On the Nature of Limits in the Concept of Limited Government

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This paper was prepared for the “Regulation and Rule of Law Workshop” at the Hoover Institution on March 10. 2017. It is very preliminary, rough in spots, and probably contains too many tables and details. I erred on too much detail, rather than too little and I hope I have articulated the argument sufficiently. Please do not circulate or post this version of the paper.

Google "limited government" and you get a wide and wild variety of definitions. "Enumerated powers" and "checks and balances" are two phrases that appear often, as is the notion that limited government depends on a constitution that spells out the limits. Written constitutions, however, are often not worth the paper they are printed on. What makes the limits in a constitution work? Or perhaps a better question is where do limits on government actually come from and what social, political, and economic dynamics sustain the limits? That is the question this paper attempts to answer in the specific historical context of the United States in the 19th century.

I do not mean to imply that anyone ever believed that all effective limits on government must be written in a constitution. Riker and Weingast's work on the importance of federalism, both as a limit on national and state governments, is influential and widely recognized. The national government is limited by the presence and powers of the states, and state governments are limited both by the national government and competition between the states. It is not just the Article I, Section 10 prohibitions on the functions states can perform that constitute the limits on state governments. While this paper adds to those conceptual ideas, it nonetheless makes a conceptual contribution of its own. The Riker and Weingast points about the limits that federalism generate depend on political interactions and political mechanisms. I consider how economic forces limit governments and, in particular, how a specific set of economic forces were turned loose in by changes to state constitutions beginning in a widely shared way in the 1840s.

The paper makes two contributions. One is to extend our understanding of the limits on government that developed in the 19th century United States. Like federalism, these limits derive from constitutional provisions, but are themselves not apparent in constitutional texts. When states moved to require general laws for incorporation of businesses, cities, and laws of many other types they changed the balance of how economic and political forces interacted. The changes not only led to a more dynamic economy, they led to new limits on the ability of governments at the national and state level to manipulate the economy for political purposes.

The other contribution brings a more critical stance to the old, old idea that modern economic development is the result of secure property rights, limited government, and the rule of law. All three of these are outcomes, not institutions, and despite having established all three conditions by 1800, the United States witnessed a series political economy disasters over the next 60 years. There were clear and egregious political manipulations of economic functions for political purposes, particularly in banking at the state level. Eight states and the territory of Florida defaulted on their bonded debts in 1841 and 1842, and five of the states ultimately repudiated all or part of their obligations. Several other states, like New York and Alabama, narrowly avoided default. Not least, in 1860, a civil war engulfed the entire country. Since we know how the story ends, these episodes seem to be bumps in the road to modern economic and political development. But what if they were not just bumps but the result of the political and economic institutions (not outcomes) actually in place in 1800? What if the "classic institutions" that secured property rights, limited government, and rule of law as constituted in 1800 were not, by themselves, sufficient to sustain modern development? In that case, an additional set of institutions must have been put in place sometime in the 19th century to ensure that development could and would be sustained. That is the case I outline here.

The central idea is that the constitutional structures that limited government in the early state constitutions and the second national constitution of 1787, were not sufficient to sustain modern development until an auxiliary set of institutions set of complementary institutions was put in place in the state constitutions in the 1840s that created both more effective limits on government at the national and state levels, and enabled modern development to proceed. The states in the United States began to mobilize the economy to discipline the polity in the 1840s. That required, however, that legislatures be limited in their ability to manipulate the economy. This was not accomplished by the strictures placed on the national and state governments in their 18th century constitutions, but by the implementation of constitutional restrictions and subsequently laws that were "general" in the terms of the time. Legislatures were restricted to pass laws that "treated everyone the same:" a requirement that rules be impersonal. Even though impersonal rules were not universal, they did not apply equally to women, slaves, and children, they did apply in rough equality to businesses, towns, churches, schools, and free white males. The new rules unleashed waves of economic competition and entry, Schumpeterian creatived destruction, that fundamentally altered the environment facing the political system. This is a history and analysis in which the endogeneity of politics and economics is not a problem to be avoided or accounted for, it is the very essence of how limits on governments worked after 1840 at both the state and national level in the United States.

I am acutely aware that, as my friend and Harvard man Dick Sylla once told me, this is not the history he learned at Harvard. The argument in this paper has to carry a historical burden. We learn a national history in the United States, but all the action described here occurred at the state level and so flies under the radar of even those educated at Harvard (even history majors). Fortunately, the history is hiding in plain sight. None of the historical assertions made in this paper are difficult to document, neither the economic events or the changes in actual institutions, for they occurred in extremely visible constitutional conventions and legislative actions. I will, however, rely on work that others and I have done for the documentation.[1]

What needs to be shown first is why Americans adopted the initial constitutional provisions that they did, the provision that created "classic limits" on government. Second, to show that the classic provisions they adopted did not stop legislatures from manipulating the economy for political purposes, what I have called "systematic corruption" (Wallis, 2006). The original constitutional provisions on separation of powers and checks and balances were intended to eliminate systematic corruption, they did not. Third, to show how actions at the state level led to economic disasters. Fourth, how the states responded to the disasters by moving decisively towards general laws for many activities the states promoted and regulated. Fifth, how those innovations spread throughout the states over the 19th century. And finally, to show how the innovations eliminated the kind of disasters that occurred between 1790 and 1860.

II Systematic Corruption

Interpreting the causes of an event as complicated as the American War of Independence is fraught with difficulties. A major realignment in American history turned on Bernard Bailyn's interpretation of the causes of the American Revolution in *The Ideological Origins of the American Revolution* (1967). At the time, the revolutionaries feared that corruption of the British constitution would lead to "tyranny and slavery." They voiced their concerns loudly and

[1]Naomi Lamoreaux and I have been working on a paper collecting the historical perspective in a coherent framework "States, not Nation: The Sources of Political and Economic Development in the United States."

clearly. The implausibility of such claims on their face seemed to later generations of historians evidence that these arguments were either propaganda or *ex post* justifications for their actions. The founding generation owned slaves as chattel property, how could they think the British were about to enslave them? What Bailyn urged was to interpret what "tyranny and slavery" actually meant to British citizens in the 18th century, both in Europe and North America, not to Americans in the late 19th and 20th century.

The literature on Republican thought is enormous, but I will boil it down to just a few sentences.[2] Whig or commonwealth thinkers in early 18th century Britain believed in mixed government, where the elements of society were represented in a balanced form through the constitution. In Britain the elements were King, Lords, and Commons. The independence of the three elements was the primary guarantee of individual liberties and, more accurately, against the corruption of the constitutional arrangements. As the 18th century unfolded, the extraordinary demands on British government finances caused by the ongoing wars with France required closer coordination of the King and Parliament. The House of Commons had gained greater control over fiscal resources in the settlement of the Glorious Revolution of 1688, and the need for a close relationship between the King and Commons required building a legislative coalition in the Commons. Critics decried the use of economic manipulation of legislators to build and secure the coalition through the granting of economic privileges, such as ownership of stock in the Bank

[2]Although Republican ideas have a long history, the modern literature begins with Robbins (1959) *Commonwealthmen*, which then emerged in two streams. One about the United States, Bailyn (1967), Wood (1969), Banning (1978) McCoy (1980), Murrin (1994), and the literature reviews by Shallope (1972 and 1982). The other tracing European origins, Pocock (1975, as well as 1987, 1993, and 1985), Skinner (1978a, 1978b, and 1998), and much much more.

of England, ownership of government debt, offices in the government, royal pensions, and similar economic emoluments. The fear at the time was that the King's ministers were manipulating the economic interests of Parliament to obtain a majority. Namier and Brook (1964) show that a majority of the members of the Commons indeed had economic attachment to such a coalition of interests. Namier and Brook nonetheless maintained that the Commons remained essentially ungovernable. Tyranny and slavery – being governed by a coalition to which one had not given consent (Skinner, 1998) – would inevitably follow. I have termed this "systematic corruption," the deliberate manipulation of economic interests to gain control of the polity. Systematic corruption is politics corrupting economics. It was not venal corruption, the abuse of public office for private gain (Wallis, 2006).

