796-1801	1821-26	1836-41, 1846-56	1861-81	1886-1896	1921-6	1946-51, 1966-76
Mean by One Std. Dev.			1851-6	1861-81	1891-6		1971-6
Mean by Two Std. Dev.s				1861-71			1971-6

Figure: Periods of Heightened State Constitutional Revision, 1776-2016

Scholars like V.O. Key and Walter Dean Burnham suggest that parties periodically splinter over divisive issues and reorganize as new parties, culminating in a critical election (Key 1955; Burnham 1970; Chambers and Burnham 1975; Sundquist 1983; Huntington 1981).⁴¹ Does state constitutional realignment exceed expected levels during Burnham's realignment periods? Against expectations, in the decade *before* a realignment election, the number of state constitutional proposals is actually less than or roughly equal to average levels.⁴²

Realignment	Founding	Jacksonian	Civil War	Progressive	New Deal	Civil Rights
Begin	1790	1818	1850	1886	1922	1970
End	1800	1828	1860	1896	1932	1980
Realignment duration	10	10	10	10	10	10
Expected Const.s Proposed	13.3	13.3	13.3	13.3	13.3	13.3
Actual Const.s Proposed	12	11	25	18	9	15
Difference	-1.3	-2.3	11.7	4.7	-4.3	1.7

Figure: National Partisan Realignment and State Constitutional Proposals, 1776-2016.

However, *after* some national realignments, state constitutional replacement jumps. On an average year, there are 1.33 state constitutions proposed. In the year after the 1860 realignment election vaulted Republicans into power, the states proposed 15 new constitutions. Sixty-three percent of the all proposals for a new state constitution occurred during one of the brief moments of national partisan realignment.

⁴¹ Note that this article adds 1980 as a realignment year, which Burnham, writing in 1970, did not.

⁴² The expected number of state constitutions proposed is derived by multiplying the yearly average by the duration in years of each realignment.

Realignment	Founding	Jacksonian	Civil War	Progressive	New Deal	Civil Rights
Begin	1776	1828	1857	1886	1932	1955
End	1791	1840	1877	1892	1948	1975
Realignment Duration	15	12	20	6	16	20
Expected Const.s Proposed	20	16	26.6	7.98	21.3	26.6
Actual Const.s Proposed	23	17	84	18	15	42
Difference	3.05	1.04	57.4	10	-6.3	15.4

Figure: National Partisan Realignment and State Constitutional Proposals, 1776-2016. Note the figure above lists years of national constitutional controversy and realignment, which roughly overlap with, but are distinct from, the periods of partisan realignment Burnham describes.⁴³

Save for the New Deal, state constitutional revision exceeded the yearly average during each of the partisan realignments in the figure above. States also revise their constitutions during periods of partisan stability, possibly resolving constitutional issues that would strain the party system and threaten national partisan realignment and constitutional amendment.

The figures above list the absolute numbers of proposed state constitutions. Equally important is the number of proposals weighted by the number of existing states. For example, in the five years between 1787 and 1791, the fourteen states proposed six constitutions. In the five years between 1912 and 1916, the United States saw also six proposals, but these were diluted across forty-eight states. Proportionate to the number of states, state constitutional revision was less widespread in the latter era. The following figure lists the number of state constitutional proposals in five year intervals, divided by the total number of states in the Union.

⁴³The reforms of the Progressives and Redeemers led to a lull in state constitutional replacement in the interwar years. Between 1922 and 1945, only two states attempted to replace their constitutions (New Hampshire in 1930 and 1938 and New York in 1938). There are three reasons for this. First, by 1912 all of the territories within the continental United States had achieved statehood. Second, Progressive innovations like the referendum, initiative, and expert constitutional commission superseded wholesale replacement by convention. The third reason is rooted in Southern politics. Southern constitutions ossified in the interwar years. The handful of Southern states had accounted for over half of the constitutional replacement in antebellum, Civil War, and Reconstruction America. But with the end of Reconstruction, Redeemers and ex-Confederates entrenched their power through durable state constitutions and statutes that disenfranchised Republican, black, and biracial state coalitions. This new, white, solidly-Democratic electorate locked Southern states under Democratic control for generations.

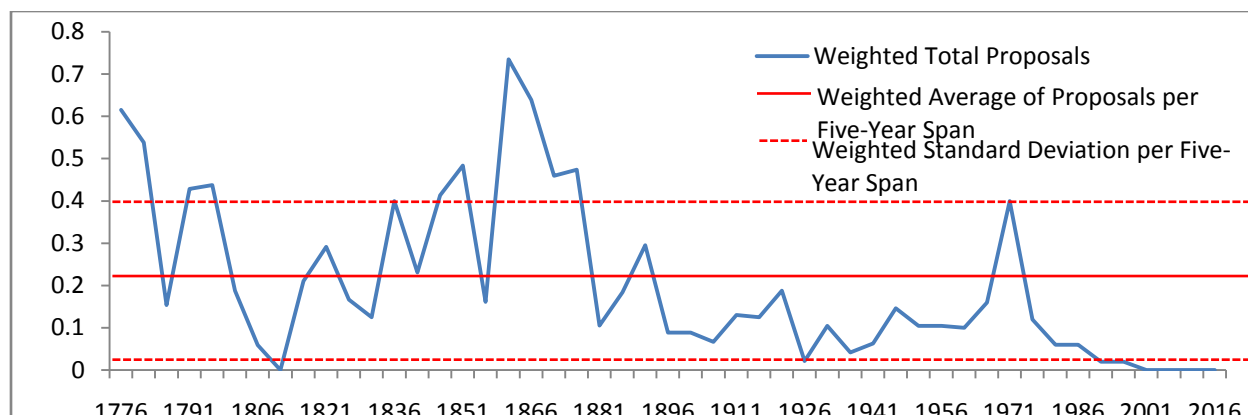


Figure: National Rates of State Constitutional Proposals, 1776-2016, Weighted by Number of States

These weighted rates of state constitutional revision largely support the unweighted results. State revision exceeds the weighted average during moments of national crisis and partisan realignment. The weighted figure below affirms that state revision roughly correlates with national partisan realignment.

Interval Exceeds	Revolution/ Founding	Jacksonian	Antebellum	Civil War/ Reconstruction	Progressive/ Jim Crow	Civil Rights
Mean	1776-86, 1796-1801	1816-26	1836-56	1861-81	1891-6	1971-6
Mean by One Std. Dev.	1776-86, 1796-1801		1836-41, 1846-56	1861-81		1971-6
Mean by Two Std. Dev.s	1776-81		1861-71			

Figure: National Partisan Realignment and State Constitutional Proposals, 1776-2016, Weighted by Number of States.

III. Devolution and Resolution of Electoral Reform, 1800-1850

The previous section shows that the states replace their constitutions during moments of national partisan contention. But this does not establish that the states replace their constitutions because of this contention. Nor does it show that this state constitutional revision resolves national controversies. This current section of the article is a case study showing that antebellum state legislators and framers revised their state constitutions partly in response to a nationwide debate over suffrage expansion, and that this quieted congressional proposals for a national amendment for suffrage expansion.

In 1800, backlash to the Federalists' Alien and Sedition Acts and widespread support for states' rights swept Jeffersonians into both houses of Congress, the White House, and many of the state legislatures.⁴⁴ Between 1800 and 1806, Democratic-Republicans and their allies captured both houses in eight of ten legislatures for which there is data, and took the remaining two not long after.⁴⁵ For example, in South Carolina, tidewater Federalist gentry controlled state politics, limiting the number of legislative seats representing upcountry farmers. But in 1800, an alliance of Appalachian frontiersmen and Charleston mechanics and shopkeepers swept Democratic-Republicans into the governorship and legislature and increased number of local elections, opened the upcountry to banking investment and the slave trade, and amended the state Constitution in 1808 to reapportion the legislature and again in 1810 to repeal taxpaying qualifications on the franchise. Connecticut, however, did not face the same tension between genteel planters and small farmers, and weathered the Jeffersonian revolution. The state remained in Federalist hands until the Republican-aligned Toleration Party captured the lower house in 1817 and in the upper house the following year. At the behest of town meetings, the Toleration Party called a constitutional convention, disestablishing the church and allowing taxpayers and militiamen exemptions from the state's property requirement on the vote (Goodman 1967, 77–81; Horton 1993, 5–14; Dubin 2007, 33–4; Graham 2007, 13–16).

⁴⁴ National political controversy was not the only cause of partisan turnover in the state legislatures. States with greater social mobility were more likely to have interparty competition. These were often western states with more land, and accordingly in Jeffersonian America, more voters, as well as states like Pennsylvania, which harbored multiple ethnic groups capable of participating in politics. Hence not every state hosted two parties in at the turn of the nineteenth century (Goodman 1967, 65–72).

⁴⁵ Democratic Republicans captured from Federalists both houses of the legislature in New York (1800-2), Pennsylvania (1801), New Jersey (1801-2), Vermont (unicameral legislature) (1802), New Hampshire (1805), Massachusetts (1806), and held both houses in Maryland (1800-1) and Rhode Island (1801). Democratic-Republicans or their allies eventually took Connecticut (1817-18) and Delaware (1822). Data from (Dubin 2007). Dubin does not have data on legislative party balance in Georgia, Kentucky, Ohio, North Carolina, South Carolina, Tennessee, or Virginia.

Attempts at antebellum state constitutional replacement correlate with shifts in partisan control of the state legislatures. Between 1800 and 1849, Americans proposed at least fifty-three new constitutions. Twenty-two were proposals to incorporate new states into the Union. The remaining thirty-one proposals occurred in established states with standing legislatures. This article has data on legislative party balance for twenty-two of these proposals. Fifteen of the twenty-two occurred within three sessions of a switch in legislative control.⁴⁶ Three of the proposals that did not accompany a shift in legislative control occurred during and after Rhode Island's Dorr War of 1841-2, when the state lacked a single legitimate legislature. Vermont too is also a unique case – between 1776 and 1850, the state's constitutions required a council of censors make septennial proposals for a new state constitution, regardless of partisan balance. After 1790, Vermont was the only state to enforce this practice.⁴⁷ Excluding these two exceptional states, sixteen of the eighteen constitutional proposals for which there are data accompany a change in partisan control. In the antebellum era, attempts at state constitutional replacement almost always were associated with shifts in state coalition politics.⁴⁸

Suffrage regulation was a particularly contentious topic for newly-elected state legislators and framers. Revolutionary-era state framers, worried that tenant farmers and the urban poor

⁴⁶ The data is derived from (Dubin 2007). Dubin's data is missing observations for nine of these thirty-one cases. See in the appendix the figure on state constitutional replacement and change in partisan control of state Legislatures, 1800-49. The figure indicates whether there was a change in partisan control of the legislature three sessions *before* the proposal of a constitution. A cutoff of three sessions recognizes that legislators may need several sessions to move a proposal to a vote, and in some cases are constitutionally required to postpone a vote until subsequent sessions. See, for example, Article LIX of the Maryland Constitution of 1776, requiring proposed amendments be approved by two sequential legislative sessions. Additionally, issues that cut across party lines and internally divide both parties can force realignments (Sundquist 1983). Split from their own party, legislators may bargain with opponents to pass a constitution before formally switching parties. That is, the legislature's formal party balance may also shift slightly *after* a constitutional proposal. Thus this article looks for shifts in partisan control within three sessions after the proposal of a new constitution. A post-ratification change in legislative party balance may also reflect gerrymandering or redistricting mandated by the new constitution. So there is some endogeneity between constitutional revision and partisan balance.

⁴⁷ Pennsylvania's 1776 Constitution and New York's 1777 Constitution allowed for meetings by a similar council, but these constitutions were soon replaced.

