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GENERAL LAWS AND THE EMERGENCE OF DURABLE POLITICAL PARTIES: THE CASE OF PENNSYLVANIA

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ABSTRACT

In previous work we have highlighted the importance of revisions to state constitutions that mandated that laws be general and uniform throughout the state. Indiana (in 1851) was the first state to adopt a general-law mandate, but most other states followed suit by the end of the century —most of them in the 1870s. This paper focuses on Pennsylvania, one of the states that made the change in the 1870s. We show that the movement to revise the state constitution was led by Republican party bosses seeking to suppress factional strife they thought was threatening their party's dominance and perhaps even its existence. Their effort succeeded. We argue that it was the shift to general laws in Pennsylvania and other states that led to the emergence of a party system in the United States dominated by two durable political organizations.

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On January 7, 1868, members of the House of Representatives of the Commonwealth of Pennsylvania convened to elect a speaker. Of the 100 members of the House, 54 were Republicans and 46 Democrats. Most of the Republicans favored Elisha W. Davis for the position, but nine voted for other candidates on the first ballot. Because no candidate secured a majority of those voting, the members had to try again. The second ballot did not resolve the situation. Nor did the next twenty-three. Finally, on the twenty-sixth ballot, all but one of the holdouts gave up and supported Davis for speaker, explaining that they had been reassured by "pledges and assurances" that their grievances about the direction of the party would be redressed. As subsequent events would demonstrate, however, the problem of factional division among the Republicans had by no means been resolved.[1]

Durable political parties—that is, parties with stable organizational identities and the capacity to compete in elections over the long-term—were a product of the late nineteenth century. Historians and political scientists have often written about US history as if our familiar two-party political system took shape at the founding, but the organizations they have called parties were both highly factionalized and ephemeral.[2] Although scholars generally recognize

[1] Pennsylvania, *Journal of the House of Representatives* (Harrisburg: Singerly & Myers, 1868), 6-33.

[2] For a survey of the literature and a critique of this view of nineteenth-century politics, see Rachel A. Shelden and Erik B. Alexander, "Dismantling the Party System: Party Fluidity and the Mechanisms of Nineteenth-Century U.S. Politics," *Journal of American History* 110 (Dec. 2023): 419-448. See also John D. Hicks, "The Third Party Tradition in American Politics,"

that the Democratic Republicans and Federalists of the "first party system" were coalitions of factions rather than true parties, most see the Democrats and the Whigs of the 1840s as recognizably modern, mass-based political parties. Yet, as Erik Alexander and Rachel Shelden show in this volume, this "second party system" was itself factionalized and ephemeral, lasting at most two decades and collapsing along with the Whigs in the mid-1850s. Nor was the Republican organization that emerged from that wreckage significantly different. A mélange of groups with different agendas (abolitionists for whom ending slavery was paramount, Free Soilers who wanted to prevent the expansion of slavery in the territories, Know Nothings intent on restricting immigration, ex-Whigs who cared primarily about protective tariffs, and ex-Democrats committed to preserving the Union), it was held together by little more than antipathy to Southern expansionism.[3]

After the defeat of the Confederacy in 1865, the fragile alliance that constituted the Republican Party threatened to disintegrate. In Pennsylvania, the focus of this essay, Democrats were on the resurgence by the end of the decade, and Republican leaders were desperate to tighten up their organization and keep their members in line. At that time, local control of patronage and the dispensation of privileges was vital to the operation of party politics, as majorities in both the electorate and the legislature were built out of coalitions of geographically fragmented interests. Then, as now, all politics was local. But then, unlike now, most legislation was local as well. The vast majority of bills enacted by state legislatures in the early nineteenth

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Mississippi Valley Historical Review 20 (June 1933): 3-28; and Lisa Jane Disch, *The Tyranny of the Two-Party System* (New York: Columbia University Press, 2002).

[3] See also Jack Furniss, "Devolved Democracy: Federalism and the Party Politics of the Late Antebellum North, *Journal of the Civil War Era* 9 (Dec. 2019): 546-568; and William E. Gienapp, *Origins of the Republican Party, 1852-1856* (New York: Oxford University Press, 1987).

century (70 to 90 percent by our count) were "special" bills—that is, bills that applied only to specifically identified individuals, organizations, or localities. Legislators bolstered their coalitions by enacting laws that granted their supporters privileges that were not available in any other way. But the local nature of these coalitions also bolstered the factionalism that threatened the Republican Party's continued hold on power.[4]

There was nothing new in the nineteenth century about the practice of awarding privileges to political allies. Ruling elites had been doing it since time immemorial, and certainly the British crown had made extensive use of the practice in the eighteenth century, provoking protests from the "Real Whig" opposition and from the American colonists whom the policies disadvantaged.[5] Republican theorists like James Madison believed that political factions

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[4] See Naomi R. Lamoreaux and John Joseph Wallis, "Economic Crisis, General Laws, and the Mid-Nineteenth-Century Transformation of American Political Economy," *Journal of the Early Republic* 41 (Fall 2021): 403-433. We use the term private bills to refer to acts that benefited specific individuals and organizations, including corporations; the term local bills to refer to acts that applied to particular towns, counties, or other governmental units; and special bills to refer to both of these classes of legislation combined. Our terminology is somewhat at variance with that of contemporary writers, including the drafters of Pennsylvania's 1874 constitution, who often used the word special to refer only to private bills, as in the clause prohibiting the legislature from enacting "any local or special law" in a long list of circumstances. See Pennsylvania, 1874 Constitution, Art. III, Sec. 7. For counts of special bills, see also Robert M. Ireland, "The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States," *American Journal of Legal History*, 46 (July 2004): 271-299. As Farah Peterson has argued, the few general laws that legislatures enacted were so poorly drafted that Chancellor James Kent and other leading jurists felt compelled to rewrite them in their opinions and commentaries. See "Interpretation as Statecraft: Chancellor Kent and Collaborative Era of American Statutory Interpretation," *Maryland Law Review* 77 (no. 3, 2018): 712-773. This kind of judicial legislation was another source of political discontent and helped fuel the codification movement that Kellen Funk discusses in this volume. Unless otherwise noted, references to state constitutions are to The NBER/Maryland State Constitutions Project, http://www.stateconstitutions.umd.edu/index.aspx; and references to state statutes are to the session laws collected on HeinOnline, https://heinonline.org/HOL/Index?index=sslusstate&collection=ssl.

[5] Virtually every major colonial protest in the decade leading up to the American Revolution was aimed at a piece of legislation that benefited interests favorable to the crown. Most notoriously the Boston Tea Party was provoked by the Tea Act of 1773, a bailout of the East India Company.

within the elite would always try to manipulate the award of privileges to enhance their power. They did not aim to put a stop to the practice; they thought that was impossible. Rather, they sought to prevent one faction from running roughshod over the others. Drawing on a long line of political thinkers tracing back to Aristotle, they proposed mixed and balanced government as a solution, drafting constitutions at both the state and federal levels that divided power among the different branches so that each could act as a check on the others.[6]

This history is well known. What is less well known is that the separation of powers the framers built into the structure of government had the perverse effect of upping the ante for control and thus increasing the incentive of those in office to dispense favors to members of their coalitions.[7] So too did the spread of the franchise. As the various states moved toward universal white manhood suffrage in the early nineteenth century, political competition heated up and the outcome of elections became more uncertain.[8] The rise in uncertainty in turn encouraged the

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On the opposition to such favoritism, see J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, Eng.: Cambridge University Press, 1985); Arthur M. Schlesinger, *The Colonial Merchants and the American Revolution, 1763-1776* (New York: Columbia University Press, 1918); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967).

[6] Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969); Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997).

[7] On the difficulties created by separation of powers, see James Sterling Young, *The Washington Community, 1800-1928* (New York: Columbia University Press, 1966). See also Douglas E. Bowers, "From Logrolling to Corruption: The Development of Lobbying in Pennsylvania, 1815-1861," *Journal of the Early Republic* 3 (Winter 1983): 439-474 at 442-443.

[8] See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000); and Stanley L. Engerman and Kenneth L. Sokoloff, "The Evolution of Suffrage Institutions in the New World," *Journal of Economic History* 65 (Dec. 2005), 891-921.

growth of factions, as splinter groups learned that they could gain bargaining power by threatening to take votes away from larger political organizations.[9]

Although the unregulated character of nineteenth-century elections meant that barriers to the formation of factions were low, entry was not costless. Factions needed funds to publicize their candidates and print ballots, and they needed workers to line up voters and make sure they got to the polls. Supporters who provided funds and labor in turn needed to be rewarded.[10] During the early nineteenth century, when governments at all levels were small and politicians had few jobs to give out if they won elections, special bills were an important source of favors to dispense. Some of the boons that legislators handed out were relatively costless and could be granted to as many people as desired. If a voter came to his representative to request a name change or a divorce or to legitimate some of his children, the favor could be granted without affecting the ability of other voters to obtain similar requests.[11] In other cases, budget

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[9] Contributing to this growing factionalism was the method of conducting elections. The Constitution left the details of the electoral process to the states, which in turn provided only the most cursory oversight, even as they increased the proportion of the population who could vote. Early on, voters in most places registered their choices by public declaration, but over time voting by ballot became the dominant practice. States began to mandate that method, but they did not provide ballots or regulate them in any way. Voters could write their choices on a slip of paper, or they could submit a ballot printed by a local political faction. The ubiquity of newspapers and printing presses meant that new groups could easily enter the political competition by distributing ballots marked for their own slates of candidates. See Gary Gerstle, *Liberty and Coercion: The Paradox of American Government* (Princeton, NJ: Princeton University Press, 2015), Ch. 5; Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century: Law, Identity and Polling Place* (New York: Cambridge University Press, 2004); Alexander and Shelden, "Dismantling the Party System."