The irony is that British subjects, both in England and in North America, fervently believed that the British Constitution, unwritten as it was, was the best constitution ever invented. They did not fear how it worked, they feared that it was being corrupted by events attendent on the rise of the British military-industrial complex of the 18^{th} century. They did not fear what was happening, they feared what would happen next. When the Americans revolted it was not because they were tyrannized or enslaved, but they feared they might be. After two decades of trying to sort out their own constitutional arrangements as an independent society, George Washington in his farewell address, identified the dangers to the American Republic as foreign entanglements, geographic expansion, and organized economic and political interests. Washington explicitly feared corporations and political parties: attempt by a faction to gain control over the entire political system through the deliberate manipulation of economic rents. He feared systematic corruption, not venal corruption.

The logic of systematic corruption was clearly laid out by Madison and Hamilton in a number of places in the Federalist Papers, most famously in Federalist #10.[3] The fear was that a faction would manipulate the interests of enough people to obtain a majority and control the government. Madison argued that an extended Republic, unlike the small republic of Montesqueiu, would prevent the coordination of a factional coalition. Lurking in the background, and at times the foreground, was the fear that inter-factional competition could lead to civil war. Madison turned out to be famously wrong. By the early 1790s the Federalist party managed to gain control of all three branches of government and Madison and Jefferson were forced, against their own ideals, to form a competing political party, the Democratic-Republicans.

It is beyond dispute that the institutional arrangements embedded in the Constitution that Madison and Hamilton defended created ongoing political competition in a democratic system of elections. No party or faction was able to seize control of the national government and manipulate economic privileges on a scale substantial enough to return a durable majority to one party. Nonetheless, we should not be persuaded that the arrangements at the national level somehow "worked" to promote modern development. The national government was wracked by an ongoing series of crises, both small and large, whenever attempts were made by one group, party, or region to use the positive agency of the national government to promote sectional interests or economic growth more broadly. Most famous and well known were the sectional

[3]North, Wallis, and Weingast (2009) build up these republican insights into a theory of how the societies Madison, Hamilton, and the republican thinkers described. They call such societies "natural states," and they are societies where systematic corruption is the way that governing coalitions are maintained and violence and civil was is limited.

crises that brought the national government to a halt: 1820 (Missouri), 1832 (Nullification), 1844 (Wilmont Proviso), 1854 (Kansas-Nebraska), and of course the onset of civil war in 1860 after the election of Lincoln. But a running series of conflicts over the public lands, internal improvements, and banking (to name the most prominent policy areas) proved incapable of resolution at the national level.

In all three areas the states filled in the gap. For public lands, western states pushed Congress to liberalize the public land law by lowering prices (1820), the minimum size purchase (several times), allowing pre-emption (generally in 1841), and finally homesteading (1862).[4] The national government chatered two banks, the First and Second Banks of the United States, both which proved to be political time bombs. By the time the second Bank's charter expired in 1836 there were over 600 state chartered banks, and the banking system managed well without a nationally chartered bank. In transportation, state and local governments spent an order of magnitude more on canals, roads, and railroads than the national government (Goodrich, 1960; Larson, 2001; Wallis, 2005). National expenditures were largely for rivers and harbors improvements, authorized in legislation that funded ten to fifteen small projects scattered across multiple states. In other words, something for everyone. The national government proved incapable of coordinating political support for a large project in a single state, like the Erie Canal.

It seems perfectly accurate to say that the institutional arrangments established in the national constitutions established a pattern of political interests and representation in a way that

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[4]Public land policy could only be changed at the national level. Feller's *Public Lands and Jacksonian Politics* is excellent on this history.

made it almost impossible for the national government to pursue active government policies, and thus produced limited government. Nonetheless, government in the early United States was not *laissez-faire*. The important governments for pursuing active policies that promoted economic development and other goals were the state governments, as Guy Callender argued in his classic 1902 paper in the *QJE*. Callendar's conclusions were reaffirmed by an intense study of early 19th century political economy in the 1950s and 1960s, in a research effort directed by the Committee on Research in Economic History.[5] State governments in almost every state were actively involved in the economy. The studies documented the extensive activities of states, but not in terms of systematic corruption (the work was before Bailyn), nor did it follow in detail how and why states withdrew from active promotion.[6]

This paper focuses attention on the series of constitutional changes that occurred between 1842 and 1851 in response to the state default crises that began in 1841. States already had classis institutions that guaranteed secure property rights, rule of law, and inclusive democracy. Those institutions were not capable of preventing states from seriously manipulating the economy for political ends. There is nothing in an electoral democracy, no matter how inclusive and egalitarian, that prevents a political faction from manipulating the economy for political ends. The constitutional changes made in the 1840s had nothing to do with elections, suffrage, or representation, they were changes intended to limit the discretion of legislatures on a number

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[5]See Hartz (1948), Handlin and Handlin (1969), Benson (1961), and Goodrich (1960). Arthur Cole, one of the founders of CREH, has a historical review with a bibliography in the *Journal of Economic History* in 1970.

[6]Goodrich has a nice article "The Revulsion Against Internal Improvements," (1950) which argues that some states stopped investments in internal improvements after the 1840s, many did not. He argues that the revulsion was apparent, not real.

of different dimensions. The critical dimension was forcing legislature to act in ways that applied equally to everyone, what were termed general laws at the time. This significantly limited the ability of legislatures and states to manipulate economic interests and, through a logic I will explore later, turned out to be largely self-enforcing.

All the bad outcomes that occurred between 1790 and 1840 when states manipulated the economy for political gain occurred under classic constitutional limits on government that we identify today: mixed goverment, checks and balances, secure private property rights, rule of law, and inclusive representative political institutions. It is easier to see with concrete examples. I'll start with banks, and move in next the section to a specific state, Indiana.

New York has the most well known and infamous history of banking. The state began chatering banks in the 1780s. A political faction, which became known as the Albany Regency, whose party was initially known as the "Bucktails," and eventually became the Democratic party in New York, developed a sophisticated political machine that used bank chartering to cement their coalition. The 1820 constitution contained a provision requiring a two-thirds majority to approve a bank charter. Since the Bucktail faction was the only party that was able to approach the two-thirds proportion, they were the only party that was able to grant charters and, symmetrically, they were capable of denying charters to banks proposed by other parties. After the Albany Regency consolidated control of the state government by agreeing to cooperate over the Erie Canal, obtaining a bank charter in New York required potential bankers to support the Bucktails.[7] It was not until the Panic of 1837 and the loss of political control by the now

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[7]Bodenhorn (2000, 2003, and particularly 2006) provides a history of 19th century banking and in his 2006 paper the most recent investigation into New York in the 1830s. Benson (1961) and Hofstadter (1969) also look into New York politics in the 1830s.

Democrats, that a coalition of Whigs and Locofocos (who were anti-bank Democrats) was able to gain control of the legislature and pass the Free Banking Act of 1838. The Act enabled anyone to obtain a bank charter through an administrative procedure and opened access into banking in New York.