⁴⁸ Note, however that this article does not note cases where changes in legislative control were not followed by an attempt at constitutional replacement.

were not materially invested in their community or wealthy enough to think and vote independently, conditioned voting and office-holding on private property ownership and taxpaying. All thirteen original states passed property or taxpaying requirements (Wood 1972; Lutz 1980; Kruman 1997; W. P. Adams 2001), disenfranchising women, blacks, Indians, and white male tenant farmers, transients, and urban workers. But between the Jefferson and Jackson administrations, state framers and legislators faced pressure to relax these restrictions on the white male vote. The growth of the manufacturing sector increased the number of urban mechanics, workingmen, shopkeepers, and immigrants, many of whom lacked enough landed property or wealth to satisfy property and taxpaying requirements. Often organized by trade, disenfranchised and working white males rallied for suffrage reform. Baltimore mobs pushed the Maryland legislature to reject property requirements in 1801. In Milwaukee, recent German and Irish immigrants organized to claim the franchise. In Richmond, disenfranchised protestors presented the 1829 state convention with a formal petition. Rural tenant farmers across the country faced similar disenfranchisement. A muster of 1,000 Shenandoah County, Virginia militiamen found that 700 lacked the vote. In Loudon County to the north, 1,000 of 1,200 were disenfranchised (Keyssar 2000, 34–7). Like their Revolutionary-era forbearers, these men were poor, armed, and angry.

In New York, for example, the working classes had long contested their political exclusion. In the Hudson River Valley, a cabal of planter dynasties like the Livingstons and Van Renssalaers leased land to tenant farmers. When, in 1765, the manager of a large manor arbitrarily cut leases from a three to one-year term, William Prendergast organized a hundred fellow farmers to march on Manhattan, where Prendergast was captured. Justice Robert R. Livingston sentenced Prendergast to death, but citizens protested the execution, securing

Prendergast's release (Countryman 1985, 9–14; Nash 2006, 72–87). A decade later, Livingston led the state's 1777 Constitutional Convention to restrict the vote for state assemblymen to those with forty pounds in freehold or rented a tenement valued at forty shillings, enfranchising only 70.7 percent of the heads of families and 60 percent of white males. Adult males with at least a hundred pounds in freehold – only 28.9 percent of the total – could vote for state senators or governor. In Westchester and Dutchess Counties on the east Hudson, these property requirements disenfranchised many tenant farmers (Gallie 1991, 1–10; Gallie 1995, 9–94; Keyssar 2000, 228; W. P. Adams 2001, 202–5). This exclusion lasted generations. By 1821, only 78 percent of adult male New Yorkers could vote for assemblymen, and only 39 percent for the governor or senators (Henretta 2009, 56). And in 1839, the Hudson Valley's tenant farmers revolted and formed roving militias, attacking sheriffs, threatening to burn cities and estates, and skirmishing with the state militia (Cheyney 1887).

The Constitution quarantined the growing suffrage controversy to the state legislatures and constitutional conventions. At the Federal Convention, delegates settled on only three election clauses, all of which maintained the states' traditional authority over elections.⁴⁹ Antebellum presidents deferred to state legislatures and constitutional conventions to resolve the issue. When these executives did intervene, it was after they retired from office, and in their capacities as

⁴⁹Federal delegates had debated the franchise briefly on the Convention floor in late July of 1787 before delegating the work to the Committee of Detail. The overburdened Committee rejected a uniform federal property requirement, instead deferring to state practices. In early August, Gouverneur Morris and James Madison revived the question arguing for a freehold requirement would grant the vote to small, independent farmers, while the tradesmen Nathaniel Gorham of Boston and Benjamin Franklin of Philadelphia replied that this rule unfairly disenfranchised city dwellers. On August 8th, Madison pleaded delegates drop the divisive question of suffrage rights, lest they alienate each other and the citizens of the states. He warned "the people have been accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted practices if we expect their concurrence in our propositions" (Farrand 1911, II:216). This resulted in the three clauses maintaining the states' power to regulate elections. The Elections Clause (Article I, Section 4, Clause 1) allowed state legislatures to regulate the "Times, Places and Manner of holding elections for Senators and Representatives," subject to Congressional override. Second, people qualified to vote for candidates to the state's lower house also qualified to vote for candidates for the national House of Representatives (Article I, Section 2, Clause 1). The Guarantee Clause required, without any elaboration, "a Republican Form of Government" for each state (Article IV, Section 4). See (Keyssar 2000, 21–4; Lutz 2009, 20–1; Beaumont 2013, 89–91).

citizens of their home states.⁵⁰ Jeffersonian congressmen, perhaps taking a strict constructionist reading of congressional authority over franchise regulation, avoided interfering in state election law.⁵¹

Armed mobilizing worried state legislators and constitutional convention delegates across the country. Broad enfranchisement promised to pacify white male mobs. From Massachusetts to Illinois to Virginia and Alabama, delegates argued enfranchised militiamen were more loyal, obedient, and in the South, better able to stop slave revolts. Thanks to Congress' liberal enabling acts to admit a territory to the Union, in some territories, male taxpayers with a year of residence could vote for delegates to a territory's constitutional convention. This new generation of convention delegates and state legislators worked as village lawyers, farmers, mechanics, and shopkeepers, and felt independent employment – not property wealth – allowed independent voting (Keyssar 2000, 30, 37–39).⁵²

⁵⁰John Adams, worrying that “Power always follows Property,” sought to limit the vote to property holders, but focused his efforts on the Constitution of his home state of Massachusetts (J. Adams 1776, 375–8; Keyssar 2000, 11, 27). Jeffersonian executives, traditional defenders of state sovereignty, respected the states' authority over the franchise. Jefferson consistently advocated a broader franchise in Virginia. In 1776 he proposed granting many Virginian males fifty acres, hoping a propertied electorate would think and vote independently, and a generation later, endorsed an 1816 movement to reform the Virginia Constitution to grant universal white male suffrage (Wood 1992, 178–9; Keyssar 2000, 10, 36–7). As president, he largely deferred to the states to regulate their own franchise. At the federal Convention, Madison espoused a freehold qualification, but knew he could not rally the divided delegates or their states to a shared national franchise regulation (Keyssar 2000, 11–2, 22–4). As he admitted in *The Federalist*, “One uniform rule would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention.” Rather, he espoused leaving the franchise to be “fixed by the State Constitutions,” a position he followed as president (Hamilton, Madison, and Jay 2003, 256).

⁵¹While Jeffersonian congressmen shied from tinkering with state suffrage laws, Article IV gave Congress authority over “all needful Rules and Regulations respecting the Territory or other Property belonging to the United States,” including territorial franchise rules (Article IV, Clause 2). Early congressional interventions into territorial suffrage were few and tended to expand the white male vote. After Ohio's 1802 Convention allowed a loophole out of taxpaying requirements, Congress scrapped property requirements for the neighboring Indiana Territory, and did the same in the southwestern territories. Similarly, the congressional acts authorizing the Ohio and Indiana constitutional conventions allowed white male taxpayers with a year of residence to vote for state convention delegates. Congress abandoned these taxpaying requirements for convention elections in Illinois (1818), Michigan (1835), and Wisconsin (1846) (Keyssar 2000, 30).

⁵²However, these Jacksonian framers maintained the republican belief that material and economic freedom allowed political freedom.

Martin Van Buren was one such delegate. The son of a tavern keeper, Van Buren hailed from the rural village of Kinderhook, New York. He left school at fifteen to clerk for a backcountry lawyer, practiced law independently, won a state senate seat in 1813 at the age of thirty-three, and three years later rose to state Attorney General (Hofstadter 1969, 212–26). In 1820, he attended the New York Constitutional Convention, organizing delegates against a proposal for freehold qualification of 250 dollars in state elections. Defeating the amendment would extend the vote to 75,000 new freeholders, increasing the state electorate to 163,000. In an extended speech, he praised this new electorate —of men, composed of mechanics, professional men, and small landholders... constituting the bone, pith, and muscle of the population of the State.” For Van Buren, free labor guaranteed the material independence that qualified one to vote. But this disqualified those who did not own their labor — women, slaves, and perhaps Indians and aliens. The vote would go only to men, —who have wives and children to protect and support” (Van Buren 1820, 190–2; Keyssar 2000, 45).⁵³ The Convention enfranchised all white males who paid served in the military or paid taxes, though black males had to hold 250 dollars in taxable property, a prohibitively high standard for almost all free blacks (R. M. Smith 1997, 172).

With the expansion of white male suffrage, Van Buren built a mass party within the state. Along the Hudson and around Albany, hotbeds of tenant farmer agitation, Van Buren found a political base, turning sporadic rural unrest into a statewide machine dubbed —the Albany Regency.” The party nearly unseated the patrician Governor DeWitt Clinton in 1820. Van Buren’s men, proudly partisan, rough-hewn, and democratic, dominated New York politics, boosting Van Buren to the United States Senate in 1821. Following Van Buren’s success, Clinton

⁵³ Note, however, Van Buren opposed a motion to enfranchise highway workers, who he worried would defer to their employers, asserting that in this case, —The people were not prepared for universal suffrage” (Carter and Stone 1821, 275; Henretta 2009, 56–7).

capitulated and sponsored a successful constitutional amendment removing tax and service requirements on the franchise in 1826 (Henretta 2009, 58).

In the 1820s and 1830s, these workingmen built political machines and eventually mass parties in states across the country, seizing state legislatures and conventions, and revising constitutions and statutes to further expand the franchise. Democrats granted the vote to resident aliens in several states in the 1830s. After Pennsylvania Whigs passed an 1836 Registry Act to temper the Democratic vote, Democrats halved residency requirements at the state's 1837 Constitutional Convention, hoping to attract new voters (Henretta 2009, 59). And on capturing the governorship, Democrats enfranchised North Carolina's landless poor in 1850. Whigs hurriedly imitated Democrats, and both parties rushed to strategically extend the franchise to new groups of voters, hoping to expand their base (Keyssar 2000, 39–42).⁵⁴

Under pressure from workingmen's mobs and parties, antebellum constitutional convention delegates scrapped property qualifications. The original eastern states abandoned old restrictions, appeasing the urban workers and rural farmers who had been excluded since the colonial era. Delaware eliminated constitutional property qualifications in 1792, Maryland in 1802, and Massachusetts in 1821 and New York in 1826. For new western territories, enfranchisement also promised more settlers and quicker admission to the Union. Kentucky's 1792 Convention extended the vote to all male residents, including blacks and Indians, though a 1799 state convention excluded the latter groups (Ireland 1999, 1–5). Delegates to the 1796 Tennessee Convention put only a token freehold requirement on the white male franchise. Five of the next eight states admitted allowed the vote to almost all white males (R. M. Smith 1997, 171). White males twenty-one or older could vote under Indiana's 1816 Constitution after a year

⁵⁴ Conservatives in Massachusetts, New York, and Virginia allowed constitutional conventions to placate reformers, only passing token franchise reforms.

of residence in the state, while Alabama’s 1819 Constitution lowered the requirement to three months.⁵⁵ Hence, while the number of states nearly doubled between 1790 and 1830, the number of states with property requirements actually decreased.

Year	1790	1800	1810	1820	1830	1840	1850	1855
States in Union	13	16	17	23	24	26	31	31
States with Property Requirements	10	10	9	9	8	7	4	3
Percent of States with Property Requirements	0.77	0.63	0.53	0.39	0.33	0.27	0.13	0.10

Figure: States with Property Requirements on the Franchise. Data from (Keyssar 2000, 336).

Most suffrage reform was complete by Jackson’s 1828 election. This suggests Jackson’s election was not the inception of mass American democracy, but rather the culmination of prior local democratic reforms. As Richard P. McCormick shows, at Jackson’s 1828 election, sixteen of twenty-two states had seen a higher or roughly equal proportion of adult white males vote in prior local elections for congressmen, governors, or state legislators (McCormick 1960, 6–7).⁵⁶ Van Buren captured the nation’s spirit in his speech to New York’s 1820 Convention. Attacking a proposed amendment limiting the vote to men with 250 dollars in freehold property, Van Buren declared “in none of [the Southern] Constitutions, nor in those of any state in the Union, except North Carolina, was such a provision as that proposed by the amendment to be found. In the Constitution of the Union, too, which has been in operation long enough to test the correctness and soundness of its principles, there was no excessive freehold representation” (Van Buren 1820, 190–2).