[10] This is not to say that factions did not appeal to voters on ideological or programmatic grounds. The most important were identified with such hot-button issues as abolitionism, limiting the hours of labor, opposition to immigration, and so on. But to have more than a transitory impact, they needed to be able to build their own organizations.

[11] There were many such bills. Examples from the Pennsylvania Legislature include, "An Act authorizing Elie A. F. Vallette to change his name …" approved February 6, 1840; "An Act To annul the marriage contract of William Drayton and Anne his wife," approved April 1, 1840; and "An Act to legitimate Amelia M. Tomlinson," approved March 15, 1845.

constraints might come into play and limit, for example, the number of petitioners who could secure pensions or other compensation for military service. Even so, the amounts involved in these requests were small enough that many could be granted.[12] In yet other cases, the value of a favor required political leaders to manipulate the economy to create monopoly rents. To reward their most powerful supporters, for example, legislators deliberately limited the number of bank charters they handed out, enacting legislation that prevented those not favored in this way from engaging in banking.[13] Whether the stakes involved were small or large is less important, however, than the way the legislative process operated. Everyone expected their representatives to exchange favors for political support and deliver specific legislative privileges to constituents. That was how the system worked. Although political leaders who were not in power complained vociferously about the practice, denouncing it as corrupt and inegalitarian, they behaved the same way when they were in power. To do otherwise was to risk the defection of their supporters and, consequently, the loss of political control.[14]

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[12] Examples include Pennsylvania Legislature, "An Act for the relief of Adam Megel, and Jacob Wertman and John Adam Gentsel, revolutionary soldiers," approved January 12, 1836; "An Act for the relief of Lewis Wright and others, soldiers of the revolutionary way," approved January 28, 1836; "An Act for the relief of Simon Link, soldiers and widows of soldiers of the revolutionary war," approved February 12, 1836.

[13] Most states passed legislation prohibiting anyone from engaging in certain banking functions, most notably issuing currency, without a charter. Most also severely limited the number of charters they handed out. The most studied case is New York, where the controlling faction of the Democratic Party (the so-called Albany Regency) doled out charters to supporters until the opposition secured a free-banking act in 1838. Pennsylvania similarly restricted access to banking until 1860. See Howard Bodenhorn, "Bank Chartering and Political Corruption in Antebellum New York: Free Banking as Reform," in *Corruption and Reform: Lessons from America's Economic History*, ed. Edward L. Glaeser and Claudia Goldin (Chicago: University of Chicago Press, 2006), 231-257; Bodenhorn, "The Political Distribution of Economic Privilege in Van Buren's New York," *Studies in American Political Development* 35 (April 2021): 127-145; and Eric Hilt, "Early American Corporations and the State," in *Corporations and American Democracy*, eds. Naomi R. Lamoreaux and William J. Novak (Cambridge, MA: Harvard University Press, 2017), 37-73.

[14] Lamoreaux and Wallis, "Economic Crisis."

As we have shown in other work, it took a major crisis in public finance in the early 1840s to set into motion a movement to limit special legislation. After eight states and one territory defaulted on their bonded debt and several other states teetered on the brink of default, most of the affected states rewrote their constitutions to prevent such catastrophes from recurring. The first states to draft new constitutions banned a few types of special laws, such as acts conferring corporate charters on particular individuals or awarding them divorces, but Indiana, which defaulted in 1841, took reform to a higher level. Its 1851 constitution banned special charters of incorporation, along with seventeen other categories of private and local bills, and then went further and mandated that laws enacted by the legislature "be general and of uniform operation throughout the state."[15]

We know that Indiana's reforms changed the norms for how governments should work because states that entered the union after 1851 almost always included a general law mandate in their first constitutions. To add such a mandate to their fundamental law, however, existing states had to overcome vested interests and transform practically every aspect of their political systems—how coalitions were built, how legislative majorities were formed, how party functionaries and supporters were rewarded. Reform was difficult, but most of them accomplished it successfully during the period of political turbulence that followed the Civil War (see Table 1 and Figure 1).

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[15] Indiana, 1851 Constitution, Article IV, Sections 22 and 23, and Article XI, Section 13. Contemporaries blamed the defaults on the system of special legislation, which encouraged legislators to build majorities for large transportation projects by piling on smaller projects to benefit other localities. They also charged that the political system had been so thoroughly corrupted by the preoccupation with special bills that legislators had lost sight of the public good. See Lamoreaux and Wallis, "Economic Crisis."

In this paper, we attempt to understand what drove this wave of constitutional revisions by focusing on the case of Pennsylvania. We show that Pennsylvania's 1874 constitution was the product of a top-down effort by Republican bosses to staunch the factionalism that threatened the survival of their political organization. That they were willing to risk convening a constitutional convention, with all its unforeseen consequences, to achieve one and only one goal—an end to the system of special legislation—provides some sense of the desperation they felt. Their gamble succeeded, and in the aftermath of the reform, the main Republican faction was able to assert control over the legislative process at the state level, suppress factionalism within the party, and secure the dominance of the Republican Party within the state for decades to come.

Although we cannot yet show that the same motives were at work in the other states that revised their constitutions to mandate general laws, we can confirm that the political outcomes were similar, though sometimes it was the Democrats who benefited from the reform rather than the Republicans. Whichever party came out on top, the factions disadvantaged by the ban on special laws howled with outrage, letting fly with many of the same charges of corruption and favoritism they had lobbed at the old system. Certainly, they had much to complain about, but the continuity in rhetoric has blinded scholars to the magnitude of the transformation that the state constitutional reforms set in motion—to the consequences they had for the distribution of power within state governments and between the states and other levels of government. In the aftermath of the reform, politics would still be local in that office holders would continue to garner support by providing services and access to the political process to their constituents. But by and large those services no longer included favors embodied in specific legislative acts. Under a regime of general laws, acts sought by one interest necessarily had broad effects on

other interests, generating conflicts that only the state's top political leaders could mediate. At the same time, the longer horizons of the newly dominant political parties gave them a stake in establishing a record of accomplishment. After a half century of relative decline, state governments began once again to build administrative capacity and take on additional functions, including a greater regulatory role in the economy.[16]

The Call for a Constitutional Convention to End Special Laws

After Indiana's constitutional innovation, the growing sense that private and local bills were illegitimate affected political discourse in Pennsylvania, as elsewhere. But the new norms had little practical effect until the 1870s. Instead, the number of private and local bills continued to increase, with legislative output rising from about 800 pages of laws per year in the 1850s to a peak of over 1600 pages in the late 1860s (Figure 2). Governors occasionally vetoed such measures, and when they did, their objections underscored the rhetorical utility of attacks on private and local legislation.[17] And yet the number of vetoes was tiny compared to the flood of

[16] This paper is part of a larger research project examining the importance of the shift to governance by impersonal rules (in the US context, general laws) in facilitating the emergence of politically and economically developed societies in the late nineteenth century. Only a handful of countries besides the US made this shift, and they did so under different circumstances and for different reasons. Wherever this change occurred, however, its effects were similar—that is, to spur capitalist growth by opening up access to profitable though hitherto restricted economic activities, and to increase the stability of democratic politics by enabling durable consolidated political parties to establish themselves. See Naomi R. Lamoreaux and John Joseph Wallis, "Democracy, Capitalism, and Equality: The Importance of State Mandates for General Laws," in *Can Democracy and Capitalism be Reconciled?*, eds. Sidney Milkis and Scott Miller (New York, Oxford University Press, 2024), forthcoming.

[17] Thus, in vetoing a private bill to confirm several land titles, Whig Governor James Pollock avowed in 1855 that the act highlighted the "impolicy and danger of special legislation." If "not repugnant to the constitution," the bill was "so subversive of well established principles—so inequitable in its provisions, and dangerous as a precedent, that it should not be permitted to become a law." Democratic Governor William F. Packer overturned a special charter for the

these bills. In the late 1860s, for example, the Pennsylvania legislature passed considerably more than a thousand such acts each year, but governors vetoed less than one percent of them.[18]

Although the growth of special legislation attracted much critical comment, there was no popular groundswell of protest demanding that the practice be stopped. To the contrary, the opposition, when it developed, came from the top—from the Republican leadership.[19] During the summer and fall of 1870, prominent members of the party began to issue calls for a constitutional convention for the sole purpose of prohibiting the legislature from enacting special laws. Alexander McClure, a reformer who would soon bolt to the Liberal Republicans, was among the first to make this case, but Republican organizations around the state quickly took up the cause. For example, the Republicans of Allegheny County, where Pittsburgh is located, met in late August and unanimously resolved that the constitution should be revised to mandate that "all legislation, as far as possible, should be by general laws." In particular, "all corporations should be created, controlled and regulated by general laws; no special or exclusive privilege should be granted to any," and "no railroad or public corporation [should be] beyond the reach of

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Trout Run Coal and Iron Company in 1858, declaring that the privileges granted to the corporation "in addition to those enumerated in the general law, are such as ought not to be given to any corporation for any purpose whatever." Three years later Republican Governor Andrew Gregg Curtin returned to the senate a bill to incorporate the Pittston Hose Company, declaring that "[l]egislation conferring special privileges is always objectionable, and more especially so, when general laws are in existence under which all may be equally favored." Although Curtin's successor, Republican John W. Geary, was from a rival Republican faction, he too opined that "[s]pecial legislation is one of the great evils of the times." George Edward Reed, ed., *Pennsylvania Archives, Fourth Series, Vol. VII, Papers of the Governors, 1845-1858* (Harrisburg: Wm. Stanley Ray, 1902), 802; and Reed, ed., *Pennsylvania Archives, Fourth Series, Vol. VIII, Papers of the Governors, 1858-1871*, 23, 362, 895.