New York was far from the only state that was deeply involved in banking, it is simply the most studied. Before 1812 it was almost impossible for anyone but a Federalist to obtain a bank charter in Massachusetts. Lu and Wallis (2017) show that before 1812, 80 percent on the bank presidents and directors that can be identified in the more than 20 banks in Massachusetts were, at some time in their lives, a Federalist legislator. In Pennsylvania, the state limited access to bank charters to raise revenues through the sale of bank charters (Schwartz, 1987). In Maryland, the state agreed to limit the number of banks in Baltimore for twenty years, in return for which the banks built a road from Baltimore into western Maryland (Wallis, Sylla, and Legler 1994). In Virginia, the state Internal Improvement Fund was a major investor in banks and derived significant revenues from dividends (Goodrich, 1960). In South Carolina the state establish a large state bank which dealt with banking state wide, while it allowed smaller private banks in Charleston dealing with commerce (Wallis, Sylla, and Legler, 1994). In Alabama the state chartered and owned a significant stock in the State Bank, and when the Bank got into difficulty after 1837 almost bankrupted the state to bail out the bank (Brantley, 1961). The first acts of the legislature in Arkansas in 1837 were to charter two banks, both of which received state bonds (Worley, 1950) and became deeply involved in state politics. The Arkansas constitution still forbids the state legislature from ever repaying the “Holford Bonds” issued in 1837 and 1838. Indiana created a monopoly state owned bank with branches (Harding, 1985).

Illinois, Kentucky, Tennessee and Missouri also created state owned banks with varying degrees of success and longevity (Abernethy, 1927). Louisiana began creating banks in the 1820s. The state invested in all of them by issuing bonds that were supposed to be serviced by the banks themselves, but were bonds of the State of Louisiana (Wallis, 2005). Mississippi intially had a single bank in which the state owned stock. In the 1830s in began chartering other banks and in 1837 gave the Union Bank of Mississippi $7 million in state bonds in exchange for nothing. The bank was supposed to service the bonds. The bank defaulted on the bonds in 1839 and the state eventually repudiated the bonds in 1842 (Bentley, 1978, Brough, nd., Kilbourne, 2000,).[8]

This is not to say that every one of these states carried systematic corruption to the extent of New York in the 1820s and 1830s, or the probability of systematic and venal corruption in Mississippi in the 1830s. It is to say, however, that in every one of these states there was the possibility of systematic corruption because the states were manipulating access to and/or actively investing banks. Some faction in every state was raising that alarm that banking policy as pursued by another faction was corrupt. Voters wanted states to undertake policies to improve the welfare of voters, particularly to increase the value of their land. Everywhere this meant that state governments became more involved in the economy, particularly in banks and canals. Their involvement was much more than any *laissez-faire* limits would have tolerated.

III. Indiana

Indiana offers insights into several aspects of state involvement in economic development

[8]For ante-bellum banking in general see Fenstermaker, 1965. For southern banking see Schweikart 1987, Green 1972, and Sparks, 1932.

in the 19th century. Indiana history is particularly well studied and generations of graduate students and faculty at Indiana University have amassed a tremendous amount of detailed historical work.[9] As Indiana wrestled with whether it should or should not engage in internal improvement investments in the mid-1830s, the state generated a unique and extremely useful set of property tax assessments that we can use to track the economic impact of state policies. Indiana got burned badly in the crisis that developed after 1839, caused in part by Indiana itself, and in the default of 1841. Indiana adopted some of the strongest constitutiona provisions with respect to debt, corporations, internal improvement, and banks in its 1851 constitution. This section drills down into the Indiana history.[10] The next section takes the picture back to a state level view of constitutions and institutions throughout the country.

When Indiana entered the Union in 1816, its population was concentrated in a narrow band of counties along the Ohio river.[11] Indians still controlled roughly two-thirds of the state. It was not until the "New Purchase" of 1818, a treaty signed at St. Mary's Ohio, that the Delaware, Weas, Kickapoos, Pottawattomie, and Miami tribes agreed to cede territory and withdraw to the north side of the Wabash river, land the tribes would continue to hold until another round of cessions and treaties in the late 1820s and early 1830s. The Wabash river formed the southern portion of the boundary between Indiana and Illinois. Below Terre Haute,

[9]The tradition goes back to Logan Esarey (1912 and 1918), Carmony (1998), and many students. I have included a partial bibliography of work on Internal Improvements in Indiana in a separate section of the references.

[10]This section is based on my paper "The Property Tax as a Coordinating Device: Indiana's Mammoth Internal Improvement System." Wallis (2003).

[11]The geography of Indiana counties is recounted in great detail in Fence and Armstrong, *Indiana Boundaries*, 1933. I have also relied on the maps in Esarey, *A History of Indiana*, 1918.

the river bends to the east and enters completely into Indiana (Figure 1 map). Migrants to western Indiana settled the lower stretch of the Wabash Valley in the late 1810s and 1820s. From Terre Haute, the river runs north to Lafayette, where it takes a long bend to the east, traversing the state and passing about 30 miles southwest of Fort Wayne. A short portage connects the Wabash with the Maumee river at Fort Wayne. The Maumee runs northeast, through the northwest corner of Ohio, and into Lake Erie. The Wabash held out the hope of an all water route from the Ohio river to Lake Erie, offering cheap an reliable transportation to much of central Indiana. The Wabash was the highway along which settlers moved into the western and then northern portions of the state, even as it marked the northern boundaries of settlement until the treaty reached at Tippecanoe in October of 1832 opened the northern portion of the state to settlement. Millions of acres of land in northern Indiana were first opened for settlement in the late 1820s and early 1830s, and their value as farm land depended directly on opening the Wabash and Erie route.

The Indiana story comes in two parts. The first part is how Indiana managed to come to a political agreement to build a canal system, in particular to fund the Wabash and Ohio Canal. Early settlement in Indiana was in the southern tier of counties along the Ohio river, and in the Whitewater Valley in the southeastern corner of the state and the lower Wabash Valley in the southwestern corner. The lands that became available in the 1820s and 1830s were not in these areas and, as a result, voters and taxpayers lived in areas that were already served by water transportation and would not benefit from building the Wabash and Ohio. As population moved north, the balance began to shift. Working out the sectoral compromise involved the creation of a new *ad valorem* property tax that would shift the expected burden of taxation away from the southern and valley counties to the northern counties.

The second part of the story describes how Indiana's finances came to such a perilous end in 1839 and later. The reason for the initial crisis had nothing to do with property taxes and land values, it was caused by the Morris Canal and Bank Company of New Jersey defaulting on obligations they had made to Indiana in 1837. The Morris Bank and taken five million in Indiana bonds on credit, promising to pay the state in installments of $500,000 every six months. In the summer of 1839, it became clear that the Bank would not be making the second 1839 installment, leaving the state with three and half million dollars in outstanding bonds for which they had never been paid but on which the were expected to pay interest. The state curtailed construction on the canals, land values which had risen in anticipation of the canals being completed fell, and the state found itself unable to service interest payments from property tax revenues.

Here is what happened. Advocates of the Wabash and Ohio had been working for years to get the state to begin construction. In 1827, the state's congressional delegation convinced Congress to donate over 500,000 acres of land to support the canal, with a five year time limit on the grant. In 1832, the state turned over the first shovel of soil in order to not to lose the grant, but construction did not move forward. Land sales everywhere in the country began booming in the early 1830s (Table 1, Column (1)). In 1833, Indiana taxes 4,329,000 acres of land. Between 1833 and 1836, public land sales in Indiana were 555,000, 674,000, 1,587,000, and 3,245,000 acres (column (2)). These were land sales from the public domain that the state could not tax for five years after it had been sold to a private individual.[12] In those five years more public land was sold in Indiana than was being taxed in 1833. In just four years from 1833 to 1836, the potential taxable land increased by over 6 million acres, more than doubling the property tax base, and none of this land would be taxable until 1838 or later. People began to appreciate the substantial fiscal boom that would occur when that land came on line and they began to explore whether the state could borrow money against the future revenues to build canals.