Between 1830 and 1855, the few states maintaining property qualifications repealed these laws. For example, an influx of poor Anglo-American immigrants to Louisiana pushed the legislature, long controlled by French planters under the conservative 1812 Constitution, to call a convention. The state’s 1845 Convention scrapped property and taxpaying requirements,

⁵⁵ See the Indiana Constitution of 1816, Article VI, Section 1 and Alabama Constitution of 1819, Article III, Section 5.

⁵⁶ In 1828, the Union included twenty-four states, but McCormick’s data excludes two.

reapportioned the legislature, and increased the number of elected offices (Hargrave 1991, 1–5). Since enfranchisement might also draw immigrants to a state and boost the state’s tax revenues and land values, many new western states further relaxed constitutional suffrage restrictions – delegates to Illinois’ 1847 Constitutional Convention proposed loosening the state’s franchise restrictions to increase immigration and repay the state’s loans. By 1859 there were thirty-three states in the Union, and property qualifications applied only to foreign-born residents of Rhode Island and African Americans in New York (Dealey 1915, 41; McLauchlan 1996, 3; Keyssar 2000, 29).⁵⁷

States relaxed other restrictions on the franchise and participation. By 1855, only six states maintained taxpaying qualifications for voters, down from a peak of twelve. Delaware, Pennsylvania, South Carolina, Indiana, and Michigan reduced residency requirements on the franchise. State legislators and framers also scrapped municipal franchise restrictions, liberalized office-holding requirements and religious tests, and established judicial elections (Sturm 1982, 63–6; Keyssar 2000, 29–32, 50–2). When the Connecticut Convention of 1818 replaced the state’s outmoded colonial charter and broadened the franchise, it also provided for annual elections, legislative amendment and election of judges, and amendment by referendum. By referendum, Massachusetts voters legalized the constitutional referendum process three years later. Of the seven states admitted between 1800 and 1828, six allowed voters to approve amendments or conventions by referenda (Dealey 1915, 42–6).⁵⁸ And across the country, state

⁵⁷Convention delegates overruled or circumvented the few proponents of property requirements. In an 1817 letter to James Madison, John Adams confided –“The questions concerning Universal Suffrage, and those concerning the necessary limitations of the Power of Suffrage, are among the most difficult. It is hard to Say, that every man has not an equal right. But, admit this equal Right, and equal Power, and an immediate Revolution would ensue.” (J. Adams 1817, 267–8). Three years later, at the Massachusetts’ Constitutional Convention, Adams argued to maintain property limitations, but Massachusetts repealed the limits the following year, granting the vote to all adult males who were taxpaying resident citizens (R. M. Smith 1997, 172; Keyssar 2000, 27).

⁵⁸ Missouri was the lone exception.

legislators and framers reapportioned legislative districts to equitably represent these new voters (Tarr 1996, 102–105).

This electoral reform occurred almost entirely through state constitutional revision. State framers described the constitutions as compacts that created, bounded, and served a community. In drafting these compacts, delegates determined who belonged to the community and had citizenship rights, including the franchise (Rodgers 1998, 80–111).⁵⁹ Practice followed this theory. Between 1790 and 1855, at least fifty-nine state-level legal provisions elaborated or repudiated property and taxpaying qualifications. Of these, forty-six were constitutional provisions, and thirteen were statutory, and even these few statutory provisions had a quasi-constitutional function in bounding the polity.⁶⁰ Framers also entrenched these franchise regulations in the state constitutions to prevent partisan legislators from disenfranchising their opponents' base. Judge Jonas Platt reminded New York's 1821 Convention that ~~the~~ qualifications of voters should be fixed with precision by the constitution, and that nothing should be left to the legislature. That department of the government was fluctuating, and liable to high party excitement" (Carter and Stone 1821, 278). Similarly, to preempt gerrymandering by legislators, state framers often entrenched apportionment rules in the constitutional text. Attempts to correct malapportionment usually meant calling a convention, or in North Carolina's case, drafting amendments (Orth 1993, 8–11; Tarr 1998, 103).

State constitutional guarantees of white male suffrage appeased riotous farmers, workingmen, and militiamen. Mass suffrage also allowed parties to herd these new voters to the

⁵⁹ See the 1776 Virginia Constitution, Section 3: ~~That~~ government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community." See also Section 6: ~~all~~ men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage."

⁶⁰ For a list of state franchise regulations in force between 1790 and 1855, see (Keyssar 2000, 330–5). Not all of these provisions were drafted between 1790 and 1855.

polls and to partisan caucuses, parades, rallies, and barbecues, which replaced the popular mobs of the Revolutionary era. Party identification also incorporated class identification. Small farmers now vented their discontent at the polls by voting Democrat. Rowdiness became rote and routinized. For example, New York's radical Working Men's Party was coopted by the state's growing Whig Party. The movement, as Sean Wilentz writes, "had been reclaimed by more conventional politicians; after 1832 the consolidation of a new brand of establishment politics, under the aegis of the Democrats and the emerging Whigs, would preclude the rise of anything like the Working Men's movement for twenty years" (Wilentz 1984, 213).

There were exceptions. Virginians peacefully submitted to franchise restrictions. Appalachian small farmers called an extralegal convention in Staunton, Virginia in 1816 to repeal franchise restrictions and a malapportionment scheme that benefitted eastern tidewater planter counties. The legislature passed piecemeal token reform until a popular vote forced a convention in 1829. But legislators granted four representatives for each county. Since the tidewater held a disproportionate number of counties, genteel eastern Jeffersonians dominated the convention, maintaining malapportionment and instituting a complex system of leasing and home-owning requirements on the franchise that kept a third of white males from the polls (R. M. Smith 1997, 173). A few provision appeased voters along the Blue Ridge Mountains, who remained loyal to Virginia, splitting them from their more radical western Allegheny counterparts. The reform movement splintered, and tidewater counties continued to dominate the state senate, even after an 1850 Convention. Despite generations of malapportionment and suffrage restrictions, most Virginians lived happily under their conservative constitutions. Far westerners would only receive equal apportionment on seceding from Virginia to form West Virginia in 1863 (Bastress 1995, 3–9).

And when reform came, it was not always peaceful. Under Rhode Island's constitution, a holdover from 1663, seats in the lower house were assigned two to a town, regardless of population.⁶¹ By the Jacksonian era, state's southern rural districts, comprising a third of the state's population, elected a majority of the state's legislators, who refused to reapportion districts to reflect a recent urban population boom. And since 1762, the state had conditioned voting on freehold ownership, such that by that 1830s, a rule requiring voters hold 134 dollars in real estate, inherit a freehold, or rent property for at least seven dollars disenfranchised a majority of voters, including Providence's recent Irish immigrant textile workers. Rural planters dominated the legislature, exempted themselves from landed property taxes, in 1811 refused a bill to relax franchise restrictions, and in 1817 tabled a call for a convention. In the 1820s, a carpenter named Seth Luther began stumping the state calling for reform. The legislature offered in February, 1821 to call a convention, but refused to address the suffrage issue, so Providence voters defeated the proposition. Three years later voters approved a convention, but delegates were selected under the standing malapportionment scheme and they maintained malapportionment and suffrage restrictions, and even scrapped the clause enfranchising the sons of freemen. Voters rejected this proposed 1824 constitution. Five years later the legislature rejected an appeal by Providence residents for suffrage expansion. And an 1834 convention dissolved for lack of quorum, leaving apportionment and suffrage laws untouched (Mowry 1901, 28–38; Dealey 1915, 42, 49–50; Tarr 1998, 102; Keyssar 2000, 71–6, 333).

The 1840 election brought a cohort of new Whig legislators who called a constitutional convention in February 1841. But after legal convention attempts in 1817, 1821, 1824, 1834, and 1841 failed to reform the vote, the Rhode Island Suffrage Association, backed by the ousted

⁶¹ The large cities of Providence, Portsmouth, and Warwick held four seats, and Newport, six, though this was still not proportionate to their population (Wiecek 1978, 241).

Democrats, called an extralegal —People’s Convention.” The Convention, and the subsequent constitution, was populist in its framing, made by a mob of urban workers led by the radical Democrat Thomas Dorr, and in its intent, expanding the franchise to all white males with a year of residency and reapportioning districts to reflect population growth in Providence and the state’s northern mill towns. Voters approved the People’s Constitution and rejected the legislature’s constitution. Claiming that voters had vindicated the People’s Constitution, the radical faction elected a separatist legislature and picked Dorr as their governor. In early May, 1842 Dorr assembled a company of several thousand militiamen and laborers and marched on Providence, where he and his legislature were inaugurated. Citing the federal Constitution, Samuel King, governor under the old regime, requested President Tyler deploy federal troops to crush the revolt, but Tyler refused, reluctant to believe ~~an~~ an exigency [would] arise which the unaided power of the State could not meet” (Tyler 1842, 2146–7). Congress too refused to intervene (Mowry 1901, 268).⁶² In the early hours of May 18th, Dorr rallied four hundred supports to storm the arsenal at Providence. Church bells across the city called loyalist militiamen to defend the arsenal, which Dorr, joined by Luther, prepared to shell. But Dorr’s cannons failed to fire, and his troops retreated to the rural town of Chepachet. The separatist legislature dissolved, and with a thousand-dollar bounty on his head, Dorr fled the state. The following year, a new convention extended the vote to all males who paid a token tax, including blacks, and peace returned to Rhode Island (Wiecek 1978, 240–5; Keyssar 2000, 71–6, 333; Chaput 2013, 119–81).

⁶² Similarly, Taney’s Supreme Court refused to judge the legitimacy of the arrest of Martin Luther, a Dorr supporter, deeming this a political question best left to the political branches. In effect, this affirmed the decisions by Tyler and Congress to defer to Rhode Islanders to resolve their controversy. See *Luther v. Borden*, 48 U.S. 1 (1849).

Other states saw the same tensions over class, the vote, and malapportionment.⁶³

Immigrants streamed into Massachusetts and Connecticut textile mills and New York factories, where they agitated for labor and suffrage reform. Malapportionment, held over from the colonial era, wracked Virginia politics. Had they resisted local reform movements, these and other state legislatures might have faced the same upheaval that dogged Rhode Island. But most state conventions and legislatures passed sweeping franchise and apportionment reforms, appeasing farmers, workingmen, and militiamen. Even Virginia's conservative legislature and conventions approved token reforms to split and quiet the state's reformist agrarian faction. Rhode Island's legislature was unique in resisting franchise reforms. By the early 1840s, the state had failed five times to reform the vote by constitutional convention, and consequently was one of only two states to maintain freehold restrictions on the franchise (Wiecek 1978, 241). And Rhode Island was the only antebellum state to face an internal civil war. Rhode Island shows the dangers of withholding the vote from mobilized, armed, angry white Jacksonian men. As Keyssar concludes, there is —little reason to think that other industrializing states would have avoided similar conflict and tumult – culminating in similarly restrictive suffrage laws – had they delayed franchise reform another generation or more” (Keyssar 2000, 76).

But Rhode Island and Virginia, with strict franchise restrictions, are exceptional cases. How do they relate to general trends? Did antebellum franchise expansion usually accompany local stability? The following figure compares the stability of a state's constitutional politics to the extent of its property and taxpaying restrictions on the adult white male franchise between

⁶³Since Rhode Island's textile mills were the nation's first, by the 1820s, the state's labor movement was older and stronger than most, but so much so as to make the state an unrepresentative case for studying reform movements (Wiecek 1978, 240; Keyssar 2000, 70–1, 76).

1800 and 1850.⁶⁴ This figure considers a state's constitutional politics unstable if it faced prolonged constitutional agitation by white males via riots, militia mobilizing, or extralegal constitutional conventions.⁶⁵

⁶⁴ This figure only accounts for residency requirements as they relate to taxpaying and property requirements. It does not list standalone residency requirements, though compared to taxpaying and property requirements, these were fairly rare.