[18] Based on a count of the veto messages of Governors Curtin and Geary that were reprinted in Reed, ed., *Papers of Governors, 1858-1871*.

[19] For this argument, see especially Mahlon Howard Hellerich, "The Pennsylvania Constitution of 1873," unpublished Ph.D. dissertation, University of Pennsylvania (1956).

legislative power no matter what exemptions or exclusive privileges may have been granted them by their charters or by special acts of Assembly."[20]

These early efforts gained momentum in October when the Union League of Philadelphia, arguably the most important Republican organization in the state, held a special meeting to push for a constitutional convention. Charles Gibbons, one of the founders of both the League and the Republican Party in Pennsylvania, introduced a resolution to a "densely packed" hall urging the legislature to call a convention to end the scourge of special legislation.[21] By Gibbons's count, the legislature had passed only 81 general laws in 1868 but as many as 1,274 local or private acts, and he calculated that the numbers were 71 and 1,245 in 1869, and 49 and about 1,200 in 1870. Especially egregious were the "hundreds" of the acts involving corporations "seeking special favors by the temptations of bribery" that had turned "our legislative halls … into market-places, where important public offices have been sold to the highest bidders by faithless and venal public servants."[22]

The assembled members of the League overwhelmingly approved the resolution and, along with it, a plan to lobby the legislature and to invite Democratic leaders to join them in this purpose. Republican newspapers in Philadelphia and elsewhere throughout the state reprinted

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[20] On McClure's call, see "Constitutional Reform the Only Remedy," (Lancaster) *Daily Evening Express* (Oct. 19, 1870), 2. For the Allegheny resolutions, see "County Convention," *Pittsburgh Gazette* (Aug. 31, 1870), 4. For an overview, see Hellerich, "Pennsylvania Constitution," 88-101.

[21] "The Union League," *Philadelphia Inquirer* (Oct. 19, 1870), 2. There is a biographical sketch of Gibbons on the website of the Pennsylvania State Senate, at https://www.legis.state.pa.us/cfdocs/legis/BiosHistory/MemBio.cfm?ID=4289&body=S, accessed Sept. 30, 2021.

[22] Preamble and Resolution of the Union League of Philadelphia and Charles Gibbons' speech, Oct. 18, 1870, reprinted in George Parsons Lathrop, *History of the Union League of Philadelphia from its Origin and Foundation to the Year 1882* (Philadelphia: J. B. Lippincott & Co., 1884), 158-162. See also *Eighth Annual Report of the Board of Directors of the Union League of Philadelphia* (Philadelphia: Henry B. Ashmead, 1870), 9-10.

the resolution with approving editorials, and the Republican governor, John W. Geary, penned a supportive letter promising to urge the legislature to call a convention.[23] Geary made good on his promise in his annual address to the legislature the following January. Declaring special and local legislation to be "the great and impure fountain of corruption, private speculations and public wrongs," he called for a constitutional convention to end this "reproach to republican government."[24]

Although a few prominent Democrats supported the call for a convention, momentum slowed when the death of a Republican legislator cost the party control of the state senate. The holdup was less over calling a convention than on how the vote for delegates would be conducted, but Democrats were generally less enthusiastic about the idea than Republicans, perhaps because they understood that they would be particularly disadvantaged by a prohibition on special legislation. Indeed, one of the earliest calls for a constitutional convention came from Republican leaders in Democratic-majority counties who felt shut out of such opportunities to build a local base of support.[25] In the referendum on whether to hold a convention, the only

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[23] See, for examples, "It is with unfeigned satisfaction," *Pittsburgh Daily Commercial* (Oct. 15, 1870), 2; "State Convention," *Pittsburgh Weekly Gazette* (Oct. 18, 1870), 2; "Constitutional Protection," *Philadelphia Public Ledger* (Oct. 18, 1870), 2; "Constitutional Reform," (Philadelphia) *Evening Telegraph* (Oct. 19, 1870), 4; "Constitutional Reform the Only Remedy," (Lancaster) *Daily Evening Express* (Oct. 19, 1870), 2; "Constitutional Reform," *Reading Times* (Oct. 20, 1870), 2.

[24] John White Geary, "Annual Message to the Assembly—1871," in Reed, ed., *Pennsylvania Archives* (Harrisburg, PA: Wm. Stanley Ray, State Printer, 1902), 1127-1131. Geary's address focused on the problem of special legislation, but he recommended some other constitutional changes as well: bringing the state constitution into line with the recent amendments to the federal constitution, introducing proportional representation, increasing the size of the General Assembly, providing for the greater security of the public funds, making the Lieutenant Government and State Treasurer elected offices, and adopting the same timing of elections as neighboring states.

[25] Their aim, however, was to institute a system of proportional representation so they could share in the spoils. See "The Reading Convention," *Philadelphia Public Ledger* (Aug. 31, 1870), 2.

counties where there was substantial opposition typically voted Democratic. At the convention itself, however, the Republicans had only a slight edge.[26]

Special Legislation as the Fuel of Factionalism

How can one explain the strong support of Republican leaders throughout the state for a general law provision in the state constitution? It is difficult to take seriously the complaint that Gibbons voiced at the Union League about "the corruptive power of corporations." After all, the League's membership was dominated by industrialists and financiers whose businesses benefited from special and local legislation.[27] And yet, it is clear that the Republican elite was serious about prohibiting these kinds of bills. Not only did they repeatedly assert that such a prohibition was the primary reason for calling a convention, but they delivered on their promise.[28]

To make sense of the leadership's position, one must appreciate the challenges posed by the competitive nature of Pennsylvania politics for the Republicans' continued dominance in the postwar period. Although the Republicans ran state government, their share of the vote in statewide elections never exceeded 52.6 percent between 1865 and 1872, and the party's national

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[26] Hellerich, "Pennsylvania Constitution," 101-126. There were several at-large delegates elected on non-partisan tickets. Only one of the 142 men who served as delegates for all or part of the convention was a sitting legislator, but 45 had previously served in the Pennsylvania House or Senate. The delegates included former governor Curtin, two former chief justices of the state supreme court, other former state officials, members of the federal cabinet, Congressmen and US Senators. Many were merchants, bankers, or railroad leaders. A few were intellectuals, the most notable being the renowned political economist, Henry C. Carey. More than half had a college education. See A. D. Harlan, *Pennsylvania Constitutional Convention 1872 and 1873: Its Members and Officers and the Result of their Labors* (Philadelphia: Inquirer Book, 1873), 28-90; Hellerich, "Pennsylvania Constitution," 134-143.

[27] Of the club's 55 founders, 33 (about 60 percent) were financiers, railroad magnates, or large-scale merchants or manufacturers. Maxwell Whiteman, *Gentlemen in Crisis: The First Century of the Union League of Philadelphia, 1862-1962* (Philadelphia: Union League, 1975), 273-277.

[28] Pennsylvania, 1873 Constitution, Article III, Section 7.

leadership considered continued control of the state to be doubtful.[29] One consequence of the close nature of the party competition was that elections were becoming increasingly expensive. There are reports that politicians were so pressed for funds to keep their supporters in line that they resorted to what were called "pinch" bills—that is, bills that negatively affected existing interests, who then had to pay off legislators to keep them from passing. There are also reports that the cost of securing private bills was rising steeply. Although it is difficult to confirm these charges, complaints by the state's business leaders suggest that they increasingly viewed the system of special legislation as a costly burden on the state's economy.[30]

The more serious problem for the party, however, was the factionalism that special legislation supported. Control of the flow of private and local bills was highly decentralized, with each locality's representatives serving as gatekeepers for bills that applied within their jurisdictions. Constituents petitioned them for favors, and the legislators (or actually the local party bosses to whom they answered) determined which ones to grant. The party structure itself was highly decentralized during this period, with county-level caucuses responsible for selecting candidates for the legislature, as well as for other local offices. To maintain control of the distribution of favors by elected representatives and prevent them from developing independent

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[29] Philip S. Klein and Ari Hoogenboom, *A History of Pennsylvania* (New York: McGraw-Hill, 1973); Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: Norton, 1970), Ch. 3.

[30] Bowers, "From Logrolling to Corruption," 462-463. According to Alexander K. McClure, "[V]enality ruled in Pennsylvania legislation, and … lobbyists and legislators studied day and night how they could introduce bills affecting existing corporations or other interests, and compel them to be halted by blackmail." McClure, *Old Time Notes of Pennsylvania* (Philadelphia: Winston, 1905), Vol. II, pp. 417-418. At the constitutional convention, the political economist Henry C. Carey complained that the "injurious and antiquated restrictions" in Pennsylvania's general incorporation law for manufacturing forced businesses to continue to seek special charters, enabling "the legislative corruption of which we now so much complain." Pennsylvania Constitutional Convention, *Debates of the Convention to Amend the Constitution of Pennsylvania …* (Harrisburg: Benjamin Singerly, 1873), Vol. 5, 480.

bases of support, county organizations went so far as to impose informal term limits on their legislators. Members of the house, for example, were kept on such short leashes that they were rarely allowed to serve more than two one-year terms.[31]

In the assembly, representatives deferred to each other on private and local legislation, for to object to a colleague's bill would be invite attacks on one's own. If a bill had only local effects and did not impinge on other representatives' districts, the implicit agreement was it would not be challenged. Beginning in 1844, House rules reserved one day each week for consideration of the "private calendar," when representatives voted on large numbers of private bills without debate. Although an objection from a single legislator was enough to remove a bill from the private calendar and effectively kill it, such objections were rare. Hence, when one member of the senate objected to a bill creating a new county that adversely affected his own district, he reminded his colleagues that he had "never voted against a bill in the Senate which was local when it was put upon local grounds." He added, "I hope my friends on the other side of the Senate will do for me what I have always done for them."[32]

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[31] Even state senators rarely stayed in office long enough to develop a power base that was independent of local bosses. Of the 33 senators in the Pennsylvania legislature in 1874, only eight had served more than one three-year term, only three more than two terms, and none more than three terms. These numbers were calculated using John A. Smull's *Manual of Rules of the General Assembly of Pennsylvania and Legislative Directory …* for the years 1866-1874 (the title varies somewhat from year to year). On the imposition of term limits by county party organizations, high legislative turnover, and the lack of party discipline, see Douglas E. Bowers, "The Pennsylvania Legislature, 1815-1860," unpublished Ph.D. dissertation, University of Chicago (1974), 14-16, 24-25; and Bowers, "From Logrolling to Corruption," 443, 451, 458. On the importance of local party leaders, see also James A. Kehl, *Boss Rule in the Gilded Age: Matt Quay of Pennsylvania* (Pittsburgh, PA: University of Pittsburgh Press, 1981), 21.