Before 1836, the Indiana property tax was a flat tax levied on acres of land. There were three quality classifications, and each classification paid a flat tax ($.80 per 100 acres of land for the best quality land, for example). The problem with an *ad valorem* tax politically was that the settled southern regions of the state rightly felt that their land would be more valuable and that an *ad valorem* tax would shift the tax burden towards those who would benefit less from the canal. In the winter of 1835, under the guidance of Governor Noble, who had initially opposed canals but had recently shifted his position, the legislature passed two bills. The first authorized the Auditor of the state to make a preliminary assessment of taxable wealth throughout the state. Wealth would comprise more than land, it would also include cash, buildings, watches and other taxables. The second authorized the Canal Board to lay out a series of possible routes for canals, turnpikes, and railroads. Both were to report back to the legislature's next session in the winter

[12]Negotiations between Ohio and the national government in 1803 resulted in an arrangment where Ohio agreed not to tax public land for five years after it was sold to a private individual, in return for which the national government promised to build a road to Ohio. The same provisions were extended to all the states admitted up to Michigan, which did not have the five year tax moratorium in its enabling act.

of 1836.[13]

There were two keys that enabled the *ad valorem* tax to coordinate the economic incentives that canal supporters wanted to affect. No matter how you feel about what Indiana did, and it will seem “corrupt” when I tell you the story, nonetheless everyone in Indiana who followed the legislative process understood that economic interests were being manipulated for political purposes. It was the substance of systematic corruption and people did oppose the canal plan for that reason.

First, the *ad valorem* tax included a wider tax base. The value of buildings and other wealth were higher in towns where the per acre land tax was minimal. Second, potential gains from lower transportation costs because of internal improvements would be capitalized in the value of land and would be captured by the *ad valorem* tax. The legislature met before the final returns from the Auditor were available, but in his message to the Legislature on December 8, 1835, Noble reported:

> The law of last session, providing for a change in our revenue system, does not require the clerks of the several counties to report the returns of the assessors to the Auditor of State before the first day of December, consequently I am not able to present you with a view of the result of the valuations. From the best information I can obtain, however, it is believed that the disparity anticipated in the value of real estate in the old and new districts of the state, does not exist. If, upon a comparison of all the returns, this opinion shall found to be correct, there can be but little reason to question the policy or justice of a change [to *ad valorem* taxation].[14]

Unlike Noble, we can compare the returns of the State Auditor for actual taxes collected in 1834 and estimates that could be collected1835 under the *ad valorem* assessments to ascertain

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[13]Legislative sessions ran from the fall to winter, so what I am calling the Legislative Session of 1836 actually began in the fall of 1835.

[14]Riker and Thornbrough, *Noble Papers*, p. 407.

the amount of property tax that would be paid by each county under both forms of taxation. The results were surprising (they are reported by county in appendix Table A1). In both years the state expected to receive roughly $25,000 from the property tax on land, so we can compare the amount of tax paid by each county directly under both regimes. Of the 55 counties for which complete information is available in both years, 39 paid less tax under the *ad valorem* scheme than the old system.[15] *Ad valorem* taxes were less than 80 percent of per acre taxes in 28 counties, while in only 12 counties were *ad valorem* taxes more than 120 percent of per acre taxes. The figures in the table and in the analysis, focus on the value of land and improvements, excluding town lots and personal property.[16]

Noble noted the reason why so many counties paid lower taxes: "No good and satisfactory reason can be assigned why capital invested in town property, bank stock, merchandise or money at interest, should not be subject to the same rate of taxation as an equal amount invested in land."[17] The numerical majority of land owners in Indiana were farmers and the per acre tax fell largely on their land. *Ad valorem* taxation enabled to the state to tax the value of town lands and other personal property, and shift some of the tax burden away from agricultural land. Agricultural land in the older southern counties did not experience higher

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[15]Fifteen new counties were created in 1835, and these are not included in the comparison. Neither are the seven counties created between 1836 and 1844. Of the existing counties in existence in 1834, fifteen reported incomplete information in 1834 or 1835.

[16]It seems natural to include the value of town lots in the value of land, but a problem arises when we compare per acre valuations across counties. In most Indiana counties, the value of town lots per acre of land fell in the late 1830s as the amount of land subject to taxation rose. This has nothing to do with the actual value of the town lots, it is a result driven by acreage. Since the results would only be stronger if town lots were included, I have chosen to leave them out.

[17]Riker and Thornbrough, *Noble Papers,* p. 407.

taxes as a result of the shift to *ad valorem* taxation and southern opposition to the canal bill was substantially muted as a result. Indiana was not a heavily urbanized state in 1835, and the small number of town residents bore a larger share of the tax burden under the new tax system. The adoption of the *ad valorem* tax, however, was not the result of tyranny of the majority, other forces were also at work.

Indiana towns were located at breaks in the transportation network. When the state planned the system of internal improvements, it chose routes that followed existing rivers (a necessity for canals) and ran between existing population centers. To do otherwise made no sense. Although farmers along canal and railroad routes expected to benefit from lower transportation costs, the big winners from internal improvements, and therefore the most vocal promoters, were the mercantile interests in the towns located in the interstices of the system. Appendix Table A1 also includes the share of all land value in the county in town lots in 1835, and a variable "terminus" indicating whether two or more transportation lines (actual or proposed) intersected within the county. The table is sorted by the ratio of taxes paid under the per acre tax to taxes paid under the *ad valorem* tax. Counties whose taxes rose under the *ad valorem* system were much more likely to have a high share of town property in their total assessed land value, and they were more likely to be terminus counties.

Table 2 presents the results of bivariate regressions where the dependent variable is the ratio of *ad valorem* taxes proposed in 1835 to per acre taxes levied in 1834. The tax ratio is regressed on a dummy variable for "internal improvement" counties (all counties including a canal, railroad, or turnpike proposed in the Mammoth bill), a dummy for "terminus" counties (all counties including an intersection of two transportation routes, including the Ohio River), "town lands" (the value of town lands as a share of total land value in each county), and "latitude" (the latitude of the central point of each county). Standard errors are reported below each coefficient estimate.[18]

The results clearly indicate counties that ultimately received a canal or railroad paid higher taxes. On average, *ad valorem* taxes in internal improvement counties were 33 percent higher than in non-internal improvement counties. Terminus counties, including all of Indiana's larger towns, paid *ad valorem* taxes that were 73 percent higher than non-terminus counties. This result is confirmed by the estimates for town lots. An increase in the share of town land in the total land value in a county of one percentage point increased that counties *ad valorem* taxes by 2.5 percentage points relative to other counties. Finally, the estimates for latitude address directly the concerns of southern counties, who felt they would pay higher taxes under the *ad valorem* scheme. Instead, northern counties paid slightly higher *ad valorem* taxes than southern counties relative to the per acre tax.

The regression estimates only emphasize what the eye sees in the raw data. The dozen or so counties that paid substantially higher *ad valorem* taxes were the primary beneficiaries of internal improvement investment. Had the shift in revenue structure not been tied to the internal improvement program, the towns would have adamantly opposed the change. Towns stood to gain the most from canals and railroads, and they were quite willing to exchange higher taxes for the benefits they saw just over the horizon.