⁶⁵ Antebellum slaves, blacks, and abolitionists also rioted and revolted, but these groups more often protested black slavery, not black disenfranchisement. And at the very end of the antebellum era, women began rallying for suffrage. But between 1800 and 1850, most legal and extralegal organizing around suffrage reform was undertaken by white males. Hence, this study of this era concerns instability caused by white men.

Outcomes of Attempted Reform of Tax and Property Qualifications on the White Male Franchise, 1800-50

Stable Constitutional Politics

Strict Qualifications	Lax or No Qualifications
LA 1812: requires voters own property, pay taxes in the last six months, or have purchased federal land	AL 1819: no qualifications AR 1836: no qualifications
NC 1823(F), 1833(L), 1835 (F, A): 1835 amendments require 50 acres to vote for Senate, taxpaying for Governor and House vote	CT 1818, 1845(A): 1818 convention maintains lax 1796 statutory requirement voters own \$134 in property or a freehold worth \$7 per year, exempts taxpayers and militiamen from property qualifications; 1845 amendment repeals property and tax qualifications
NY 1801(F), 1804(S): 1801 Convention maintains 1777 requirement for a 20 pound freehold or rental of a tenement for 40 shillings per yearly ; 1804 statute changes the tenement requirement to \$25 per year	DE 1831: 1831 Convention maintains 1792 amendment enfranchising anyone who paying taxes within the last six months, with exceptions FL 1838: no qualifications
VA 1804(S), 1816(F), 1829, 1850: 1804 statute maintains 1762 requirement of 25 cleared acres or 50 acres total; 1830 Convention adds exception enfranchising some leasing land; 1850 Convention repeals property requirements	GA 1833(F), 1839(F): maintains 1798 Constitution's provision enfranchising anyone paying taxes within the last year IA 1846(F), 1848: no qualifications IL 1818, 1848: no qualifications IN 1816: no qualifications KY 1850: no qualifications LA 1845: no qualifications MA 1821(F, A): 1821 amendment enfranchises anyone paying taxes within last two years unless exempt from taxes, repeals 1780 property qualification requiring 3 pounds in annual income or 60 pounds in estate for Senate vote ME 1819: no qualifications MI 1835, 1850(F): no qualifications MO 1820, 1845(F): no qualifications MS 1817, 1832: in 1817 requires taxpaying or militia service; drops this requirement at 1832 Convention NH 1847(S), 1850(F): 1792 provision disenfranchises those who opt out of tax payment; 1847 statute enfranchises them after a year of tax payment NJ 1807(S), 1844: 1807 statute enfranchises those worth 50 pounds and all taxpayers; 1844 convention repeals this NY 1821, 1826(A): in 1821 drops property requirement for whites, keeps \$250 requirement for blacks, institutes taxpaying requirement, with exceptions for militiamen, firemen, and resident highway workers; subsequent conventions maintain this OH 1802: enfranchises taxpayers, exempting resident highway workers OR 1843(F), 1845(F): no qualifications SC 1810(A): 1810 amendment repeals 1790 tax qualification, maintains 50 acre freehold from 1790 Constitution TN 1835: repeals freehold 1796 qualification VT 1814(F), 1822(F), 1828(F), 1836(F), 1843(F), 1850(F): no qualifications WI 1846(F), 1848: no qualifications

Unstable Constitutional Politics

Strict Qualifications	Lax or No Qualifications
RI 1824(F), 1834(F), 1841(F), 1842: failed conventions maintain 1762 statute requiring a freehold worth 40 pounds or 40 shillings per year, with exceptions for freeholders' sons; 1842 Convention requires \$134 in real estate or \$7 in yearly rentals, with exceptions	CA 1849: no qualifications MD 1801(S), 1850(F): 1802 amendment repeals 1776 freehold qualification of fifty acres or thirty pounds in value; no tax qualifications NM 1848(F), 1849(F), 1850(F): no qualifications NY 1837(F), 1846: maintains 1821 qualifications PA 1833(F), 1838: maintains 1790 provision enfranchising those paying taxes in the last two years with minor exemptions TX 1836(F), 1845: no qualifications

Figure: State-Level Outcomes of Attempts at Regulation of Property and Tax Qualifications on the Franchise, 1800-50. Franchise regulations listed above are passed by constitutional convention, unless noted as a legislative constitutional amendment (A) or statute (S). Also included are failed conventions (F) and legislative committees (L) that proposed but did not ratify a new constitution to displace standing franchise regulations. These standing regulations, made by a previous legislature or convention, are listed after the failed convention or committee. For state property and taxpaying qualifications, see (Keyssar 2000, 328–35). For details on the stability of constitutional politics in each state, see the appendix.

A few trends emerge. Most antebellum states expanded the suffrage. These states saw relative constitutional stability. Suffrage expansion and party mobilization encouraged disaffected and organized small farmers, mechanics, and militiamen to seek political reform through the ballot box, rather than riskier and more violent means. In frontier states, the guarantee of legal recognition might have preempted settlers from mobilizing in the first place. This is not a causal claim that franchise reform and appeasement guaranteed constitutional stability. Other stories are possible. In many older eastern states, a history of successful legal constitutional reforms, including but not limited to suffrage reform, might have dissuaded citizens from extralegal violence, stabilizing a state's constitutional politics. And most frontier states were sparsely settled by whites, precluding the longstanding class grievances, legal repression, and urban mobilizing that led some poor eastern farmers and mechanics to extralegal violence.⁶⁶ Regardless of the causal story, what matters is that most states peacefully broadened the white male franchise, resolving a longstanding national controversy over the white male vote.

There were other paths to stability. In Rhode Island, Virginia, Louisiana, and North Carolina, planters used malapportionment and suffrage restrictions to keep the legislature from capture by white mechanics and small farmers. Louisiana refused reform until an 1845 state convention, while Virginia and North Carolina legislators and convention delegates appeased Appalachian farmers with token reapportionment and franchise expansion (Hargrave 1991, 1–5; Orth 1993, 2–10; Bastress 1995, 1–9). Framers in these three states further appeased white small farmers by stripping civil rights from free blacks, who these farmers may have seen as an economic threat (Tarr 1998, 105). Early in the nineteenth century, state legislators and

⁶⁶ Alabama's founding 1819 Constitution exemplifies the frontier democracy for white males. For the connection between the frontier and democracy, see (Turner 1920). Contrast Alabama to neighboring Louisiana, which, due to longstanding Mississippi trade routes, had an established French planter class which, when framing the state's founding 1812 Constitution, legally excluded poor whites. Note also that through the 1820s and 1830s, turnout in frontier states did not reach levels seen in the east (McCormick 1960, 297–8).

convention delegates in these states laid the groundwork for later Jim Crow laws. Rhode Island broke this pattern. Planter legislators did not pit working whites against local blacks. Further, Providence workingmen were well-organized and angry, rejecting the legislature's token reforms, and instead forming their own separatist government.

Suffrage expansion did not always guarantee stability. Anglo-Americans in California, New Mexico, and Texas granted broad suffrage to white males, but still faced domestic turmoil, forming separatist governments to split from Mexico (Grodin, Massey, and Cunningham 1993, 1–9; C. Smith 1996, 2–4; May 2011, 9–14). After 1801, Maryland refused property and taxpaying qualifications but maintained malapportionment, leading a reform party to consider armed revolt (Jameson 1887, 216; Dealey 1915, 49). In 1838, a narrow and corrupt Democratic victory in the Pennsylvania gubernatorial election led Whigs in the state Senate to challenge the results and the deposed Whig governor to rally militiamen to seize the state armory. And the following year, New York tenant farmers rioted against their landlords. Both of these states had largely repealed property requirements. But these states are exceptional. Pennsylvania's revolt traced to a single contested election, and New York's revolt to long-standing labor tensions that franchise reform could not resolve (Egle and Ritner 1899; Dealey 1915, 49; McCormick 1967, 134–47, 154–66; Gallie 1991, 1–14; Gallie 1995, 9–116).

This local constitutional revision may have preempted Congress from proposing a national amendment regulating the franchise. Congress frequently debated the election of executives and legislators – election regulation was the most common topic for amendments proposed in Congress for thirty of the fifty years after 1800 (Vile 2003, 540–59). Between 1813 and 1822, Congress considered forty-four amendments to reform selection of presidential electors, almost half the total number proposed. The disputed election of 1824, furtively decided

by the House, spurred twenty-two more congressional proposals for an amendment to guarantee a popular vote in presidential elections (Ames 1897, 21). Jackson proposed a similar amendment in his 1829 State of the Union address. But surprisingly, this congressional agitation fizzled without producing a national constitutional amendment. The answer may lie with the states. Since the federal Constitution delegated franchise regulation to the states, agitation for franchise expansion occurred locally. Movements did not bridge states or regions, and a single national popular movement for electoral reform never emerged (Tarr 1998, 99).⁶⁷ Nor was there clear need for a national movement, as the states had independently resolved the issue by the Jacksonian era. In 1812, only nine of eighteen states in the Union allowed direct election of presidential electors. By 1832, South Carolina was alone among the Union's twenty-four states in forbidding a popular vote (Aldrich 2011, 102–111). The local interdependent expansion of mass parties and the adult white male franchise quieted the push for national electoral reform.⁶⁸

Antebellum property and tax qualifications encouraged disenfranchised working adult white males to organize and agitate. But local reforms dissolved this class-based mobilizing. State framers and legislators mandated winner-take-all districts, creating a two-party system that muscled out organized class-based third parties like New York's Working Men's Party. These same framers and legislators relaxed suffrage restrictions, appeasing small farmers and urban mechanics and allowing mass parties to absorb these groups. In quieting antebellum suffrage movements, state legislatures and conventions helped calm antebellum workingmen's movements. Contrast this to Europe, where exclusion of urban laborers prompted the

⁶⁷ However, in responding to local movements, state framers might borrow a provision from a neighboring or recently-framed constitution or from a compendium of state constitutions, and convention debates frequently referred to other states' constitutions.

⁶⁸ Electoral reform amendments proposed in Congress between 1800 and 1830 tended to focus on national elections, rather than local ones. With a national amendment, Congress could have overturned local and state constitutional election law, as it later would through the Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments. But the antebellum Congress continued to defer to the states to regulate local elections, perhaps expecting the state legislatures or ratifying conventions would not approve an amendment interfering with local election policy.

organization of workingman's parties and fueled the revolutions of 1848. In the United States, antebellum state-level suffrage concessions headed off this labor organizing and radicalism, stabilizing national politics.

In restricting the franchise to white males, state framers also helped settle and define the extent of antebellum citizenship. Eastern industrialization and land shortages pushed white men from rural freeholds to urban wage labor. With fewer of these men holding landed property and paying property taxes, state framers abandoned property and tax qualifications, instead asserting that independent labor allowed material independence and the privilege of voting (Keyssar 2000, 46–8). This excluded from the vote dependent laborers like women and slaves, and some free blacks, Indians, and aliens. But other free blacks, Indians, and aliens were wage laborers and potential voters. Framers in some states closed this loophole by asserting that blacks, Indians, and immigrants, like women and children, lacked the mental and moral capacities for citizenship and thus the vote (R. M. Smith 1997, 165–242; Keyssar 2000, 44–5). Delegates to Maine's 1819 Convention excluded Indians from the state polity and vote, but included free blacks in both (R. M. Smith 1997, 172). New York, Massachusetts, Connecticut, Vermont, Maryland, and Virginia, which had granted the vote to any inhabitant, revised their constitutions to enfranchise only citizens, excluding aliens, as did every new state constitution drafted between 1800 and 1840, save Illinois' (Keyssar 2000, 32–3). Pennsylvania, Connecticut, North Carolina, and Tennessee excluded free blacks from the vote (Henretta 2009, 52–5), as did New Jersey, which in 1807 repealed the nation's last provision to allow female suffrage. By 1860, only the New England states still allowed free blacks to vote without qualification (Tarr 1998, 105–7).⁶⁹

⁶⁹ The exception in New England is Connecticut, which excluded free blacks from the polls. A 1846 New York referendum allowed free blacks to vote given they held \$250 in freehold estate, which few did (Henretta 2009, 52–5).