[32] Quoted in Bowers, "Pennsylvania Legislature," 154-155. After introduction, special bills were referred to one of the legislature's standing committees, but the committees functioned mainly as rubber stamps. Even so, there were ways to avoid committee scrutiny. For example, representatives could attach bills as amendments to bills already on the floor so long as they were on similar subjects. See Bowers, "Pennsylvania Legislature," 62-63, 68, 70-71. Critics also

Control of the distribution of legislative favors thus rested with local political bosses, not with the state party leadership. Although the leadership controlled the flow of federal and state patronage, local representatives' ability to dispense such a rich variety of favors to supporters undermined party discipline.[33] Republican members of the legislature might vote as block on resolutions that cheered the US Senate's reinstatement of Edwin Stanton as Secretary of War, but they were likely to break ranks on bills that mattered within the state.[34] For example, a move to increase the liabilities of shareholders in railroads failed on a split party vote, with 13 Republicans and 13 Democrats voting for it, and 35 Republicans and 27 Democrats voting against.[35] Even civil rights measures important to the Republicans' mission could be fraught. Although only one Republican joined with Democrats in a move to repeal a bill giving Blacks access to railroad cars in the state, ten members refrained from voting, and the Republicans only prevailed by a margin of two votes.[36]

Because political power was so decentralized, the relatively few general laws that the legislature enacted did not in fact always apply generally. To secure passage, the leadership often

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accused the legislature's clerks of slipping bills that had never actually been voted on into the stack of items awaiting the governor's signature. Hellerich, "Pennsylvania Constitution," 228.

[33] This local independence plagued the Democrats as well. Thus, William A. Russ, Jr. described the "plethora of local and special bills" that John Cummings, a Republican-leaning Democrat from Snyder County, shepherded through the House to secure his reelection. See Russ, "The Origin of the Ban on Special Legislation in the Constitution of 1873," *Pennsylvania History* 11 (Oct. 1944): 260-275 at 265.

[34] For the vote on the resolution, see Pennsylvania, *Journal of the House of Representatives* (1868), 140.

[35] At this time, shareholders often paid in at the time of purchase only part of the par value of the shares they held in corporations. The vote was on an amendment to a railroad bill that would have made shareholders jointly and severally liable to the amounts unpaid on their shares. Pennsylvania, *Journal of the House of Representatives* (1868), 278.

[36] The bill recommitted to the judiciary committee an act that would have repealed an act "compelling the admission of negroes into railroad cars." Pennsylvania, *Journal of the House of Representatives* (1868), 240.

had to cajole opponents by agreeing to enact private bills that exempted their districts (or powerful supporters), from the law's application. Sometimes the exceptions were written into the law itself, as for example, when the Pennsylvania legislature voted to authorize members of school boards to administer oaths of office to teachers, except in "the city and county of Philadelphia."[37] But it was more common to see them written into subsequent legislation. Thus, after Pennsylvania enacted a general incorporation law for manufacturing in 1849, most new companies continued to seek special charters and, in that way, escape the relatively restrictive features of the statute. For example, companies in the iron industry obtained special charters in order to buy stock in other companies (purchases that were prohibited by the general law), engage in lines of business otherwise not permitted (such as building a railroad or a telegraph), borrow money in greater amounts than allowed by the general statute, escape limits imposed on real estate holdings, and institute non-standard voting rules for elections for directors.[38]

The locally based factions that special legislation supported became a serious problem during the Civil War when they coalesced into two main rival camps. One was headed by Andrew Gregg Curtin, the state's governor; the other by Simon Cameron, Lincoln's first

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[37] Pennsylvania Legislature, "An Act Authorizing School Directors to administer oaths …" approved 20 April 1853.

[38] See, for examples, "AN ACT To enable the Sharon Iron Company, of Mercer county, to subscribe to the Stock of the Pittsburg and Erie Railroad Company," 5 April 1855; "AN ACT to incorporate the Hopewell Coal and Iron Company," 7 May 1855; "AN ACT To incorporate the Saucona Iron Company, in the county of Northampton," 8 April 1857; "AN ACT To incorporate the Sullivan Coal and Iron Company," 2 March 1868; "AN ACT To incorporate the Emaus Iron Company," 11 March 1870; "AN ACT Relative to the Bloomsburg Iron Company," 12 March 1870; "A Further Supplement To an act, entitled 'An Act to incorporate the Emaus Iron Company ..." 2 April 1872. See also Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, Mass.: Harvard University Press, 1948), 39-41; and Naomi R. Lamoreaux, "Revisiting American Exceptionalism: Democracy and the Regulation of Corporate Governance: The Case of Nineteenth-Century Pennsylvania in Comparative Context," in *Enterprising America: Businesses, Banks, and Credit Markets in Historical Perspective*, ed. William J. Collins and Robert A. Margo (Chicago: University of Chicago Press, 2015), 40.

secretary of war. The division traced back at least to 1855, when the legislature deadlocked over which of the men should be US Senator.[39] It was partly ideological: Curtin was a centrist who only belatedly supported emancipation and sparred with the US War Department, and sometimes Lincoln himself, throughout the Civil War; Cameron was more closely aligned with the abolitionist wing of the party. But Cameron had an unsavory reputation—he had been forced to resign from the cabinet by a procurement scandal—and even many radicals regarded him as unacceptably corrupt.[40] Indeed, Cameron was such a polarizing figure that some Republicans would support almost anyone but him, and that anyone could include Democrats—even during the war itself, when the Democracy was viewed by Republicans as the party of treason.[41]

The factional divide within the Republican Party continued to grow in the war's aftermath, coming to a head in 1867 when Cameron beat out Curtin in the legislative contest for

[39] A coalition of Whigs and Know-Nothings had seemingly elected Cameron (until then a Democrat) when it was discovered that more votes had been cast than there were legislators voting. The deadlock only ended when the Democrats regained control of the legislature and elected their own candidate as senator. Klein and Hoogenboom, *History of Pennsylvania*, 151.

[40] The division between the two men was also personal—rooted, it is said, in a drunken accusation by Cameron that Curtin had fathered an illegitimate child. Jack Furniss, "Andrew Curtin and the Politics of Union," *Pennsylvania Magazine of History and Biography* 141 (Apr. 2017): 145-176.

[41] In 1862, for example, the Democrats had a one-vote majority in the joint-session of the legislature that would elect a US senator. Charles Buckalew, the Democratic candidate, might have been expected to win, but members of both parties predicted that Cameron would bribe enough Democratic legislators to secure his own election. McClure described attending a secret meeting at which four Republican legislators from the Curtin faction vowed to vote for Buckalew if it looked as if Cameron would win. In the end, the maneuver did not prove necessary because the Democratic majority held. Hundreds of rank-and-file Democrats from Philadelphia invaded the state house, armed with knives and pistols, and threatened death to any Democrat who failed to support Buckalew. No Democratic representative defected, though one declared that he had been offered $100,000 to vote for Cameron. McClure, *Old Time Notes*, Vol. II, 31-38; Erwin Stanley Bradley, *Simon Cameron, Lincoln's Secretary of War: A Political Biography* (Philadelphia: University of Pennsylvania Press, 1966), 226-230.

US Senator.[42] After the Democrats won some state-wide victories in that same year, including the position of chief justice of the state supreme court, Republicans responded hysterically with charges that the electoral process had been corrupted.[43] But when they pushed a bill through the legislature to tighten up voter registration, the Philadelphia faction held it up until they secured a provision giving the city's ward bosses control over who could vote there.[44] The maneuver is a good example of the problems of enacting general legislation in such a factionalized context. If a small group of legislators is pivotal to the enactment of a bill that other members of the coalition favor, and (as was the case in Pennsylvania) the legislature is closely divided, the group is in a position to extract local benefits in exchange for its support. Thus, even though the

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[42] The Republicans had a majority of 35 votes in the joint session of the legislature that would make the decision, so the bargaining was confined to the party's various factions. The maneuvering was complex, but, in a nutshell, Cameron succeeded in making the leaders of all the other factions believe that they would benefit from Curtin's defeat. Curtin then accepted a position as ambassador to Russia, effectively leaving the field to Cameron. For the details, see Erwin Stanley Bradley, *The Triumph of Militant Republicanism: A Study of Pennsylvania and Presidential Politics, 1860-1872* (Philadelphia: University of Pennsylvania Press, 1964), 209-221; and Kehl, *Boss Rule*, Ch. 2.