In the legislative session that followed, Indiana again enacted two bills. One

[18]There are no sampling issues in these regressions, the entire universe of Indiana counties is represented (barring missing information on a county), so the standard errors provide information more on the fit of the variables rather than their statistical significance.

implemented the *ad valorem* property tax and the other authorized the Canal Fund to borrow up to $10,000,000 in five percent bonds to finance a network of canals, turnpikes, and railroads (as indicated on the map in Figure 1). This was the "Mammoth System of Internal Improvement" as the bill and the system came to be known. The new property tax was levied and a complete assessment of property values was made in 1837. Borrowing and construction on the Mammoth System began in late 1836, with construction concentrating on the Wabash and Ohio and a small canal serving the Whitewater Valley in the southeastern corner of the state.

We can compare the property values from the 1835 prospective assessment with the 1837 actual assessment to see what happened to property values in counties without improvements, counties with internal improvements, and counties where two transportation routes crossed (terminus counties). Table 3 presents a difference in difference estimate for 1835 and 1837. The first row of the table compares the change in assessed value per acre across all counties in the state, which increased by $3.90 (assessed value per acre was $5.82 in 1835 and rose to $9.37 in 1837). Land values rose by $4.55 an acre in internal improvement counties and $2.74 in non-improvement counties, and by $8.29 an acre in terminus counties and $2.93 an acre in non-terminus counties (which included all the non-improvement counties and some of the improvement counties). The difference in difference was $1.81 for improvement counties, that is the increase in the value of land attributable to being in a county with a proposed improvement, and $5.36 an acre in terminus counties. Being in a terminus county roughly doubled the assessed value of land (average assessed land value per acre per year when they were reported are given in Table 1 colmun (6) and (7)). Governor Noble was right about shifting the burden of taxation away from the southern regions, away from farmers in general, and onto towns in the north.

The lower panel of the table shows the difference in land values in counties where the *ad valorem* revenues were 1.2 times the flat rate revenues. $4.91, and the difference in the counties where *ad valorem* revenues were less than .8 times the flat rate revenues, i.e. where property tax revenues were lower under the *ad valorem* tax, was only $2.99. Assessed property values rose in every county in Indiana between 1835 and 1837, but they rose much faster in improvement counties and taxes where *ad valorem* taxes were higher than the old flat rate tax.

In 1839, as discussed earlier, the Morris Bank defaulted on their obligation to pay Indiana $500,000 every six months. In the summer and fall of 1839, construction slowed on the canals and eventually came to a halt as the state exhausted its sources of funds, even as the state continued to pay interest on bonds that it had not received. Property values began to fall. Property was reassessed in each year but the state did not publish county level figures in each year, published property tax assessments by county are available in 1842. The second column of Table 3 calculates difference in difference estimates comparing 1837 to 1842. The decrease in property values statewide is $4.21, in internal improvement counties $5.49, in non-improvement counties $2.80 and in terminus counties $9.06. More than all of the increase in assessed value associated with internal improvements was wiped out between 1837 and 1842. Indiana defaulted on its interest payments in 1841. We have more complete data for 1842. Table 1 shows that acres of taxable land rose from 6,186,000 in 1837 to 13,646,000 in 1842, more than doubling as anticipated in 1836 (column (3)). Value per acre rose from $5.41 in 1835, to $9.87 in 1837, and then fell back to $5.37 on 1842. Total property tax revenues in 1842 were $393,248 (column (8)). If land values had remained at $9.87 revenues would have been roughly $700,000 and

Indiana would have been able to service the debt on all $12 million in bonds outstanding.[19]

Indiana defaulted in 1841 because the value of land in Indiana fell. Indiana had used changes in the taxation of land to coordinate a political solution to the impasse that prevented the state from realizing the value of millions of acres of land that were not accessible to water transportation and therefore not suitable for commercial agriculture. There was nothing wrong with the economics of Indiana's logic or the decision they made in 1836. Had land values stayed near their 1837 values Indiana would not have defaulted. The clincher to the argument is the Whitewater Valley. The Whitewater Canal was purchased from the state by a private investor from Cincinnati who completed construction on the canal. Property values in the Whitewater Valley did not fall between 1837 and 1842. Had Indiana been able to complete its Mammoth System of canals, they would not have defaulted.

How did Indiana react?

IV. Constitutional Changes, 1842-1851

Indiana's situation in 1841 was not unique. Indiana, Illinois, Michigan, Pennsylvania, Maryland, Louisiana, Mississippi, Arkansas and the Terrritory of Florida all defaulted on their bonded debts in 1841 or 1842. Mississippi, Arkansas, Michigan, Louisiana, and Florida eventually repudiated all or part of their debts. Indiana and Illinois worked out an arrangement with their bondholders. Indiana agreed to pay half the principle on their bonds and the bond holders were given direct ownership of the Wabash and Ohio canal in compensation. The canal was completed but never profitable because of the competition from railroads.

[19] Indiana also had $2 million in bonds outstanding that it had invested in the State Bank.

The details in every state were different, the Indiana story contains unique as well as common characteristics with the other defaulting states (and near defaulters: Alabama, New York, and Ohio). The clearest common factor was borrowing. States that didn't borrow didn't default, and of the top 10 borrowers measured in per capita debt only Alabama did not default. What makes Indiana interesting, aside from the data, is that in 1835 before it began large scale borrowing for canals, it possessed all of the institutional feature that an advocate of the Washington Consensus prescription for development would advise countries to adopt. Doug North at his most neo-classical could not have envisioned institutions that would secure property rights, limit government, and ensure rule of law better than Indiana's. There were no limits on the national government that did not exist in Indiana (or the other states). Yet, Indiana made a disastrous set of collective decisions. There was and is nothing about "democracy" that prevents voters, taxpayers, legislators, and their governments from making mistakes like these.

Unlike New York before 1836, or Massachusetts before 1812, or Mississippi and Arkansas in 1837, there is no evidence than any part of the process in Indiana was "corrupt" in any way. The decision in Indiana was the result of a transparent public debate that can be easily followed in the newspapers and public documents such as the Governor's Messages and the Auditor's reports. While I have no doubt that the typical voter in Indiana in 1836 could not articulate the political compromise that enable the Mammoth System to be authorized in 1836, I also have no doubt that people understood more or less what was going on. They were too optimistic *ex ante*, but their optimism was only revealed to be unwarranted *ex post*. Nonetheless, what Indiana had done in 1836 was a textbook example of the political dynamics of systematic corruption: manipulate economic interests to create and sustain a political coalition.

In order to understand how the states responded to the default crisis, we need to draw on the simple conceptual framework laid out in Wallis (2005). Whether we are talking about banks or canals, the infrastructure serves a small minority of the voters and taxpayers, perhaps a third at best. Simple majority rule will prevent such a project from being funded out of general tax revenues, since a majority of voters will bear costs for which they receive no gain. Likewise, it is impossible to canals to every county or town, so the state cannot build a "small" canal to every county. The state may be able to fund a small amount of education in every county and benefit a majority of voters and/or counties, call that "something for everyone." Neither of these options works well for banks or canals. A third option was pursued by Indiana, what we can call "benefit taxation." Indiana authorized $10 million in new bonds 1836. The tax rates, mils of assessed value, was the same everywhere in the state, but the affect of the canals on assessed value was different, as we saw in the previous section. Under the right circumstances, a majority of voters could be willing to vote for legislation approving bonds for canal construction, even if the canal only benefitted a minority of the population.[20]

The fourth option had several possible dimensions. In general we can call it taxless finance, a proposal where taxpayers and voters undertake a contingent liability in return for a perceived benefit. For example, Pennsylvania and Maryland did not raise taxes when they began borrowing to build their canals. Instead, they borrowed enough money to service their bonds until expected canal revenues began to flow into the state Treasury. Unfortunately, the flow of

[20]The "right" circumstance had to be that voters in general thought that the canal would return some money to the Treasury. All voters expected their taxes to rise, in different amounts. As long as expected revenues offset the contingent taxes that voters and taxpayers in the counties where canals did not go, then a majority could support the legislation. That is what happened in Indiana.

canal tolls was not enough to service the bonds, and ultimately both Pennsylvania and Maryland had to institute and raise property taxes to service their bonds.[21] Borrowing against future revenues enabled states to fund current expenditures without raising taxes, hence taxless finance.