Voting and citizenship were not identical – one could be a non-voting citizen as a free black, woman, transient, child, and sometimes as an immigrant, slave, or Indian. But in the era of Jacksonian mass democracy, voting marked complete citizenship. Repudiating universalistic Revolutionary-era natural rights language, antebellum state framers expressly described voting as a civil right or privilege. The franchise was, in the words of John Kennedy of New York’s 1846 Convention ~~not~~ “a natural right,” but “a privilege, a franchise, a civil right,” conditioned on ~~mature~~ “mature age and sex” (Crosswell and Sutton 1846, 783). The vote was reserved to full members of the political community, usually exclusively white male citizens (Scalia 1999, 58–62).⁷⁰

IV. Implications and Conclusion

State constitutional revision often resolves national constitutional controversies. This has three implications for current understandings of national constitutional politics. First, accounts of judicial review and judicial power that ignore the states may misread American constitutional development. Why? Reformers are opportunistic, seeking change through the federal courts and state constitutions simultaneously. To study one path in isolation is to misunderstand it. Imagine national constitutional politics is simplified to include only courts and states:

⁷⁰But note that the Whigs were less committed to restricting citizenship to white males. Jacksonians sought to guard America’s agrarian virtue from the industrial revolution and reformist Whigs (Watson 1990, 59–60), and thus Democrats took a binary approach to civic inclusion. As Watson explains, —~~For~~ Jacksonians, equality was absolute and indivisible. If a man was entitled to some privileges of citizenship, he was entitled to all of them, and there could be no intermediate classes of partially enfranchised or semi-equal citizens.” Democrats granted white males full citizenship, including German and Irish immigrants. Since a ~~true~~ Jacksonian Democrat was master of his own house, shop, or farm,” women, who Democrats felt relied on men, were excluded from the vote. Whigs relied on the same white male constituency as the Democrats, but had a more nuanced idea of citizenship, excluding some white male immigrants from the vote. Some Whigs also championed Indians’ legal challenges to Jackson’s removal policy. Northern Whigs could also attack the House’s —~~gg~~ rule” banning debate on abolition, for, unlike Democrats, they did not believe in the virtue of Southern planters. Finally, years before the Seneca Falls convention, Whigs made concessions to women on issues like temperance, hoping women would urge their husbands to the polls (Watson 1990, 60–9; R. M. Smith 1997, 197–242).

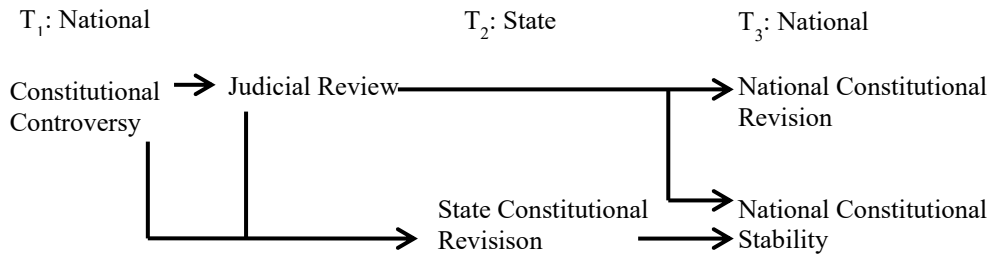


Figure: The Courts and States in National Constitutional Revision.

Scholars of judicial review focus on the period between T_2 and T_3 , disputing whether courts can force revision of the national constitution and major national statutes. Some doubt the courts can unilaterally force national constitutional reform (Dahl 1957; Graber 1993; Rosenberg 2008; Whittington 2009), while others trust the courts have this power (Adamany 1973; Lasser 1985). Both arguments miss that national branches, including the courts, can defer controversies to the states at T_1 . If judges are the impartial, apolitical arbiters they claim to be, then they ought to defer political questions to political bodies like state legislatures and conventions.⁷¹ If judges are partial and political, then they strategically devolve issues to the states to avoid inter-branch confrontation.⁷² Further, judges often devolve political questions by refusing to grant a writ of certiorari to hear a case. Studying only cases that get the writ and go before the courts, judicial scholars can miss the many cases the courts refuse and quietly devolve to the states. Selecting issues over which the courts have power, these studies may systematically exclude cases of deference to the states, missing an important part of judges' reasoning and of inter-branch conflict.

⁷¹See *Luther v. Borden*, 48 U.S. 1 (1849). More recently, Justices Marshall, Holmes, Rehnquist, and O'Connor frequently and gladly devolved controversies to the states.

⁷²Marshall is an instructive case – an arch-Federalist, he stripped states' economic regulatory power in *Fletcher v. Peck* (1810), *McCulloch v. Maryland* (1819), and *Gibbons v. Ogden* (1824), until the 1828 election of the states-rights Democrats and Andrew Jackson forced Marshall to defer to states' commerce regulations in *Willson v. Black Bird Creek Marsh Co.* (1829) and *Barron v. Baltimore* (1833). See *Fletcher v. Peck*, 10 U.S. 87 (1810), *McCulloch v. Maryland*, 17 U.S. 316 (1819), *Gibbons v. Ogden*, 22 U.S. 1 (1824), *Willson v. Black Bird Creek Marsh Co.*, 27 U.S. (2 Pet.) 245 (1829), and *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833).

When we integrate the states, many cases of national constitutional action or inaction attributed to the courts could be explained by state revision. For example, devolution to the states through popular sovereignty may have caused the slavery crisis and realignment that Adamany and Lasserblame on *Prigg v. Pennsylvania* (1842) or *Dred Scott* (1857).⁷³ These scholars are correct that national deference to the judiciary occurs at T₁ and policy changes at T₃. But they miss that devolution by Congress, the president, and the courts to the states at T₁ spurs state constitutional revision at T₂.⁷⁴ American state legislatures, voters, and conventions have amendment power the courts lack. These amendments are written with political aims, have plenary legal power, structure executives and legislatures to enforce these policy aims, and can constrain state judiciaries.⁷⁵ The states, not the courts, may force national realignment at T₃.

The courts, lacking the power of the purse and the sword, can rarely force unilateral policy change.⁷⁶ Dahl, Graber, Whittington, and Hirshl show the federal government at T₁ defers to the courts. Sidelined by their weak enforcement powers, the courts merely legitimize the national constitutional status quo at T₃. But states might also serve this quieting function. State framers can solve a political controversy, allowing federal constitutional inaction, or can experiment with policies, offering constitutional solutions that kill controversies without threatening the status quo. Either way, states can cause the national constitutional inaction Dahl, Graber, and Whittington blame on the courts. Though national policy changes or remains stable

⁷³*Prigg v. Pennsylvania*, 41 US 539 (1842) and *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

⁷⁴ Graber suggests this in passing (Graber 1993, 40).

⁷⁵ Dinan and Burgess and Tarr note state constitutions' easy revision procedure and special legal prerogatives attract reformers thwarted at the national level (Dinan 2006; Dinan 2012; Burgess and Tarr 2012, 17–8). Yet constitutional devolution reflects national coalitions' political tactics and intentions, as much as these legal incentives.

⁷⁶ For example, Rosenberg demonstrates that after Southern states ignored *Brown v. Board* until Congressional budgeting forced compliance (Rosenberg 2008). Coalitions defer to Courts not to legitimize, resolve, or postpone issues, as Dahl suggests, but to kill them, as Graber claims. Hirschl asserts dominant and waning coalitions use courts to entrench their power and silence or preempt outsider claims, just as Rosenberg's "flypaper" Supreme Court attracts, traps, and kills minority rights claims (Hirschl 2009). See *Brown v. Board of Education of Topeka II* 349 U.S. 294 (1955).

after judicial deference, it is not solely because of judicial deference. The judiciary's effect on national constitutional development is sometimes conditioned on the states.

Describing popular constitutionalism without the states would be equally misguided. Some scholars see national institutions like the Congress as the main site of popular constitutionalism (Ackerman 1984), while others catch popular constitutionalism at both the state and national level (Beaumont 2013). And historians, lawyers, and political scientists have long noted the state constitutional conventions' republican and Jeffersonian character (Wood 1972; Lutz 1980; Fritz 1997; Kruman 1997; Rodgers 1998; Scalia 1999; W. P. Adams 2001; Dinan 2006; Bridges 2008).

Second, the federal branches defer to the states to postpone or prevent inter-branch conflict. For example, the federal judiciary may devolve controversial issues to the states to avoid confronting a hostile, powerful realignment president. Recall the Federalist Marshall Court devolved commerce debates to the states rather than challenge the Jackson.⁷⁷ The contemporary Supreme Court had repeatedly deferred the constitutional status of same-sex marriage not only to federal and state courts, but also to state constitutions.⁷⁸ Studying only the federal branches, Dahl and Whittington may miss how the state constitutions quietly mediate and direct federal inter-branch conflict. If court devolution to the states results in policy change, then Dahl again misreads state power as court power. Relatedly, the national Constitution's inflexibility, particularly to citizenship reform, constrains the president and Congress. Devolution to state constitutions' initially quiets controversy, but in the long run, may fracture executive and

⁷⁷ In *Gibbons v. Ogden* (1824) the Marshall Court allowed states to regulate intrastate commerce to the exclusion of the judiciary. In *Willson v. Black Bird Creek Marsh Co.* (1829) Marshall held a state charter preempted judicial intervention via the Commerce Clause, given no federal law expressly applied the Clause against the charter. In *Barron v. Baltimore* (1833), Marshall upheld a state taking to the exclusion of judicial regulation. These are cases of both capitulation to Jackson and devolution to the states.

⁷⁸ Only when the majority of states accepted same-sex marriage did the Court follow. See *Obergefell v. Hodges*, 576 U.S. ___ (2015).

legislative coalitions. The presidency is not a “battering ram” against unbending constitutional orders, as Skowronek and Whittington claim; rather, the constitutions constrain the branches, and have some agency in creating new political orders.

Relatedly, the states can revise and reinterpret the national Constitution. The Tenth Amendment asks the states to elaborate non-enumerated provisions of the national Constitution, and Article V engages the states in amending enumerated provisions.⁷⁹ Antebellum states like South Carolina nullified and interposed provisions of the national Constitution. Jackson rebuffed South Carolina’s nullification of the Tariffs of 1828 and 1832, declaring that the national “Constitution and laws are supreme, and the *Union indissoluble*.”⁸⁰ But, save for the crises over nullification and slavery, state constitutional experimentation has offered national actors solutions to political crises, stabilizing the Union and its Constitution.⁸¹ Decentralization unites the states.

Third, the state constitutions mediate national realignments. V.O. Key’s midcentury studies claimed the states lagged behind federal reforms, especially in the South, and especially on race (Key 1955; Key 1956; Key 1963). Subsequent scholars ignored the states, tracing national realignments to national institutions like the presidency (Skowronek 1993), national parties (Burnham 1971; Sundquist 1983; Aldrich 2011), or to national ideologies like liberalism (Huntington 1981). No current model integrates the states.⁸² This project suggests some states precede and incite federal coalition and policy realignment, while other states follow.

⁷⁹As Lutz argues, the framers wrote an “incomplete text” that intentionally deferred controversies over citizenship, the franchise, the constitutionality of slavery to the states (Lutz 1988). This is akin to Dinan, Burgess and Tarr, and Marshfield’s claims on subnational constitutional “space.”

⁸⁰ See Jackson’s Nullification Proclamation.

⁸¹ Scholars ought to incorporate the states into their models of constitutional review. For example, Whittington describes the historical contest between departmentalist and judicial modes of interpretation, but largely misses this third mode of state interpretation, which mediates and directs the interaction of the other two (Whittington 2009).

⁸²To this author’s knowledge. However, some have recognized the states’ influence on national electoral law (McCormick 1960), citizenship law (Novkov 2008), and constitutional law (Blocher 2010; Tarr 2010; Burgess and Tarr 2012), for example.