[43] See, for example, the pamphlet "Democratic Frauds: How the Democrats Carried Pennsylvania in 1867," attributed to Henry Charles Lea. The Board of Directors of the Union League offered rewards "for the detection of electoral conspirators, or the arrest and conviction of fraudulent voters of any kind," and the League pushed the legislature to enact a new voter registration law. Lathrop, *History of the Union League*, 99 and 101. See also the *Sixth Annual Report of the Board of Directors of the Union League* (Philadelphia: Henry B. Ashmead, 1868).

[44] Entitled "A Further Supplement To the act relating to the Elections of this Commonwealth," the statute appears to be a general law, but buried in its midst is the special treatment of Philadelphia. Section 12 begins by setting the hours of elections: "That for all elections hereafter holden under this act the polls shall be opened between the hours of six and seven o'clock A. M., and be closed at six o'clock P.M." That statement ends with a semi-colon, which is followed by the statement "none of the foregoing provisions of this act shall apply to the city of Philadelphia" and then a separate set of procedures that gave the city's aldermen control of the voter rolls. The act was approved on April 4, 1868. The maneuvers that led to this exemption cannot even be glimpsed in the senate or house journals, but see McClure, *Old Time Notes*, 233-243. The bill was struck down by the state's high court (headed by a Democrat who had been elected as part of the Democratic resurgence) and then was rewritten and passed, with the Philadelphia exemption intact but now more properly located in its own sections. See "An Act Further supplemental to the act relative to the elections of this Commonwealth," approved April 17, 1869, sections 21-45.

Republicans had a majority in the legislature, they could not pass the registration bill without exempting the city of Philadelphia from its strictures. A general law mandate would have reduced the ability of such pivotal groups to extract benefits for themselves, because anything they demanded in exchange for their support would have to apply generally and thus would require the support of a majority of the legislature.

The nefarious uses to which the Philadelphia faction put its control threatened to split the Republican Party, as did Cameron's increasingly heavy-handed tactics. Curtin supporters like McClure bolted to the splinter Liberal Republican Party and others rejoined the Democrats.[45] It was in this mood of crisis that party leaders began to call for a constitutional convention to ban special legislation. Indiana had taken that step two decades earlier, and the state's most prominent Republican leader, Oliver P. Morton, had visibly more ability to enforce party discipline than Cameron or any other party boss in Pennsylvania.[46] Although Republicans in Indiana were buffeted by the same conflicts as those elsewhere (and faced the same resurgence in Democratic popularity), Morton was secure in his dominance, as radical Republican Congressman George W. Julian found to his chagrin, when he defied Morton and lost much of

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[45] Control of the voter rolls in Pennsylvania's largest city, gave the Philadelphia faction the power to determine statewide elections, as well as those in Philadelphia, so long as the vote spreads were not too large. Once returns were in from elsewhere in the state, the Philadelphia group would manufacture whatever vote margins were needed to achieve their desired outcome. See the pamphlet written by an anonymous Republican member of the League, "The Union League and the Political Situation in Philadelphia" (Philadelphia, 1873). See also Frank B. Evans, *Pennsylvania Politics, 1872-1877: A Study in Political Leadership* (Harrisburg: Pennsylvania Historical and Museum Commission, 1966), 75-76; Hellerich, "Pennsylvania Constitution," 37, 40-41, 346-351; and McClure, *Old Time Notes*, 233-243. On the chaos within the Republican Party in the early 1870s, see Bradley, *Triumph of Militant Republicanism,* Chs. X-XI.

[46] According to Emma Lou Thornbrough, Morton completely dominated the Indiana Republican Party until his death in 1877. See *Indiana in the Civil War Era, 1850-1880* (Indianapolis: Indiana Historical Bureau & Indiana Historical Society, 1965), 225.

his district to gerrymandering. Though he fled to the Liberal Republicans and then to the Democrats, he was never able to revive his career.[47]

The alacrity with which most Republicans supported the call for a convention to ban special legislation suggests that they all expected to benefit from the change. If they had been paying close attention to the Indiana example, they might have balked, because Morton's dominance suggested that Cameron would be the big beneficiary, as he turned out to be. But they all seem to have believed that banning special legislation would curb Cameron's power and heal the factionalism that was tearing the party apart. Curtin supporters like McClure were in the vanguard of the movement to call the convention; Cameron's support was more reluctant.[48]

From Factions to Parties

When the delegates assembled in convention to write a new state constitution, the proposal to ban special legislation generated little controversy. After the requisite three readings, the delegates adopted the language proposed by the drafting committee almost as written. Modeled on Indiana's pathbreaking general law mandate, the provision banned twenty-six types of special and local legislation, including charters of incorporation, and specified that no special law could be passed "granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for."[49] This provision, along with the rest

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[47] Mary Elisabeth Seldon, "George W. Julian: A Political Independent," in *Gentlemen from Indiana: National Party Candidates, 1836-1940*, ed. Ralph D. Gray (Indianapolis: Indiana Historical Bureau, 1977), 29-54.

[48] Klein and Hoogenboom, *History of Pennsylvania*, 357-360.

[49] Pennsylvania, 1873 Constitution, Article III, Section 7. Although there was some debate over the details of the twenty-six enumerated prohibitions, the convention adopted the committee's draft virtually as proposed, accepting for the most part only amendments that strengthened its

of the new constitution, was ratified by the voters in December, 1873, and the main reason Republican political leaders had called the convention was achieved.[50]

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provisions. The one significant change was the final clause of the article. On the second reading of the section, the convention deleted language prohibiting the legislature from granting any power or privilege in any case "where a general law can be made applicable," language that had been copied from the Indiana Constitution. The amendment to strike the provision was offered by a Republican delegate who objected that the provision was vague and that its effects could not be foreseen. The clause was defended by the committee's Republican chairman, Harry White, who considered it to be "of vital importance to this section"—the "rock" that future legislatures would be able to "stand upon in opposing some matter of special legislation." After a brief discussion, another Republican delegate proposed substitute language that was adopted by the convention with only slight modifications in wording: "Nor shall any bill be passed granting any powers or privileges in any case where such powers and privileges shall have been provided for by general law, and in no case where the courts have jurisdiction or are competent to grant the powers or give the relief asked for." The delegates had already added language prohibiting the legislature from evading the bans on special bills "by the partial repeal of a general law." On second reading, they added a provision giving it the authority to repeal special laws that had already been enacted. Pennsylvania 1873 Constitutional Convention, *Debates*, Vol. II, 589-622, and Vol. 5, 248-267. The quotations are from Vol. II, 592 and Vol. V, 252, 253-254, 255, and 258. Information on the political affiliations of the delegates is from A. D. Harlan, *Pennsylvania Constitutional Convention 1872 and 1873: Its Members and Officers and the Result of their Labors.* (Philadelphia: Inquirer Book and Job Print, 1873).

[50] In calling for the convention, Republican leaders had risked the possibility that the delegates would enact reforms that in other circumstances they would have been able to block. Although they also had their own goals for the convention beyond the prohibition on special legislation, the lack of party discipline and the close balance between Republicans and Democrats among the delegates meant there was no assurance they could get what they wanted. For example, Republican businessmen wanted the right to form corporations without going to the legislature for a private bill, but they also wanted to escape what they thought were the onerous restrictions that existing general incorporation laws imposed. Not only did the delegates resist creating a constitutional right freely to form corporations, but not trusting the legislature, they went further and added rules to the constitution that restricted what corporations could do and how they could be governed. Hence the 1874 Constitution specified that a corporation could not "engage in any business other than that expressly authorized in its charter," nor hold any real estate beyond what was "necessary and proper for its legitimate business" (Article XVI, Section 6); that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received"; that "all fictitious increase of stock or indebtedness shall be void"; and that increases in capital within the ceilings allowed by law required "the consent of the persons holding the larger amount in value of the stock" obtained at a meeting "held after sixty days notice" (Article XVI, Section 7). The constitution even imposed a cumulative voting rule for "all elections for directors or managers of a corporation" in order to give minority shareholders a better chance to secure representation on the board (Article XVI, Section 4). Finally, the constitution gave the legislature the power "to alter, revoke or annul any charter of incorporation

The ban on special bills had an immediate and profound effect on the business of the legislature. As Figure 2 shows, there was a precipitous drop in the number of pages of legislation enacted, much as had occurred in Indiana two decades earlier. The kinds of laws enacted changed as well. In Indiana, private and local bills had fallen from about 80 to 90 percent of the total in the twenty years before the constitutional revision to about 20 percent afterwards, while the share of general laws rose from about 10 percent to 40 to 60 percent.[51] We cannot obtain similar "before" figures for Pennsylvania because the few general laws the legislature enacted often had exemptions imbedded in them that benefited particular locations and groups and because the legislature often mashed multiple special laws together in same bill. From contemporary accounts, we know that the vast majority of the thousand plus laws enacted each year benefited specific private parties and localities. We can, however, provide "after" figures. In 1875, the Pennsylvania legislature passed only 98 laws, 39 percent of which were general, 3 percent private, and 18 percent local. In 1879, 57 percent of the 211 bills enacted were general laws, 12 percent were for private parties, and 13 percent were for localities. (The rest in both years were for the operation of state government.) The change was even starker than the numbers suggest, for many of the private and local bills in 1879 were acts that repealed special bills enacted before the constitutional revision.[52]

… whenever in their opinion it may be injurious to the citizens of this Commonwealth" (Article XVI, Section 10). The article on railroads and canals also included regulatory measures, among them prohibitions on discrimination in freight rates (including rebates to favored shippers), consolidating (or sharing officers and managers) with competing transportation companies, and vertically integrating into mining and manufacturing (Article XVII, Sections 3-7).