Another tried and true method of taxless finance was to give a private group monopoly rents in return for making the investment. The Charles River Bridge was an arrangement where Massachusetts gave a group of investors an implied monopoly on a bridge across the Charles River. If the investors did not build the bridge, they could not exploit their monopoly. Famously, Massachusetts later chartered another bridge company. When the Charles River Bridge Company sued to stop the new bridge, the Supreme Court of the United States ruled in favor of Massachusetts on a technicality. Had the original charter given the Charles River Bridge Company a clear exclusive monopoly, the Supreme Court would have upheld it.[22] The were many cases of exclusive privileges granted in special acts of incorporation. This was another form of taxless finance.

The third form was literally to grant tax exemptions or reductions to groups in return for providing a public service or infrastructure investments. Railroads, for example, were often given exemptions from property taxes or preferential tax treatment.

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[21]This history is told in a number of places. Wallis, Sylla, and Grinath 2003 provides a concise summary. For Pennsylvania see Hartz and for Maryland see ___.

[22]Justice Taney declared that the Court must construe corporate charters in the narrowest possible terms. The Charles River Bridge's charter did not include any explicit grant of monopoly or "words that even relate[d] to another bridge, or to the diminution of their tolls." Nor could the grant of a monopoly have been implied. The rights of the community to "safe, convenient, and cheap ways for the transportation of produce ... shall not be construed to have been surrendered or diminished by the state; unless it shall appear by plain words, that it was intended to be done." *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837) at 549-50

The problem with taxless finance from a political economy standpoint is that voters, taxpayers, and perhaps legislators may not perceive the full cost of the taxless finance scheme. People may well believe that they are going to get a canal for free, only to find that the canal charges monopoly tolls or, as in Pennsylvania and Maryland, when canal tolls fail to materialize that their taxes must go up *ex post* to pay for a canal they thought would be free *ex ante*. There can be no doubt that democracies do not do well at making decision where benefits are easy to see and costs are hard to see (or vice versa). Taxless finance schemes were tools easily used by factions to systematically corrupt, to manipulate economic interests to consolidate a political coalition.

Eleven existing states wrote new constitutions between 1842 and 1851 (Louisiana wrote two), shown in Table 5. In addition, Iowa, Wisconsin, California, and Florida wrote their first constitutions which I will call "new" states (Iowa wrote a second constitution in 1857 as well). Table 5 gives the dates of the constitutions and whether the new constitution contained provisions with respect to debt, corporations, and taxation. The details of the provisions are given in tables 6, 6, and 8.

The debt crises motivated the new constitutions. Every state but Virginia contained a provision for state debts. The most common debt provision was a procedural restriction which required the legislature to borrow only for a single purpose, to raise taxes immediately by an amount sufficient to service the debt, and to approve the higher taxes by a majority of voters in a referendum. States could only borrow if voters were willing to raise taxes immediately. This is the origin of the bond referendum in the United States, now common in every state, as well as in local governments. Eight of the states adopted a procedural restruction, Indiana and Ohio banned borrowing for internal improvements completely, only Virigina had no provision for debt (Table 6). Three of the new state constitutions included a procedural debt restriction, Florida did not.

Eight of the states required that the legislature pass general laws for incorporation of business (Table 7), three of the new states did so (again, Florida was the exception). Seven states prohibited special acts of incorporation for any purpose, as did two new states. Six states prohibited state investment in private corporations, Illinois only prohibited investment in banks, and all four of the new constitutions prohibited state investments in private corporations. Three states banned banks altogether, and six states required a general incorporation act for banking (free banking), in four the general banking act had to be approved by voters.

Six states required uniform rules for taxation, a general rule for taxation, and three of the new states required uniform rules for taxation (Table 8). Six states required taxation by value (*ad valorem)*, as well as one new state.

Two features of the tables stand out. The first is the relative uniformity of adoption. With the exception of Virginia and Florida most states attempt to do something explicitly about debt and corporations, and about half the states are changing the rules with respect to taxation. All of these provisions are, in the normal sense of the word, limits on government. The second feature is the lack of southern states in the tables. Virginia and Louisiana wrote new constitutions (Louisiana writes two, it is the champion constitution writer, it has had twelve to date.) Virginia does not address debt, corporations, or taxation; Louisiana addressed all of them. There is also only one New England state, Rhode Island. Unlike the southern states who reformed neither their constitutions or their laws, several New England states implemented general incorporation acts (or similar legislation) without a constitutional amendment. The reasons for these regional differences are almost completely unexplored in the literature.

I won't dwell on the 1840s constitutions beyond drawing the obvious connection that these provisions collectively were directed at preventing taxless finance schemes in the future. Indiana and Ohio banned borrowing for internal improvements, but no other state capped the amount that could be borrowed for any single purpose. Any amount could be borrowed as long as a tax increase sufficient to service the debt was approved by the voters. Mandatory general incoroporation and general taxation were needed to close off the other two taxless finance avenues.

Once these provisions were adopted, states quickly began to appreciate there benefits. After 1850, there was widespread adoption of debt restrictions and general incorporation laws. By 1900 almost all states had constitutional provisions regarding debt and incorporation, except the New England states which had legislation rather than constitutional provisions. General taxation spread, but then receded in the early 20th century.

The constitutional changes in the 1840s were movements towards general laws and away from special legislation. Special legislation applied to one group or a small number of groups, even to one person (which was often called a private bill, both at the state and national level). Voters and politicians quickly came to understand that changes made in the institutions governing the creation of business corporations could have similar salutary benefits in other areas of state policy. The ability to create special privileges through laws that treated different people differently could be used to systematically manipulate economic interests and through them the political process. Systematic corruption could operate in any area of state policy in which the legislature could create a rent for a specific individual or group. Systematic corruption was not limited to the creation of business corporations or even to corporations in general.

States began changing their constitutions to mandate general laws for lots of things that states did. Legislatures were required, where possible, to create general laws that applied equally to everyone. Beginning with Wisconsin in 1848, states required that general laws govern the formation and operation of counties and municipal governments. Local governments in the United States are creatures of the states. The structure of a local government polity, including how it taxes, spends, and borrows, is in principle completely within the control of the state government. Granting of local exemptions and privileges could be politically manipulated by state legislators for political ends. Mr. Taylor, a delegate to the 1908 constitutional convention of Michigan, highlights the similarities between municipal corporations and private corporations: "It seems to me that the successful operation of a municipal corporation is not vastly different from the successful operation of an industrial corporation."[23] General incorporation laws for counties and other local governments tied the hands of state legislatures in the same way that general incorporation acts for businesses corporations did.

Any law held the potential for creating special privileges, however. Beginning with Indiana in 1851, states began mandating that laws for a wide variety of purposes be "general" laws that applied equally to everyone, and often prohibiting special laws for those purposes. I will call these "general law provisions."[24] An easy example to grasp is divorce law. Individuals

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[23]*Proceedings and Debates of the Constitutional Convention of the State of Michigan, 1907-1908, Vol 1 and 2*, (Lansing: Wynkoop, Hallenbeck, Crawford, Co, 1908), II.818.