Conservative state coalitions can constitutionally entrench the local status quo, postponing the state realignments that spark national change. Even after national coalition and policy realignments, these states can block policy implementation.⁸³

Realignment theorists like Burnham, Sundquist, and Huntington posit realignments are periodic, but as Mayhew notes, they struggle to explain why, relying “on suggestions and metaphors rather than on sustained argument” (Mayhew 2002, 15–20).⁸⁴ One metaphor describes “pressure buildup” against old, inflexible institutions, as popular majorities revise political systems based on the “dead issues of the past.”⁸⁵ Constitutions explain the periodicity of realignments. Article V requires two thirds of the House, Senate, and state legislatures to approve a proposed national amendment. This frustrates all but the most committed movements, which gradually build at the state level until they clear this national threshold, scoring national constitutional and policy realignment.

Justice Louis Brandeis was right to dub the states “laboratories of democracy.” When demographic, economic, and technological shifts threaten the reigning national coalition, the coalition defers these contentious issues, particularly ones of populism and civic inclusion, to the states. State radicals use these wedge issues to fracture the dominant state coalition, entrenching their new power in a new state constitution. These constitutional reform movements grow at the state level, eventually forcing federal coalition realignment and constitutional change. State and federal constitutional duration reflects the devolution of politically sensitive issues.

⁸³Dinan suggests states have five means to block or change federal constitutional policy: lobbying the federal government, lawsuits in federal court, state statutes, and most importantly, constitutional amendments (Dinan 2012).

⁸⁴ One exception is Beck, who claims impressionable young voters flock to a new realignment coalition and maintain this affective party identification through their lives. Parties stay entrenched for roughly a generation before replacement, explaining periodicity (Beck 1974).

⁸⁵Sundquist quoted in Mayhew.

Appendix

The following figure lists all thirty-one attempts to replace a standing state constitution between 1800 and 1840. The figure also lists whether the state legislature shifted control three sessions before or after an attempted constitutional replacement, and if so, the figure lists the years and magnitude of that shift. Control of the legislature shifts when a party or inter-party coalition loses a simple majority.⁸⁶ Columns list the vote share of the Democratic-Republican Party, its successor, the Democratic Party, or an allied local party, measured against the Federalists, National Republicans, Whigs, or an allied local party.

State	Const. Proposed	Order	Passed	Upper House		Party: DR/D	Party: F/NR/W	Party: Other	Lower House		Party: DR/D	Party: F/NR/W	Party: Other				
CT	1818	2	Yes	1817	T	0	F	12			1816	T	90	F	111		
				1818	T	7	F	5			1817	T	105	F	96		
DE	1831	3	Yes														
GA	1833	4	No	ND					ND								
	1839	4	No	1838	U	50	SR	37			1837	U	88	SR	103		
IL	1848	2	Yes	1839	U	28	SR	46		1	1838	U	96	SR	76		
												1852	D	56	W	18	1
													1854	D	34	W	41
LA	1845	2	Yes	1842	D	8	W	9			1844	D	26	W	34		
				1844	D	9	W	8			1846	D	55	W	43		
MA	1820	2	No	1822	DR	9	F	31			1819	DR	161	F	231	16	
				1823	DR	24	F	16			1820	DR	64	F	87	42	
MO	1845	2	No														
MS	1832	2	Yes	ND					ND								
NC	1823	2	No	ND					ND								
	1833	2	No	ND					ND								
	1835	2	No	1835	D	33	W	30		2	1836	D	62	W	58		
NJ	1844	2	Yes	1836	D	24	W	26			1840	D	54	W	66		
				1843	D	12	W	6			1843	D	35	W	23		
				1844	D	6	W	13			1844	D	18	W	40		
NY	1801	2	No	1801	DR	21	F	22			1799	DR	34	F	43	31	
				1802	DR	21	F	11			1800	DR	67	F	39	1	
	1822	2	Yes	1821	BK	13	CL	18		1	1819	BK	58	CL	30	34	
				1822	BK	32	CL	0			1820	BK	71	CL	33	22	
	1837	3	No	1838	D	18	W	14			1836	D	90	W	38		
1839				D	12	W	20			1837	D	28	W	100			
1846	3	Yes	1846	D	21	W	10		1	1845	D	74	W	51	2		
			1847	D	8	W	24			1846	D	52	W	76			
PA	1833	3	No								1834	D	62	W	11	27	
												1835	D	28	AM	72	
				1838	3	Yes	1838	D	15	W	18			1835	D	28	W

⁸⁶ Note that this figure lists legislatures with a switch in party control, i.e. a shift in simple majority. While a simple majority is not enough to call a constitutional convention in many states, during realignments, legislators are prone to crossing party lines. This suggests that a newly dominant party may be able to bargain to get opposition legislators to support their proposed constitution to clear a supermajority threshold. That is, even with only a simple majority in a state legislature, a party may be able to propose a new constitution.

				1839	D	17	W	16		1836	D	72	W	7	21
RI	1824	2	No	ND						ND					
	1841	2	No												
	1841	2	No												
	1842	2	Yes												
TN	1835	2	Yes	1835	D	7	W	18		1835	D	25	W	46	4
				1837	D	14	W	11		1837	D	42	W	33	
VA	1816	2	No	ND						ND					
	1830	2	Yes	ND						ND					
VT	1814	4	No	N/A						1812	DR	124	F	85	
										1813	DR	104	F	108	
	1822	4	No	N/A						ND					
	1828	4	No	N/A						ND					
	1836	4	No												
	1843	4	No												

Figure: State Constitutional Replacement and Change in Partisan Control of State Legislatures, 1800-49. For –Order,” 1 indicates the proposed constitution was the state’s first proposal, 2, the second, and so on. –ND” indicates the data for these years is not available from the data compiled by Michael Dubin(Dubin 2007). –N/A” indicates the state was unicameral. Parties are identified by the following acronyms: –DR” – Democratic-Republicans, “D” – Democrats, –F” – Federalists, –NR” – National Republicans, –W” – Whigs, –T” – Toleration Party, –U” – Union Party, –SR” – Southern Rights Party, –BK” – Bucktail, –CL” – Clintonian, –M” – Ant-Masonic, and –O” – Other. All proposals were made by constitutional conventions, save for legislative proposals by Pennsylvania and North Carolina in 1833.

State	Stability of Constitutional Politics around and after Constitutional Convention(s) or Amendments(s)
AL	1819, stable: sparse settlement by whites and little party organization at state’s founding (McCormick 1967, 287–95)
AR	1836, stable: sparse settlement by whites and little conflict at the state’s founding (Goss 1993, 1–3)
CA	1849, unstable: in 1836 and 1845, separatist Californians elect extralegal governments to secede from Mexico; a balance of delegates from the state’s diverse regions and ethnic groups assures a moderate convention and constitution (Grodin, Massey, and Cunningham 1993, 1–9)
CT	1818, 1845(A), stable: the Republican-aligned Toleration Party captures the legislature from Federalists in 1818 on a platform of religious disestablishment and franchise expansion; Connecticut is a single party state from 1776 until the 1830s (Goodman 1967, 77–81; Horton 1993, 5–14; Dubin 2007, 33–4)
DE	1831, stable: Federalist control 1796-1820 and peaceful elections and power sharing through the Jacksonian era (Goodman 1967, 79–80; McCormick 1967, 147–54; Dubin 2007, 39–40)
FL	1838, stable: state has a dispersed, unorganized population of only 50,000, of which 20,000 are slaves excluded from political participation (D’Alemberte 1991, 1–5)
GA	1833(F), 1838(F), stable: legislature calls two failed conventions, but otherwise little agitation for constitutional reform (M. B. Hill 1994, 5–6)
IA	1844(F), 1846, stable: Iowans push for constitutional reform peacefully, resulting in a convention in 1857 (Stark 1998, 1–5)
IL	1818, 1848, stable: tension between French slaveholders and recent, antislavery settlers is resolved by allowing limited de facto slavery (Finkelman 1989; Finkelman 2001, 58–80)
IN	1816, stable: tension between French slaveholders and recent, antislavery settlers dissipates as slaveholders free slaves or move to neighboring Illinois (Robinson 1971, 404; McLaughlan 1996, 1–5; Hammond 2007, 113–123)
KY	1850, stable: legislature regularly submits constitutional questions to voters via referenda (Ireland 1999, 2–7)
LA	1812, 1845 stable: French planters disenfranchise white small farmers at the 1812 Convention, but after increased settlement by small farmers, the 1845 Convention repeals these restrictions (Hargrave 1991, 1–5)
MA	1821(F, A), stable: tension between western small farmers and eastern towns is largely resolved by

aggregating the opinions of town meetings and by a series of constitutional amendments (Peterson 2010, 3–15)

MD	1802(A), unstable: malapportionment over-represents eastern shore planters, underrepresenting Baltimore, and the state approaches revolution, forcing reform in 1837; renewed discord forces the legislature to call a convention in 1850 (Jameson 1887, 216; Dealey 1915, 49; McCormick 1967, 154–66)
ME	1819, stable: separation from Massachusetts appeases Maine separatists, and subsequent intrastate political conflict does not implicate the Maine Constitution (Tinkle 1992, 1–9)
MI	1835, 1850(F), stable: state is sparsely populated by farmers, who make up a majority of the state’s fairly inclusive convention (Fino 1996, 1–8)
MO	1820, 1845(F), stable: Jacksonians quickly organize the state; by 1840, a stable two-party system has emerged (McCormick 1967, 304–310)
MS	1817, 1832, stable: after movements for repeal for suffrage expansion and judicial elections, the legislature capitulates and calls a peaceful convention (Winkle 1993, 2–7)
NC	1823(F), 1833(L), 1835 (F, A), stable: reapportionment appeases dissatisfied western voters (Orth 1993, 2–8)
NH	1847(S), 1850(F), stable: conflict is channeled by parties into elections; Jacksonians control the state from 1827 until the 1850s (McCormick 1967, 54–62)
NJ	1807(S), 1844, stable: the state is small and homogenous, avoiding the tension between easterners and frontiersmen that upset other states (McCormick 1967, 124–34; Connors 1970, 3–9)
NM	1848(F), 1849(F), 1850(F), unstable: state is divided between Anglo-American settlers, Spanish-Mexicans, and Indians; the latter two rebel against the former in the failed 1847 Taos Revolt (C. Smith 1996, 2–4)
NY	1801(F), 1804(S), 1821, 1826(A), 1837(F), 1846, stable/unstable: small western farmers and New York City workingmen organize, but are appeased by ongoing statutory and constitutional reform; along the Hudson, tenant farmers rebel in 1839, leading to the 1846 Convention (Cheyney 1887; Gallie 1991, 1–14; Gallie 1995, 9–116)
OH	1802, stable: class divisions in Ohio’s frontier society are weak and are resolved through political and legal means (Steinglass and Scarselli 2004, 2–19)
OR	1843(F), 1845(F), stable: the federal government resolves border disputes with Great Britain; most intrastate conflict is co-opted by parties (Schuman 1995, 611–7)
PA	1833(F), 1838, unstable: tax policies result in the Whiskey Rebellion (1794) and Frie’s Rebellion (1800), and a disputed election leads to armed mobilizing and the Buckshot War (1838); otherwise, state mobilizing occurs through mass parties (Egle and Ritner 1899; McCormick 1967, 134–47)
RI	1824(F), 1834(F), 1841(F), 1842, unstable: longstanding resentment over malapportionment and suffrage restriction lead to a separatist “People’s Constitution” and legislature in the Dorr War (Mowry 1901, 28–38; Dealey 1915, 42, 49–50; Wiecek 1978, 240–5; Tarr 1998, 102; Keyssar 2000, 71–6, 333; Chaput 2013, 119–81).
SC	1810(A), stable: tensions between costal planters and upcountry small farmers are resolved when the former take the legislature in 1800 and reform suffrage and apportionment law (Goodman 1967, 77–81; Graham 2007, 13–16).
TN	1835, stable: main constitutional contention is over judicial design, which seems not to align with class or race tensions (Laska 1990, 7–11)
TX	1836(F), 1845: in 1836 Anglo-American Texans revolt and secede from Mexico, joining the Union in 1845 (May 2011, 9–14)
VA	1804(S), 1816(F), 1829, 1850: token reforms appease Blue Ridge farmers, keeping the state legislature under the control of eastern counties (McCormick 1967, 178–99; Bastress 1995, 1–9)
VT	1814(F), 1822(F), 1828(F), 1836(F), 1843(F), 1850(F): constitutional revision comes through the combination of meetings of the state Council of Censors and state conventions (W. C. Hill 1992, 12–16)
WI	1846(F), 1848, stable: conventions are the main site of constitutional change in early Wisconsin (Stark 1997, 1–8)

For 1800-50. Years indicate a successful convention, unless designated as the year of an amendment (A) or of a failed convention (F) or legislative committee (L) that did not ratify a constitution. A state’s constitutional politics is considered unstable if it saw regular constitutional agitation by white males via extralegal riots, militia mobilizing, or illegal constitutional conventions.