[51] The rest pertained to the operation of state government. For a complete breakdown, see Lamoreaux and Wallis, "Economic Crisis," 406.

[52] Most types of private and local bills completely disappeared. There were a few private bills providing financial relief to individual veterans or their widows and orphans—a type of special legislation that had not been banned by the constitution—but the relatively small number

We have examined the statutes enacted by the legislature in 1875, 1879, and 1885, as well as Pennsylvania state court decisions relevant to the constitutional prohibition from 1874 through 1890, and have found little evidence that the legislature evaded the prohibition by deploying general language to obscure what were in fact special laws.[53] The one significant exception was the use of classification schemes to distinguish cities of different sizes. Because Philadelphia was always in a class of its own, the legislature was able to pass laws that applied only to that city and hence were effectively special laws. Over time, law makers tried to grant other cities similar status by increasing the number of classes, but the state supreme court blocked these moves. Although the court had early on approved a scheme that divided cities into three classes, determining that large cities had different needs from small, it policed the uses that the legislature made of such classification schemes and overturned laws that, as it declared in *Appeal of Ayars* in 1889, seemed to be "a mere pretext for the enactment of laws essentially local or special." *Ayars* established the principle that classification was "essentially unconstitutional" unless there was absolute necessity for it that sprang "from manifest peculiarities, clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class, separately, that would be useless and detrimental to the others."[54] As

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suggests that the constitution had changed legislative practice more generally. These figures come from our review of Pennsylvania's session laws on Heinonline.

[53] A few laws were so narrowly drafted as to raise the suspicion that they benefited a particular party, but they were nonetheless written in a way that made them generally applicable to all people in similar situations. Moreover, their numbers were trivial, especially compared to the thousands of special bills enacted before the constitutional probation. See, for example, Pennsylvania Legislature, "An Act Limiting the time within which action may be brought upon refunding bonds given upon the distribution or partition of estates of decedents," approved June 30, 1885.

[54] *Appeal of Ayars*, 122 Pa. 266 (1889) at 279 and 281. *Ayars* declared unconstitutional a law that divided cities into seven classes and specified a different governance rule for cities of the fifth class (apparently aimed at Wilkes Barre). The earlier case approving the three-part classification scheme was *Wheeler v. Philadelphia*, 77 Pa. 338 (1875). The court explicitly approved a scheme

Donald Marritz has shown, Pennsylvania courts rigorously enforced this principle over the next century.[55]

Before the prohibition on special laws, promoters of the relatively few general laws the legislature enacted were able to secure their passage by adding sweeteners or exemptions that benefited specific opponents. After the constitutional revision, it was much more difficult to put together the majorities needed for passage. Log rolling was still possible, but because all the bills in a legislative package had to be general, the added measures were as likely to exacerbate as to reduce controversy. Not surprisingly, therefore, most of the general laws enacted over the next couple of decades were relatively narrow in their scope. In the first burst of enthusiasm that followed the adoption of the new constitution, the legislature passed a flurry of general statutes to supply law in areas where special bills had been particularly abundant. In 1874, for example, it enacted a new general incorporation law that covered both for profit and non-profit corporations and would remain the basic law of the state until the 1930s.[56] But legislation of such broad impact quickly became rarer. By the mid-1880s, the typical general law covered either an extremely limited topic (for example, a law making it a crime to mutilate a book or work of art in a public library or museum), an issue that was likely to have broad support in the state (such as a prohibition on the sale of "any article designed to take the place or butter or cheese produced

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that included a class with only one city in *Kilgore v. Magee*, 85 Pa. 401 (1877). But by the next decade, the court was subjecting such plans to much stricter scrutiny. In addition to *Ayars* (and the precedents summarized in that opinion) see *In re Ruan St.*, 132 Pa. 257 (1890), in which the court overturned a law that allowed Philadelphia to use a different procedure from other cities for establishing the value of property taken to build roads, claiming that for this purpose large cities did not have fundamentally different needs from small.

[55] Donald Marritz, "Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution," *Widener Journal of Public Law* 3 (issue 1, 1993), 161-215

[56] Pennsylvania Legislature, "An Act To provide for the incorporation and regulation of certain corporations," approved April 29, 1874.

from pure unadulterated milk, or cream from the same"), an issue that no legislator would want to be on record opposing (a bill making it a crime to take "a female child under the age of sixteen years for the purpose of prostitution"), or that punted on a more controversial matter (an act setting up a commission to "revise the mining and ventilation laws in the bituminous coal regions").[57]

What would eventually make it possible to enact broader laws was the development of long-lived political parties capable of integrating a diverse set of interests around a common vision. Only long-lived parties could credibly commit to a consistent plan of action or to a project that took time to generate benefits. And only umbrella organizations could carry out the internal process of negotiation and compromise needed to unify what had once been factions behind a coherent legislative agenda.

The ban on special bills was critical to the development of long-lived integrated parties in several ways, some of which were immediately apparent, others of which took longer to manifest themselves. In the short run, the ban stripped local politicians of an important source of goodies to dispense within their jurisdictions, making other sources of favors, such as patronage jobs, relatively more important. It was that shift that gave Cameron, Pennsylvania's lone Republican US senator, his initial advantage. So long as the Republicans controlled the White House,

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[57] Pennsylvania Legislature, "An Act To prevent the willfully cutting, mutilating, or otherwise injuring any book, volume, map, chart, magazine, newspaper, painting, engraving, or statuary in public libraries, museums or galleries," "An Act For the protection of the public health, and to prevent adulteration of dairy products and fraud in the sale thereof," approved May 21, 1885; "An Act Supplementary to an act, entitled 'An act to protect children from neglect and cruelty …", approved May 28, 1885; "An Act Providing for the appointment of a commission to revise the mining and ventilation laws in the bituminous coal regions …," approved March 31, 1885. No bill on this last topic was enacted in that session. The new constitution required the yeas and nays to be recorded for the final vote on any bill. As a result, most bills that got to the required third reading passed overwhelming, if not unanimously, with those opposed simply declining to vote. For some examples, see Pennsylvania Senate, *Journal* (1887), 855-57.

Cameron (and later his son, Donald, who succeeded him as senator) controlled the distribution of federal patronage in the state, including more than 200 positions at the Philadelphia customhouse and thousands more at the state's 3000 plus post offices (the Philadelphia post office alone employed nearly 450 people). The Camerons used these jobs (and others at the state level) ruthlessly to solidify their organization and gain control of the selection of candidates for office. Contemporaries reported, for example, that the majority of delegates at state Republican nominating conventions were government employees who owed their positions to the Camerons.[58]

Their dominance was no means complete, however. They still faced significant factional opposition within the party, and the Philadelphia and Pittsburgh organizations retained considerable independence.[59] Given the importance of federal patronage, this opposition was particularly troublesome in the runup to presidential elections, when the Camerons had to make sure the party's standard bearer was someone beholden to them. James G. Blaine's popularity in the state posed an especial problem for them, and 1884 presidential election was consequently a double blow. Not only did Blaine secure the Republican nomination, but he lost to Democrat Grover Cleveland.[60] With the help of their lieutenant and successor, Matthew Quay, they set out to reduce their reliance on federal jobs by pushing the legislature to make greater investments in state-run institutions such as hospitals, normal schools, asylums, and penitentiaries. In 1887, for

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[58] Robert Harrison, "Blaine and the Camerons: A Study in the Limits of Machine Power," *Pennsylvania History* 49 (July 1982): 157-175 at 160-161.
[59] Harrison, "Blaine and the Camerons"; Peter McCaffery, *When Bosses Ruled Philadelphia: The Emergence of the Republican Machine, 1867-1933* (University Park: Pennsylvania State University Press, 1993).
[60] On this point, see especially Harrison, "Blaine and the Camerons." The enactment of federal civil service reform in response to the assassination of President James A. Garfield was likely an additional motivation to reduce their dependence on federal patronage.

example, the list of institutions to which the General Assembly appropriated funds took up about seven pages of the index to that year's legislative session—up from less than two in 1875. Republican party leaders rewarded supporters in the legislature by allotting these expenditures to their districts. Quay kept card files, known as "Quay's coffins," in which he detailed the favors handed out to individual legislators and tracked their voting records and other political activities.[61]

In additional to ongoing opposition within the party, Quay and the Camerons faced competition from the Democratic Party. The ban on special laws had hit Democrats particularly hard because they relied on local favors to counter Republican control of federal and state jobs. Although in the early 1870s Democrats had won nearly half of the seats in the state senate, after the ratification of the constitution their share fell to something more like a third.[62] But the party still had statewide strength, and in 1882 it captured the governorship, electing Robert E. Pattison, a Philadelphia reformer, in part because of ongoing Republican factionalism. Pattison won the position again in 1890.[63]

The 1890s were a watershed, however, when the longer-run effects of the ban on special legislation became apparent. Under a regime of general laws, those that stand to benefit from a legislative initiative, along with those that stand to be harmed, have an incentive to organize for, or against, the legislation, and in cases where the issues involved are likely to come up again and again, to create more formal interest groups. These groups play a very different role in the

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[61] Quay's strategy is described in Kehl, *Boss Rule in the Gilded Age*, Ch. 5. Jon Grinspan describes how the popular Republican congressman Will (Pig Iron) Kelly was forced to pledge allegiance to the party after facing a tough election challenge in 1878. See Grinspan, *The Age of Acrimony: How Americans Fought to Fix their Democracy, 1865-1915* (New York: Bloomsbury Publishing, 2021), 113-115.
[62] Smull's *Manual* for 1869-1883.
[63] Klein and Hoogenboom, *History of Pennsylvania*, 329-33.