[24]The provision in the Indiana Constitution of 1851 had 17 sections, each specifying a type of law that had to general.

in early 19th century America were able to approach state legislature to have a divorce granted; the most famous case was Andrew Jackson's wife Rachel, who wanted to divorce her first husband, Lewis Robards, and eventually was granted the divorce by the Tennessee legislature, but not before she and Jackson were married.[25] Having a divorce granted by the legislature was an inherently political act. In 1851, Indiana prohibited "legislative" divorce and required the legislature to create a general law governing "judicial" divorce. After 1851, the divorce law in Indiana was the same for every married couple, even though there were undoubtedly cases where the courts discriminated in their enforcement of the law based on the social standing of the individuals involved. In practice as well as in theory, the law of divorce became an impersonal law that applied equally to everyone. The political logic of "general laws" applied to divorce in the same way that it applied to corporations.[26] If the legislature did not have discretion to treat people differently, then it would be impossible for a faction to manipulate the interests of individuals or groups through the creation of those private privileges.

Taking account of the whole environment in which the rules and policies governing business corporations pays off when we compare the adoption of general rules for business

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[25]Remini, pp. 57-69.

[26]The word "general" gets used in multiple ways here. A general law applies equally to everyone, and a constitutional amendment that creates the presumption that the legislature will create general laws whenever possible is, if you will, a "general general law." Historically, general laws were urged against 'private, special, or local laws': "Until the mid- to late-nineteenth century, state legislatures mostly enacted local, private, and special legislation, and very little general legislation. Local legislation refers to statutes that apply to localities rather than to the state as a whole. Private legislation refers to statutes benefitting individuals rather than the general public. Special legislation can be either local or private, and this term will be used throughout this study to describe local and private legislation. General legislation applies to the entire state." Robert M. Ireland, "The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States," *American Journal of Legal History*, 46, no. 3, 271.

incorporation, municipal incorporation, and general law provisions. The idea that general incorporation acts were adopted by states as a way to deal with systematic corruption is just that: an idea. We can test the idea by examining why people said they acted as they did. Another, and depending on your preferences for evidence, perhaps stronger test is to see if they took similar actions in other areas of society. If general incorporation was seen as a solution to the problem of systematic corruption, then it should have been applied to other organizations. It was.

Table 9 gives the dates at which states changed their constitutions to require general incorporation acts (for business). Table 10 gives the dates when states changed their constitutions to mandate general laws for the incorporation of municipalities and Table 11 gives the dates when mandated general laws for a wide variety of purposes: “general law provisions.”

The tables are a hard to digest and compare at a glance. Figure 2 graphs the first year a state adopted a constitutional provision mandating general incorporation on the horizontal access, and the first year a state mandated general law provisions on the vertical access. Figure 3 does the same, only the vertical axis represents the first year that a state mandated general laws for municipal governments. Although there is a strong diagonal in the graphs, this results from the fact that new states that entered after 1850 tended to adopt provisions that mandated general laws for incorporation, general laws for municipal governments, and general law provisions. For example, the large group of states that entered the union in 1889, all included all three provisions in their constitutions. This can be tracked in the tables.

There was not a strong relationship between when a state adopted a general incorporation provision and the other two provisions between 1840 and 1870. Most of the entries in Figures 2 and 3 lay above the 45 degree line, indicating that the state adopted a general incorporation provision before it adopted a general municipal provision or a general law provision. Depending on whether new states that adopted all three measures in the first constitution are included or not, the average difference between the date of the first general incorporation provision and the first general law provision is 10 years (7 years including the new states) and the difference between incorporation provisions and municipal provisions is 14 years (9 including new states).

Figure 4, however, plots the dates of adoption of general law provisions and of municipal provisions, and shows the striking relationship between the two. Here the adoption dates fall largely on the 45 degree line (the three exceptions being Michigan, 1850 general law provisions and 1909 municipal provisions; Alabama, 1861 for general laws and 1901 for municipalities; and Wisconsin the very first state with provision for municipalities in its first constitution in 1848, and a general law provision in 1871).

The figures show that states were learning. It became increasingly common for states to adopt a package of general law provisions. Not just for corporations, but for municipalities, and for laws in general. The records of the constitutional convention debates reveal how often states were using other states' experiences to help guide their new constitutions. Mr. Sibley of Minnesota not only looked at other states' constitutions, but also spoke directly with other legislators from Iowa, and specifically notes that the Michigan provision had been shown to work particularly well.

> In the pretty extensive communication I have had, within the last few weeks, with persons from that State [Iowa] upon this subject [of general laws], I have heard no one complain that all the objects of such corporations could not be attained under such laws….I think the provision on this subject in the Constitution of Michigan is preferable to that in the Constitution of the State of New York….this provision of the Michigan Constitution has been found to work well. (*Debates and*

Proceedings of the Minnesota Constitutional Convention, 1857, 128)

The experience of states continued to accumulate. Mr. McDermott, in the 1890 constitutional convention in Kentucky, speaking in favor of a general law provision, noted the experience of other states explicitly. When he talks of excluding or restricting the classes, he refers to the types of functions for which general acts must be passed and special laws are restricted or prohibited, pulling from the experiences of other states and describing what states had done previously and where they had gotten the ideas from.[27]

> This system is not an experiment. We tried it, to a slight extent, in the Constitution of 1849. We there declared that certain things were never to be provided for by a special or local act. In 1865 Missouri followed our example, and took the lead we gave her, largely increasing the number of classes entirely excluded, and forbidding the passage of other local or special acts which general acts could provide for. In 1870 Illinois tried the same plan and enlarged the list. In 1871 Wisconsin followed suit. In 1872 West Virginia tried the Missouri Constitution of 1965. In 1873 Pennsylvania still further increased the number of classes excluded, and required that a notice should be published before any other private bills should be passed, and forbade the enactment of any private act if a general law could be made applicable. In 1874 New York followed Pennsylvania and Missouri. In 1875 Missouri, after and experience of ten years, of the plan I have described, enlarged it. In fact, she adopted restrictions that are, in effect, as severe as any as those we recommend. This shows that Missouri found she was moving in the right direction. In 1875 New Jersey imitated Pennsylvania and Missouri, and in 1876 Texas completely copied the provisions of the Pennsylvania Constitution. We compared all of these provisions, and we embodied in this section the best of them, and we examined a great many of the local and private acts of our State." (Remarks of Mr. McDermott, *Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort*1890, III: 3992.)

Mr. McDermott is quoted a length to show how states were deliberately and

[27]*Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort, on the Eighth Day of September, 1890, to Adopt, Amend or Change the Constitution of the State of Kentucky*, 4 vols, (Frankfort, Ky.: E. Polk Johnson, 1890), III: 3992.

consciously learning from one another. As the nineteenth century unfolded, states progressively tied the hands of state legislatures by requiring them to pass legislation that applied equally to everyone, particularly with respect to the formation of organizations, be they business corporations or cities. Figures 2, 3, and 4 and the tables that underlay them give considerable support to the idea states were adopting a common institutional form, the general law, and applying to many distinct and disparate areas of state policy.

Adoption of general laws on such a widespread basis was likely not driven only by the interests of businesses. The scholars who studied the adoption of general laws note remarkably similar justifications for the adoption of corporate, municipal, and general law provisions. Binney (1894) and Ireland (2001) give detailed reports of how the supporters of these provisions argued for their adoption. People were usually very concerned about corruption. According to a delegate to the Alabama Constitutional Convention of 1901, corruption across state legislatures “can all be traced to the effort to secure the passage of local or private bills, conferring some special or valuable privilege, franchise or pecuniary advantage”. (Ireland, pp. 277-278).