Bibliography

- Ackerman, Bruce. 1984. "Storrs Lectures: Discovering the Constitution." *Faculty Scholarship Series*, January. http://digitalcommons.law.yale.edu/fss_papers/149.
- . 1998. *We the People: Transformations*. 2. Belknap Press of Harvard University Press.
- Adamany, David. 1973. "Legitimacy, Realigning Elections, and the Supreme Court." *Wisconsin Law Review* 1973: 790.
- Adams, John. 1776. "Letter to James Sullivan, May 26, 1776." In *The Works of John Adams, Second President of the United States: With a Life of the Author, Notes and Illustrations*, edited by Charles Francis Adams. Vol. IX. Boston: Little, Brown.
- Adams, Willi Paul. 2001. *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*. Rowman & Littlefield.
- Aldrich, John Herbert. 2011. *Why Parties?: A Second Look*. University of Chicago Press.
- Ames, Herman Vandenburg. 1897. *The Proposed Amendments to the Constitution of the United States during the First Century of Its History*. Washington: Government Printing Office.
- Bastress, Robert M. 1995. *The West Virginia State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Beaumont, Elizabeth. 2013. *The Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy*. Oxford University Press.
- Beck, Paul Allen. 1974. "A Socialization Theory of Party Realignment." In , edited by Richard G. Niemi. Jossey-Bass.
- Beienburg, Sean. 2014. "Contesting the U.S. Constitution through State Amendments: The 2011 and 2012 Elections." *Political Science Quarterly* 129 (1): 55–85. doi:10.1002/polq.12146.
- Berkowitz, Daniel, and Karen Clay. 2005. "American Civil Law Origins: Implications for State Constitutions." *American Law and Economics Review* 7 (1): 62–84.
- Blocher, Joseph. 2010. "What State Constitutional Law Can Tell Us about the Federal Constitution." *Penn State Law Review* 115: 1035.
- Bridges, Amy. 2008. "Managing the Periphery in the Gilded Age: Writing Constitutions for the Western States." *Studies in American Political Development* 22 (01): 32–58. doi:10.1017/S0898588X08000035.
- Browne, Cynthia E. 1973. *State Constitutional Conventions from Independence to the Completion of the Present Union, 1776-1959: A Bibliography*. Greenwood Press.
- Bryce, James. 1908. *The American Commonwealth*. Macmillan.
- Burgess, Michael, and G. Alan Tarr. 2012. "Introduction: Sub-National Constitutionalism and Constitutional Development." In *Constitutional Dynamics in Federal Systems: Sub-National Perspectives*, edited by Michael Burgess and G. Alan Tarr. McGill-Queen's Press - MQUP.
- Burnham, Walter Dean. 1970. *Critical Elections: And the Mainsprings of American Politics*. W. W. Norton & Company.
- . 1975. "Party Systems and the Political Process." In *American Party Systems: Stages of Political Development*, edited by William N. Chambers and Walter Dean Burnham. New York: Oxford University Press.
- Carmines, Edward G., and James A. Stimson. 1989. *Issue Evolution: The Race and the Transformation of American Politics*. Princeton University Press.

- Carter, Nathaniel Hazeltine, and William Leete Stone. 1821. *Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York: Containing All the Official Documents, Relating to the Subject, and Other Valuable Matter*. Albany: E. and E. Hosford.
- Casper, Jonathan D. 1976. "The Supreme Court and National Policy Making." *The American Political Science Review* 70 (1): 50–63. doi:10.2307/1960323.
- Cayton, Adam. 2015. "Why Are Some Institutions Replaced While Others Persist? Evidence from State Constitutions." *State Politics & Policy Quarterly*, July, 1532440015594663. doi:10.1177/1532440015594663.
- Chambers, William N., and Walter Dean Burnham, eds. 1975. *American Party Systems: Stages of Political Development*. New York: Oxford University Press.
- Chaput, Erik J. 2013. *The People's Martyr: Thomas Wilson Dorr and His 1842 Rhode Island Rebellion*. Lawrence, Kansas: University Press of Kansas.
- Cheyney, Edward Potts. 1887. *The Anti-Rent Agitation in the State of New York, 1839-1846*. Philadelphia: Porter & Coates.
- Congleton, Roger D., and Bjørn Rasch. 2006. "Amendment Procedures and Constitutional Stability." In *Democratic Constitutional Design and Public Policy: Analysis and Evidence*. MIT Press.
- Connors, Richard J. 1970. *The Process of Constitutional Revision in New Jersey: 1940-1947*. New York: National Municipal League.
- Countryman, Edward. 1985. *The American Revolution*. Macmillan.
- Crosswell, Sherman, and R. Sutton. 1846. *Debates and Proceedings in the New-York State Convention, for the Revision of the Constitution*. Albany: The Albany Argus.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6: 279.
- D'Alemberte, Talbot. 1991. *The Florida State Constitution: A Reference Guide*. New York: Greenwood Press.
- Dealey, James Quayle. 1915. *Growth of American State Constitutions from 1776 to the End of the Year 1914*. Boston: Ginn and Company.
- Dinan, John. 2006. *The American State Constitutional Tradition*. Lawrence: University Press of Kansas.
- . 2012. "State Constitutions and American Political Development." In *Constitutional Dynamics in Federal Systems: Sub-National Perspectives*, edited by Michael Burgess and G. Alan Tarr. McGill-Queen's Press - MQUP.
- Dixon, Rosalind, and Richard Holden. 2012. "Constitutional Amendment Rules: The Denominator Problem." In *Comparative Constitutional Design*, edited by Tom Ginsburg. Cambridge University Press.
- Dodd, W. F. 1910. "Judicial Control over the Amendment of State Constitutions." *Columbia Law Review* 10 (7): 618–38. doi:10.2307/1110983.
- . 1915. "The Function of a State Constitution." *Political Science Quarterly* 30 (2): 201–21. doi:10.2307/2141919.
- . 1920. "The Problem of State Constitutional Construction." *Columbia Law Review* 20 (6): 635–51. doi:10.2307/1111866.
- Dubin, Michael J. 2007. *Party Affiliations in the State Legislatures: A Year by Year Summary, 1796-2006*. McFarland.

- Egle, William Henry, and Joseph Ritner. 1899. –The Buckshot War.” *The Pennsylvania Magazine of History and Biography* 23 (2): 137–56.
- Elazar, Daniel J. 1972. *American Federalism: A View from the States*. Crowell.
- . 1982. –The Principles and Traditions Underlying State Constitutions.” *Publius* 12 (1): 11–25. doi:10.2307/3329670.
- Elkins, Zachary, Tom Ginsburg, and James Melton. 2009. *The Endurance of National Constitutions*. Cambridge ; New York: Cambridge University Press.
- Farrand, Max, ed. 1911. *The Records of the Federal Convention of 1787*. Vol. II. New Haven: Yale University Press.
- Fehrenbacher, Don Edward. 1989. *Constitutions and Constitutionalism in the Slaveholding South*. University of Georgia Press.
- Finkelman, Paul. 1989. –Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois.” *Journal of the Early Republic* 9 (1): 21–51. doi:10.2307/3123523.
- . 2001. *Slavery and the Founders: Race and Liberty in the Age of Jefferson*. Armonk, NY: M.E. Sharpe.
- Finn, John E. 1999. –Transformation or Transmogrification? Ackerman, Hobbes (as in Calvin and Hobbes), and the Puzzle of Changing Constitutional Identity.” *Constitutional Political Economy* 10 (4): 355–65. doi:10.1023/A:1009023000354.
- Fino, Susan P. 1996. *The Michigan State Constitution: A Reference Guide*. Annotated edition edition. Westport, CT: Greenwood Press.
- Friedman, Lawrence M. 1988. –State Constitutions in Historical Perspective.” *Annals of the American Academy of Political and Social Science* 496 (March): 33–42.
- . 2014. –The Endurance of State Constitutions: Preliminary Thoughts on the New Hampshire Constitution.” Accessed November 24. <http://waynelawreview.org/the-endurance-of-state-constitutions-preliminary-thoughts-on-the-new-hampshire-constitution/>.
- Fritz, Christian G. 1997. –Alternative Visions of American Constitutionalism: Popular Sovereignty and the Early American Constitutional Debate.” SSRN Scholarly Paper ID 1447962. Rochester, NY: Social Science Research Network. <http://papers.ssrn.com/abstract=1447962>.
- Funston, Richard. 1975. –The Supreme Court and Critical Elections.” *The American Political Science Review* 69 (3): 795–811. doi:10.2307/1958390.
- Gallie, Peter J. 1991. *The New York State Constitution: A Reference Guide*. New York: Greenwood Press.
- . 1995. *Ordered Liberty: A Constitutional History of New York*. New York: Fordham University Press.
- Gates, John B. 1989. –Supreme Court Voting and Realignment Issues: A Microlevel Analysis of Supreme Court Policy Making and Electoral Realignment.” *Social Science History* 13 (3): 255–83. doi:10.2307/1171372.
- Goodman, Paul. 1967. –The First American Party System.” In *The American Party System: Stages of Political Development*, edited by William N. Chambers and Walter Dean Burnham. New York: Oxford University Press.
- Goss, Kay Collett. 1993. *The Arkansas State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.

- Graber, Mark A. 1993. "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary." *Studies in American Political Development* 7 (01): 35–73. doi:10.1017/S0898588X00000687.
- Graham, Cole Blease. 2007. *The South Carolina State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Green, Fletcher Melvin. 1930. *Constitutional Development in the South Atlantic States, 1776-1860: A Study in the Evolution of Democracy*. University of North Carolina Press.
- Grodin, Joseph R., Calvin R. Massey, and Richard B. Cunningham. 1993. *The California State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Hall, Kermit. 2009. "Mostly Anchor and Little Sail: The Evolution of American State Constitutions." In *Toward a Usable Past: Liberty Under State Constitutions*, edited by Paul Finkelman and Stephen E. Gottlieb. University of Georgia Press.
- Hamilton, Alexander, James Madison, and John Jay. 2003. *The Federalist: With Letters of Brutus*. Edited by Terence Ball. New York: Cambridge University Press.
- Hammond, John Craig. 2007. *Slavery, Freedom, and Expansion in the Early American West*. Charlottesville: University of Virginia Press.
- Hammons, Christopher W. 1999. "Was James Madison Wrong? Rethinking the American Preference for Short, Framework-Oriented Constitutions." *The American Political Science Review* 93 (4): 837–49. doi:10.2307/2586116.
- Hardin, Russell. 1989. "Why a Constitution." In *The Federalist Papers and the New Institutionalism*, edited by Bernard Grofman and Donald Wittman. Algora Publishing.
- Hargrave, Lee. 1991. *The Louisiana State Constitution: A Reference Guide*. New York: Greenwood Press.
- Henretta, James A. 2009. "The Rise of Democratic-Republicanism: Political Rights in New York and the Several States, 1800-1915." In *Toward a Usable Past: Liberty Under State Constitutions*, edited by Paul Finkelman and Stephen E. Gottlieb. University of Georgia Press.
- Hershkoff, Helen. 1999. "Positive Rights and State Constitutions: The Limits of Federal Rationality Review." *Harvard Law Review* 112 (6): 1131–96. doi:10.2307/1342383.
- . 2001. "Positive Rights and the Evolution of State Constitutions." *Rutgers Law Journal* 33: 799.
- Hershkoff, Helen, and Stephen Loffredo. 2010. "State Courts and Constitutional Socio-Economic Rights: Exploring the Underutilization Thesis." *Penn State Law Review* 115: 923.
- Hill, Melvin B. 1994. *The Georgia State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Hill, William C. 1992. *The Vermont State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Hirschl, Ran. 2009. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press.
- Hofstadter, Richard. 1969. *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840*. Berkeley: University of California Press.
- Horton, Wesley W. 1993. *The Connecticut State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Huntington, Samuel P. 1981. *American Politics: The Promise of Disharmony*. Harvard University Press.