political process from factions, because political parties respond to their emergence by developing distinct programmatic identities that enable them to attract the support and resources of groups in sync with their agendas.[64] The lengthening time horizons of parties played a key role here. The Democrats were not yet able to negotiate this transition in Pennsylvania, where President Grover Cleveland's anti-tariff and anti-labor policies led to massive defections in the industrial parts of the state, especially after the onset of depression in 1893. The Democrats tried to reinvent themselves in the mid-1890s by fusing with the Populists. Although this strategy worked in some states, it did not help the party in Pennsylvania, where there was little interest in inflation and strong support for protective tariffs. Not only did the Democrats continue to lose ground in the late 1890s, but their losses persisted, as these failed maneuvers became a catalyst for the Republicans to redefine themselves as the party of industrial prosperity. The Republicans' move enabled them to attract labor votes as well as financial support from business interests in the state that could be used to reinforce the party's consolidated structure. The legislative agenda that they pursued with these resources then further solidified their identity and dominance. Not until the Great Depression of the 1930s would a Democrat again win a gubernatorial election in the state.[65]

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[64] On the emergence of organized interest groups during this period, see Elisabeth S. Clemens, *The People's Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890-1925* (Chicago: University of Chicago Press, 1997). On the adoption by the major parties of programmatic identities in the late nineteenth century, see also Didi Kuo, *Clientelism, Capitalism, and Democracy: The Rise of Programmatic Politics in the United States and Britain* (New York: Cambridge University Press, 2018).

[65] Burnham tracked the decline of in the voting strength of the Pennsylvania Democratic Party in *Critical Elections*, Ch. 3. For the political details, see Lewis Wesley Rathgeber, "The Democratic Party in Pennsylvania, 1880-1896," unpublished Ph.D. dissertation, University of Pittsburgh (1956); and William E. Lyons, "Populism in Pennsylvania, 1892-1901," *Pennsylvania History* 32 (Jan. 1965): 49-65.

On the surface the practice of politics in Pennsylvania looked much the same in the late 1890s as it had in the early 1870s. Elections were still rowdy affairs, turnout was still high, and political support was still for sale.[66] Below the surface, however, everything had changed. Factionalism within the Republican Party had been tamed by the ban on special bills and centralized control of state spending and federal and state jobs. The party still included a diverse collection of people and interests, but its identification with industrial prosperity provided a unifying theme around which all could rally, and most now thought it in their interest to push for their views within the party organization rather than bolt to join or form another faction. Not only was the party likely to be around, and maybe even dominant, for the foreseeable future, but it was a reliable source of the financial resources need to win elections and an avenue for upward mobility.[67]

And as the party structure changed, moreover, so did government. We have already noted the state's growing investment in schools, hospitals, asylums, penitentiaries, and the like--all investments that required significant lengths of time to bear fruit. The period also witnessed complementary investments in regulatory and general administrative capacity, as the Secretary of the Commonwealth took on responsibility for overseeing corporations and the Secretary of Internal Affairs assumed oversight of transportation through the Bureau of Railroads and the financial sector through the Banking Department. There was a newly created Bureau of Labor Statistics, an Insurance Commissioner, and a Superintendent of Public Instruction, and the list

[66] Grinspan, *Age of Acrimony*, Ch. 8.
[67] On the changes in the organization of Pennsylvania politics, see especially McCaffery, *When Bosses Ruled Philadelphia*, Ch. 4.

would expand in the early twentieth century to include new boards of Revenue Commissioners, Veterinary Medical Examiners, and Health and Vital Statistics, and the like.[68]

The National Pattern

As Table 1 shows, most of the states in existence at the time Indiana rewrote its constitution waited until the turbulent 1870s to adopt a constitutional mandate that laws be general. A second wave of adoptions followed in the 1890s, another period of political turmoil in which the Populist revolt threatened Democratic control in the South. As a rule, wherever and whenever states adopted general law mandates, the work of the legislature abruptly changed, as assemblies concentrated on enacting a relatively small number of general laws in place of the myriad of private and local bills that had previously occupied their time. Although there were a few exceptions, the volume of legislative output (which in most states had increased steeply over the course of nineteenth century) dropped dramatically with the ban on special laws (see Table 2). The few states that did not adopt a general law mandate rarely experienced a similar break in trend; indeed, their average numbers over the period 1870-1899 were uniformly higher than over the period 1830-1859.

Although there are no studies of the effect of general law provisions on political parties in other states, there is abundant evidence that the transformation we observed for Pennsylvania occurred elsewhere—that is, that factionalism gave way to the dominance of one or the other of the two major parties. The Democrats ruled in the South, of course, and also in Oklahoma and

[68] Edward J. Davies II attributes this growth in capacity to the 1874 constitution in "State Economic Policy and Region in Pennsylvania, 1853-1895," *Business and Economic History* 21 (1992): 280-289.

Arizona. Republicans controlled most Northern, Midwestern and Far Western states. Indeed, there were twelve states in which Republicans won more than 95 percent of statewide elections between 1894 and 1928. (Pennsylvania was not even on that list!)[69] Two-party competition was a national phenomenon, not a state characteristic. Shigeo Hirano and James M. Snyder, Jr., have attempted to quantity party dominance at the state level, defining a state as uncompetitive if the eight-year moving average between the Democratic and Republican vote shares differed by at least 15 percentage points. Even by this rather extreme definition, 28 out of 45 states (62 percent) were uncompetitive in 1904.[70]

The stable, long-lived parties that emerged in the late nineteenth century built their dominance on the distribution of patronage and favors fed by increases in state spending and by the rise of interest-group politics. It is easy to dismiss the public institutions that states built during this period as fodder for political rewards, but they also represented important additions to the stock of colleges and universities, treatment centers for the psychologically and physically impaired, and hospitals and charitable institutions.[71] Similarly, it is easy to dismiss state

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[69] The states were California, Iowa, Kansas, Maine, Michigan, Minnesota, New Hampshire, North Dakota, Oregon, South Dakota, Vermont, and Wisconsin. Shigeo Hirano and James M. Snyder, Jr., *Primary Elections in the United States* (New York: Cambridge University Press, 2019): 10-15.

[70] The number of uncompetitive states increased from 19 to 28 between 1890 and 1904, with most of the increase in the Republican parts of the country. Hirano and Snyder, *Primary Elections*, 11-13.

[71] Local governments dominated large infrastructure investments in the late nineteenth century, but, as Werner Troesken notes, local investment was often coupled with state regulation, as local governments could not be trusted to honor agreements with, for example, public utilities like gas lighting companies. Once the investments were made and the pipes in the ground, the companies could not defend themselves against local expropriation. State-wide guarantees of rate regulation could ameliorate those problems. States also exerted their authority over highway construction, gasoline taxation, and driver's licensing. See Troesken, *Why Regulate Utilities?: The New Institutional Economics and the Chicago Gas Industry, 1849-1924* (Ann Arbor: University of Michigan Press, 1996); Troesken, "Regime Change and Corruption: A History of Public Utility Regulation," in *Corruption and Reform: Lessons from America's Economic History*, eds. Edward

legislatures as tools of big business, but during this period farm and labor groups also organized and accumulated the resources they needed to affect policy. More than two dozen states created commissions to regulate railroads, at least some of which were extraordinarily effective. And the rise of Standard Oil and other trusts stimulated states to enact antitrust laws and build the administrative capacity to enforce them.[72]

But the corruption was very real, as was the backlash it fueled. Critics decried the growing importance of campaign contributions and the parties' increasingly centralized control of patronage and other rewards as a continuation—even a worsening—of the old corruption, and, as Tabatha Abu El-Haj discusses in her essay, they pursued electoral reforms such as the secret ballot, stricter voter registration laws, and selection of party candidates by primary elections regulated by the state. Although antiparty reformers initiated the changes, and party leaders at first resisted them, the dominant parties were the main beneficiaries of the new rules. Indeed, as Hirano and Snyder have argued, they subtly influenced their formulation in ways that further entrenched them in control.[73] In the process, they changed what democracy meant for ordinary people. Whereas politics in the nineteenth century had been for many a participatory sport, now most people found themselves in the position of spectators. Perhaps not surprisingly, many lost interest and stopped bothering to vote.[74]