- Ireland, Robert F. 1999. *The Kentucky State Constitution: A Reference Guide*. Westport, Conn: Greenwood Press.
- Jacobsohn, Gary. 2006. "Constitutional Identity." *The Review of Politics* 68 (03): 361–97. doi:10.1017/S0034670506000192.
- Jameson, John Alexander. 1887. *A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding*. Chicago: Callaghan and Company.
- Keyssar, Alexander. 2000. *The Right to Vote: The Contested History of Democracy in the United States*. New York: Basic Books.
- Key, V. O. 1955. "A Theory of Critical Elections." *The Journal of Politics* 17 (01): 3–18. doi:10.2307/2126401.
- . 1956. *American State Politics: An Introduction*. 1st ed. New York: Knopf.
- . 1959. "Secular Realignment and the Party System." *The Journal of Politics* 21 (02): 198–210. doi:10.2307/2127162.
- . 1963. *Southern Politics in State and Nation*. New York: Vintage Books.
- Kramer, Larry D. 2004. *The People Themselves: Popular Constitutionalism and Judicial Review*. Oxford University Press.
- Kruman, Marc W. 1997. *Between Authority and Liberty: State Constitution-Making in Revolutionary America*. UNC Press Books.
- Laska, Lewis L. 1990. *The Tennessee State Constitution: A Reference Guide*. New York: Greenwood Press.
- Lasser, William. 1985. "The Supreme Court in Periods of Critical Realignment." *The Journal of Politics* 47 (04): 1174–87. doi:10.2307/2130812.
- Levinson, Sanford. 2012. *Framed: America's 51 Constitutions and the Crisis of Governance*. Oxford University Press.
- Lieberman, Robert C. 2002. "Ideas, Institutions, and Political Order: Explaining Political Change." *American Political Science Review* 96 (04): 697–712. doi:10.1017/S0003055402000394.
- Lutz, Donald S. 1980. *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions*. Louisiana State University Press.
- . 1982. "The Purposes of American State Constitutions." *Publius* 12 (1): 27–44. doi:10.2307/3329671.
- . 1988. "The United States Constitution as an Incomplete Text." *Annals of the American Academy of Political and Social Science* 496 (March): 23–32.
- . 1994. "Toward a Theory of Constitutional Amendment." *The American Political Science Review* 88 (2): 355–70. doi:10.2307/2944709.
- . 2009. "Political Participation in Eighteenth-Century America." In *Toward a Usable Past: Liberty Under State Constitutions*, edited by Paul Finkelman and Stephen E. Gottlieb. University of Georgia Press.
- Madison, James. 1999. "The Vices of the Political System of the United States." In *Writings*, edited by Jack Rakove. Library of America.
- Marshfield, Jonathan L. 2010. "Models of Substantial Constitutionalism." *Penn State Law Review* 115: 1151.
- Mayhew, David R. 2002. *Electoral Realignments: A Critique of an American Genre*. Yale University Press.
- May, Janice C. 2011. *The Texas State Constitution*. New York: Oxford University Press.

- McCormick, Richard P. 1960. –New Perspectives on Jacksonian Politics.”*The American Historical Review* 65 (2): 288–301. doi:10.2307/1842870.
- . 1967. –Political Development and the Second Party System.” In *The American Party System: Stages of Political Development*, edited by William N. Chambers and Walter Dean Burnham. New York: Oxford University Press.
- McHugh, James T. 2003. *Ex Uno Plura: State Constitutions and Their Political Cultures*. SUNY Press.
- McLauchlan, William P. 1996. *The Indiana State Constitution: A Reference Guide*. Greenwood Press.
- Mehta, Jal. 2010. –The Varied Roles of Ideas in Politics: From ‘Whether’ to ‘How.’” In *Ideas and Politics in Social Science Research*, edited by Daniel Beland and Robert Henry Cox. Oxford University Press.
- Miller, Joshua. 1988. –The Ghostly Body Politic: The Federalist Papers and Popular Sovereignty.” *Political Theory* 16 (1): 99–119.
- Mittal, Sonia, and Barry R. Weingast. 2013. –Self-Enforcing Constitutions: With an Application to Democratic Stability In America’s First Century.” *Journal of Law, Economics, and Organization* 29 (2): 278–302. doi:10.1093/jleo/ewr017.
- Mowry, Arthur May. 1901. *The Dorr War: Or, The Constitutional Struggle in Rhode Island*. Providence: Preston & Rounds.
- Nash, Gary B. 2006. *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America*. Penguin.
- North, Douglass C., and Barry R. Weingast. 1989. –Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England.” *The Journal of Economic History* 49 (04): 803–32. doi:10.1017/S0022050700009451.
- Norton, Anne. 1988. –Fransubstantiation: The Dialectic of Constitutional Authority.” *The University of Chicago Law Review* 55 (2): 458–72. doi:10.2307/1599813.
- Novkov, Julie. 2008. –Bringing the States Back In: Understanding Legal Subordination and Identity through Political Development*.” *Polity* 40 (1): 24–48. doi:10.1057/palgrave.polity.2300093.
- Onuf, Peter S. 2009. –State Politics and Republican Virtue: Religion, Education, and Morality in Early American Federalism.” In *Toward a Usable Past: Liberty Under State Constitutions*, edited by Paul Finkelman and Stephen E. Gottlieb. University of Georgia Press.
- Ordeshook, Peter C. 1992. –Constitutional Stability.” *Constitutional Political Economy* 3 (2): 137–75. doi:10.1007/BF02393118.
- Orth, John V. 1993. *The North Carolina State Constitution: With History and Commentary*. Chapel Hill: University of North Carolina Press.
- Parsons, Craig. 2010. –Ideas, Positions, and Supranationality.” In *Ideas and Politics in Social Science Research*, edited by Daniel Beland and Robert Henry Oklahoma. Oxford University Press.
- Peterson, Merrill. 2010. *Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820s*. New Edition edition. Indianapolis, Ind: Liberty Fund Inc.
- Robinson, Donald L. 1971. *Slavery in the Structure of American Politics, 1765-1820*. New York: Harcourt Brace Jovanovich.
- Rodgers, Daniel T. 1998. *Contested Truths: Keywords in American Politics Since Independence*. Harvard University Press.

- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. Chicago: University of Chicago Press.
- Scalia, Laura J. 1999. *America's Jeffersonian Experiment: Remaking State Constitutions, 1820-1850*. Northern Illinois University Press.
- Schattschneider, E. 1975. *The Semi-Sovereign People: A Realist's View of Democracy in America*. [S.l.]: Holt Rinehart and Winston.
- Schuman, David. 1995. "The Creation of the Oregon Constitution." *Oregon Law Review* 74: 611.
- Skowronek, Stephen. 1993. *The Politics Presidents Make: Leadership from John Adams to George Bush*. Cambridge, Mass: Belknap Press.
- Smith, Chuck. 1996. *The New Mexico State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Smith, Rogers M. 1993. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *The American Political Science Review* 87 (3): 549–66. doi:10.2307/2938735.
- . 1997. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven: Yale University Press.
- Stark, Jack. 1997. *The Wisconsin State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- . 1998. *The Iowa State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Steinglass, Steven H., and Gino J. Scarselli. 2004. *The Ohio State Constitution: A Reference Guide*. Greenwood Publishing Group.
- Stephanopoulos, Nicholas, and Mila Versteeg. 2015. "The Contours of Constitutional Approval." SSRN Scholarly Paper ID 2646773. Rochester, NY: Social Science Research Network. <http://papers.ssrn.com/abstract=2646773>.
- Sturm, Albert L. 1970. *Thirty Years of State Constitution-Making, 1938-1968: With an Epilogue: Developments During 1969*. National Municipal League.
- . 1982. "The Development of American State Constitutions." *Publius* 12 (1): 57–98. doi:10.2307/3329673.
- Sundquist, James L. 1983. *Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States*. Brookings Institution Press.
- Tarr, G. Alan. 1996. *Constitutional Politics in the States: Contemporary Controversies and Historical Patterns*. Greenwood Publishing Group.
- . 1998. *Understanding State Constitutions*. Princeton University Press.
- . 2010. "Explaining Sub-National Constitutional Space." *Penn State Law Review* 115: 1133.
- Tinkle, Marshall J. 1992. *The Maine State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Tribe, Laurence H. 1987. "Idea of the Constitution: A Metaphor-Morphosis, The." *Journal of Legal Education* 37: 170.
- Turner, Frederick Jackson. 1920. *The Frontier in American History*. Mineola, NY: Dover Publications.
- Tyler, John. 1842. "Letter to Samuel King, May 7, 1842." In *A Compilation of the Messages and Papers of the Presidents: Prepared Under the Direction of the Joint Committee on Printing, of the House and Senate, Pursuant to an Act of the Fifty-Second Congress of the United States*. Vol. V. Bureau of National Literature.

- Van Buren, Martin. 1820. —“Mr. Van Buren Against the Property Qualification for the Right of Suffrage.” In *The Extra Globe, Containing Political Discussions, Documentary Proofs, &C.*, edited by Francis Preston Blair and Amos Kendall. Vol. IV. Washington: The Globe.
- Versteeg, Mila, and Emily Zackin. 2014. —“American Constitutional Exceptionalism Revisited.” SSRN Scholarly Paper ID 2416300. Rochester, NY: Social Science Research Network. <http://papers.ssrn.com/abstract=2416300>.
- Vile, John R. 2003. *Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2002*. Second. Santa Barbara: ABC-CLIO.
- Watson, Harry L. 1990. *Liberty and Power: The Politics of Jacksonian America*. New York: Hill and Wang.
- Weingast, Barry R. 1997. —“The Political Foundations of Democracy and the Rule of Law.” *The American Political Science Review* 91 (2): 245–63. doi:10.2307/2952354.
- . 2006. —“Designing Constitutional Stability.” In *Democratic Constitutional Design and Public Policy: Analysis and Evidence*, edited by Roger D. Congleton and Birgitta Swedenborg. MIT Press.
- Whelan, Frederick. 1983. —“Prologue: Democratic Theory and the Boundary Problem.” In *Liberal Democracy*, edited by James Roland Pennock and John W. Chapman. New York: New York University Press.
- Whittington, Keith E. 2009. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*. Princeton University Press.
- Wiecek, William M. 1978. —“A Peculiar Conservatism’ and the Dorr Rebellion: Constitutional Clash in Jacksonian America.” *The American Journal of Legal History* 22 (3): 237–53. doi:10.2307/845183.
- Wilentz, Sean. 1984. *Chants Democratic: New York City & the Rise of the American Working Class, 1788-1850*. New York: Oxford University Press.
- Williams, Robert F. 2009. *The Law of American State Constitutions*. Oxford University Press, Incorporated.
- Winkle, John W. 1993. *The Mississippi State Constitution: A Reference Guide*. Westport, CT: Greenwood Press.
- Wolin, Sheldon. 1990. *The Presence of the Past: Essays on the State and the Constitution*. Johns Hopkins University Press.
- Wood, Gordon S. 1972. *The Creation of the American Republic, 1776-1787*. Norton.
- . 1992. *The Radicalism of the American Revolution*. Random House Digital, Inc.
- Zackin, Emily. 2013. *Looking for Rights in All the Wrong Places: Why State Constitutions Contain America’s Positive Rights: Why State Constitutions Contain America’s Positive Rights*. Princeton University Press.