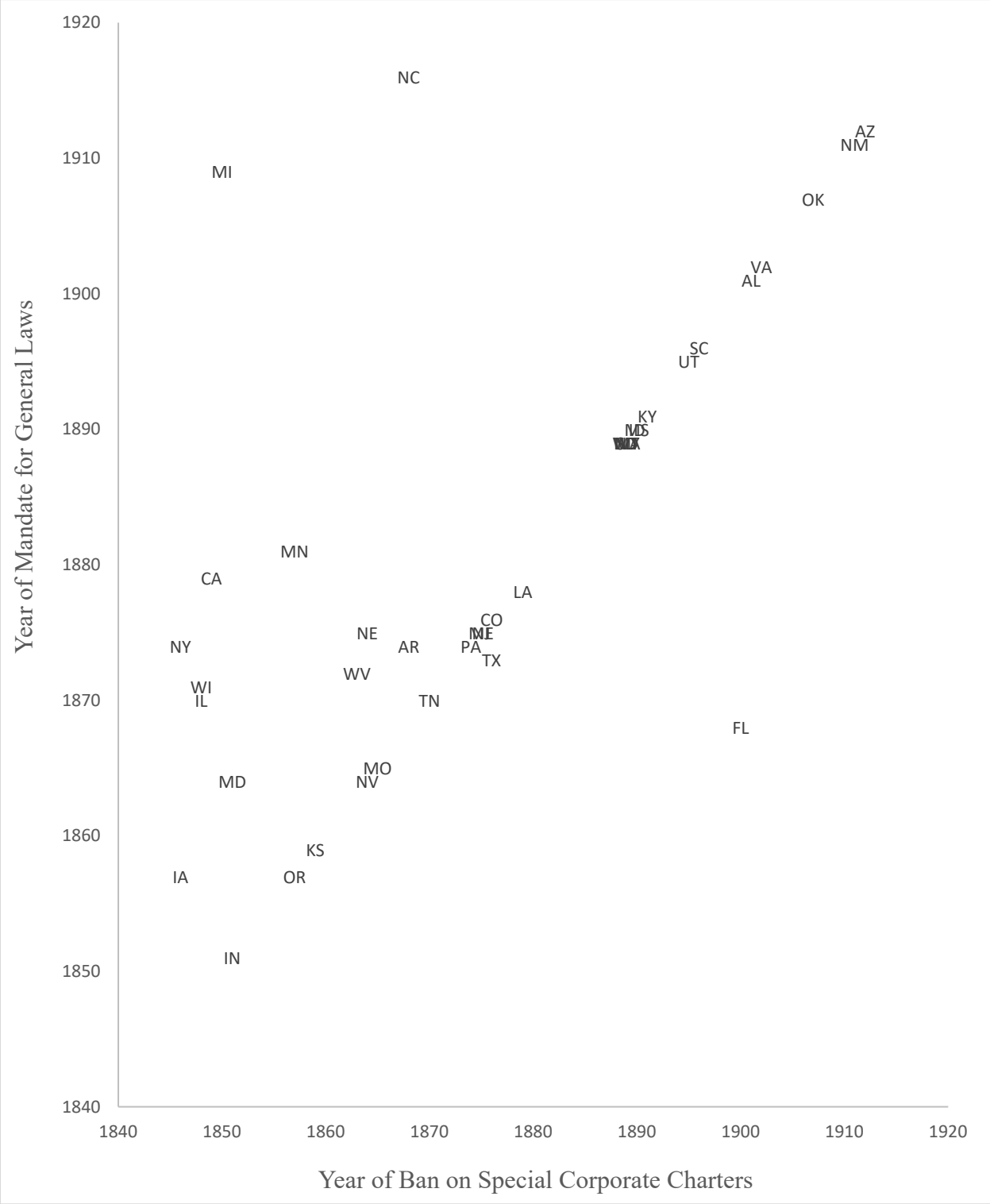
Glaeser and Claudia Goldin (Chicago: University of Chicago Press, 2006), 259-281; and Wallis, "History of the Property Tax".

[72] Clemens, *People's Lobby*; Naomi R. Lamoreaux, "Antimonopoly and State Regulation of Corporations in the Gilded Age and Progressive Era," in *Antimonopoly and American Democracy*, eds. Daniel A. Crane and William J. Novak (New York: Oxford University Press, 2023), 119-167.

[73] Hirano and Snyder, *Primary Elections*, 26-29.

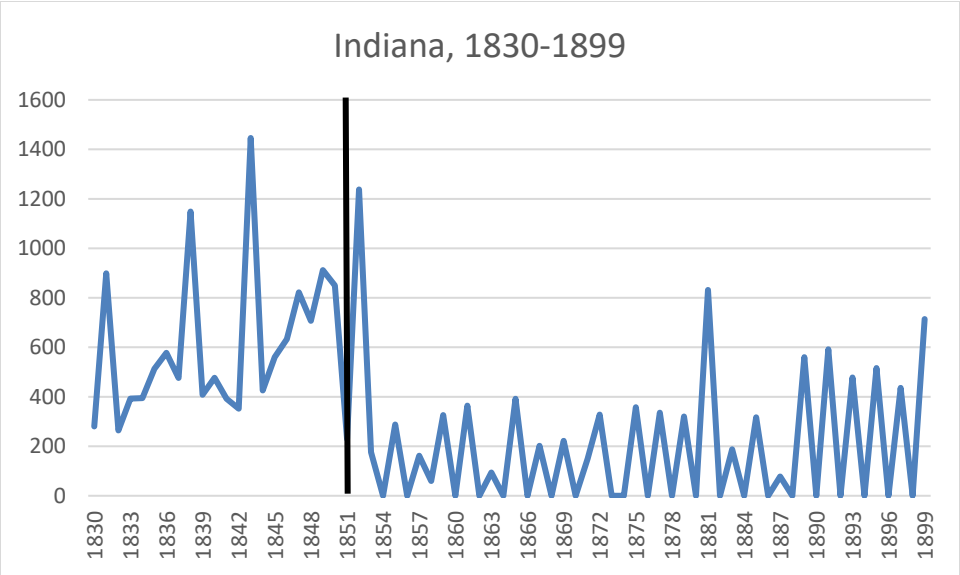
[74] Grinspan, *Age of Acrimony*; Mark Lawrence Kornbluh, *Why America Stopped Voting: The Decline of Participatory Democracy and the Emergence of Modern American Politics* (New York: New York University Press, 1999); Michael E. McGerr, *The Decline of Popular Politics: The American North, 1865-1928*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

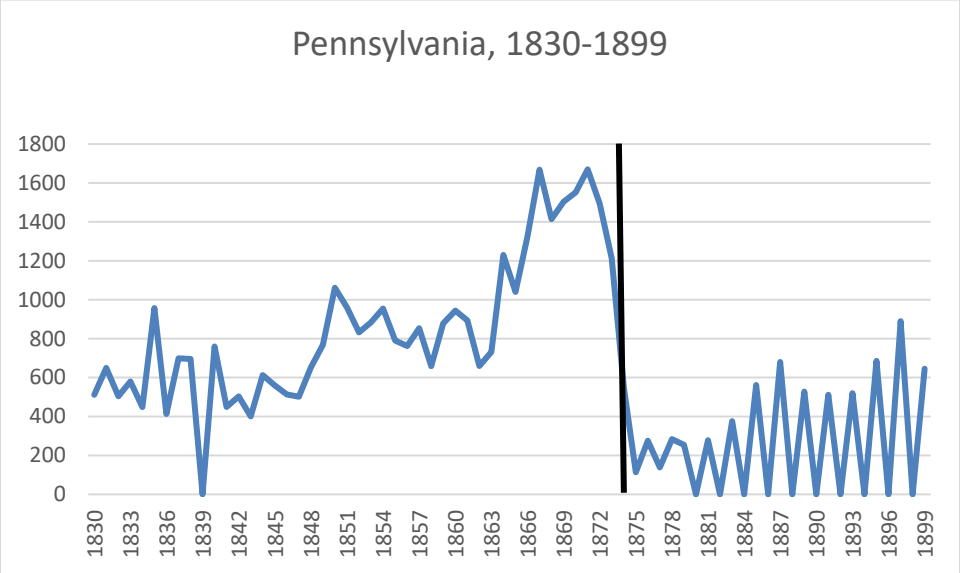
Figure 1. Comparison of Dates of Constitutional Mandates for General Laws with Dates of Bans on Special Corporate Charters, by States



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

Figure 2. Legislative Output in Indiana and Pennsylvania
(Number of pages in session laws in each year)





Notes and Sources: The page numbers come from the state session laws as listed on Heinonline, https://heinonline.org/HOL/Index?index=sslusstate&collection=ssl. Whenever a legislative session ran over two years, the page numbers were entered for the year in which the session started. Vertical lines represent the date at which the state adopted a constitution provisions mandating general laws.

Table 1. Timing of Constitutional Mandates for General Laws and Bans on Special Corporate Charters by Region and Year of Statehood

State	Year of Statehood	Year of Ban on Special Charters	Year of General Law Mandate
New England states admitted before 1851			
New Hampshire	1776	--	--
Rhode Island	1776	--	--
Connecticut	1788	--	--
Massachusetts	1788	--	--
Vermont	1791	1913	--
Maine	1820	1875	1875
Middle Atlantic states admitted before 1851			
New York	1776	1846	1874
Maryland	1776	1851	1864
Pennsylvania	1787	1874	1874
New Jersey	1787	1875	1875
Delaware	1787	1897	--
Midwestern states admitted before 1851			
Ohio	1803	1851	--
Indiana	1816	1851	1851
Illinois	1818	1848	1870
Missouri	1821	1865	1865
Michigan	1837	1850	1909
Iowa	1846	1846	1857
Wisconsin	1848	1848	1870
Western states admitted before 1851			
California	1850	1849	1879
Southern states admitted before 1851			
South Carolina	1776	1896	1896
Virginia	1776	1902	1902
Georgia	1788	1890	--
North Carolina	1789	1868	1916
Kentucky	1792	1891	1891
Tennessee	1796	1870	1870
Louisiana	1812	1879	1878
Mississippi	1817	1890	1890
Alabama	1819	1901	1901
Arkansas	1836	1868	1874
Texas	1845	1876	1873
Florida	1845	1900	1868

States admitted after 1851			
Minnesota	1858	1857	1881
Oregon	1859	1857	1857
Kansas	1861	1859	1859
West Virginia	1863	1863	1872
Nevada	1864	1864	1864
Nebraska	1867	1864	1875
Colorado	1876	1876	1876
Montana	1889	1889	1889
North Dakota	1889	1889	1889
South Dakota	1889	1889	1889
Washington	1889	1889	1889
Idaho	1890	1890	1890
Wyoming	1890	1889	1889
Utah	1896	1895	1895
Oklahoma	1907	1907	1907
Arizona	1912	1912	1912
New Mexico	1912	1911	1911

Notes and Sources: See Figure 1.

Table 2. Change in Legislative Output for States in the United States in 1851
(pages per year in the session laws)

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

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