And Binney similarly, although he was not writing history, he was writing about current legal events:

> What may be called the science of legislation – the careful adaptation of laws both to the needs of the State and the various classes of people composing it, and to the body of law already existing, the determination of the proper scope of general laws, and of the circumstances which call for legislation of a local or special character – was too little regarded, and as time went on not only was the volume of special and local legislation needlessly increased, such acts being frequently passed as to matters that could have been provided for under a general system, but private schemes were often pushed through the legislatures by unscrupulous men, to the sacrifice of public interests, each separate locality was liable to unwise interference in its affairs, and distracting changes of its

> governmental system, and the law, as to many matters, was thrown into confusion.
> The natural consequence of all this was the growth of a very general feeling of hostility to all local and special legislation. One State after another sought, by changes in its Constitution, to check the excesses into which its legislature had fallen in this respect, and the influence of the example so set is seen in the Constitutions of all the more recently organized States. That some effectual restrictions upon special legislation were needed has been repeatedly testified to by the courts of various States when called upon to enforce these restrictions. Thus, in Indiana, the earliest State to adopt them, their object was stated as being "to restore the State from being a coterie of small independencies, with a body of local laws like so many counties palatine, to what she should be, and was intended to be, a unity, governed throughout her borders on all subjects of common interest by the same laws, general and uniform in their operation."[28]

Historically, general laws for business corporations were the leading edge of the movement towards general law provisions across a range of government policies. During the 1847 constitutional convention of Illinois, the focus on the "evils of special legislation" was directed at business corporations. Mr. Bosbyshell was one of many delegates to comment on the use of special acts for corporations, opposing it because special incorporation could be "granted to the few, and wholly denied to the many" and was thus against it no matter the form or the intent.[29]

The 1870 constitutional convention of Illinois highlighted the move for delegates to focus on the evils of special legislation with respect to municipalities. Mr. Washburn spoke to the evils of special legislation and the greater difficulty in passing general legislation for municipalities. He noted delegates to the Convention had been complaining and denouncing special legislation; however, when it came to addressing the one-third of special laws had been

[28] Binney, 1894, pp. 6-7. The last quote is referenced to Maize v State, 4 Ind. 342.

[29] *The Constitutional Debates of 1847, Collections of the Illinois State Historical Society Volume XIV*, (Springfield: Illinois State Historical Library, 1919), 651.

used to incorporate cities and towns, had started backing down. As Mr. Washburn noted, when it comes to conflict with their own local interest, are opposed to it, which was a hurdle that had to be overcome to pass general legislation.[30]

> I wish to remark that if there is one evil more than all others, afflicting the people of this State, it is that in relation to special legislation, which has troubled us for the last six or eight years. If there was one reason stronger than all others for having a Convention meet here to amend our Constitution, it was this — to put a stop to the evils of special legislation. If there is one thing that the people demand at our hands more than all others, it is that we put an effectual end to special legislation. And I had supposed that the committee were a unit on that subject. I have heard from day to day, in this Convention, complaints and denunciations against special legislation, and until the last few days I have not heard a single individual object to those complaints and denunciations. If we look at the records of the last four, five or six years, upon this subject of special legislation, we find that special laws occupy eight or nine hundred pages of those records, and even more than that in the work of the last Legislature. And it is not to be denied or disputed, but if we look further it will be apparent that, perhaps, more than one third of those special laws have been passed to incorporate cities and towns. The greater portion, I say, of this greatest of all public evils lies in the very direction of incorporating cities and towns. And when the people have charged us particularly with reference to this point ; have demanded of us that this abomination of special legislation — this prolific source of corruption, both in legislators and people, shall cease — upon squarely meeting the proposition to do this, there is a general back-down. Men who have seemed most anxious on this subject in general, when it comes to conflict with their own local interest, are opposed to it. (*Debates and Proceedings of the Constitutional Convention of the State of Illinois*, 1870, I.597)

General laws required that governments support organizations by providing rules and legal identities (entity benefits) that applied equally to all groups and all citizens, a constraint on legislatures that spread to many areas of legislative competence in the second half of the 19th century. The close association shown in Figure 3 was, in fact, a close association and not a statistical artifact. People at the time thought that general laws that applied equally to everyone

[30]Debates and Proceedings of the Constitutional Convention of the State of Illinois, I.597.

and limited the ability of politicians and legislatures to create special privileges were a way to improve how democracy worked.

V. When Bad things happen: real limits on government.

All of the constitutional provisions discussed in the two previous sections create real limits on state governments. Their texts establish limits, but the limits are much more than the texts establish. Most of these limits did not forbid legislators to do certain things, although there are provisions like the prohibition on state investment in private corporations. Most of the provisions regarded procedure, like the procedural debt restrictions, or the procedures for creating a corporation (which was taken out of the discretion of the legislature), or on the form of laws that the legislatures must pass. The last section showed the persistent and pervasive movement to require general laws, laws that in principle applied equally to everyone. This was not a limit on what legislatures could legislate about, it was a limit on legislative discretion, on how they were able to legislate.

Legislatures were constrained from treating different individuals and different groups differently, over a wide range of government functions. Mandating general incorporation acts for businesses was a critical limit, for it changed the dynamics of the economy, but the general principle applied much more widely to government policies. These limits are not perfect, but they have been durable and generally effective. The right standard to judge them against is not an ideal pure impersonal rule and enforcement, no rules or laws universally treat everyone the same. A better comparison is the inability of most developing societies to create and enforce any rules that treat everyone the same, or the experience of early 19th century states like New York and Massachusetts.

Often discussions of rule of law assume that the rules will be enforced in an unbiased manner. That convenient theoretical assumption gets in the way of understand how rule of law system could actually get to unbiased rules and unbiased enforcement. American states in 1800 had fairly effective rule of law, but they also had laws that enabled governments to treat different people differently. Massachusetts Federalists broke no laws when they limited bank charters to Federalists, that was well with in the discretion of the legislature. With a few possible exceptions, all of the manipulations of entry and charters in banking described in section II were perfectly legal. They all fell within the rule of the laws as written before the 1840s.

Systematic corruption was neither illegal nor was there anything capable of controlling or eliminating it in the dynamics of an inclusive, electoral democracy with the classic limits on government embedded in either the national constitution or the state constitutions. So how did the limits put in place in the 1840s and later change the nature of limited government? To be clear, remember that the general laws do not stop the political system from regulating the economy, they do not stop the political system from trying to manipulate the economy, but they do stop the political system from manipulating the economy by treating different people differently.

There are two elements, both dynamic, one internal to the political process and one external. Within political parties and coalitions, as well as within legislatures, there were still many dimensions on which coalitions could build arrangements that would enable durable groups to remain in place. But they could no longer to do by creating clear economic privileges for one group and not another, for example, by preventing entry of other organizations into politics or economic activities, whether the other organizations were political, economic, or some combination of the two. This limited the instruments available to a faction to remain in control.

Simultaneously, and almost certainly more important, the political system was unable to prevent new economic organizations from rising and competing. In a fundamental way, the political process lost control of the economic system. This did not mean that the government could not regulate economic organizations, they could and did in many ways. It meant that the government largely abandoned limits on entry. The government extended organizational tools, like corporate charters, to everyone. Laws became more impersonal in form and enforcement. Critically, any group or interest the government moved against, could organize to push back. Both politics and economics became more competitive as a result, what North, Wallis, and Weingast (2009) call a open access social order.

It is difficult to pass a constitutional provision which enjoins legislatures from doing stupid stuff. The likelihood of bad decisions become higher as the costs and benefits of proposed policies become more difficult to discern. A key element in the procedural debt provisions was requiring that a majority of voters approve a tax increase before money could be borrowed. My favorite quote from the Indiana literature is from Judge Kilgore, who spoke against the absolute prohibition on state debt at the the Indiana Convention in 1851. He remarked that "I appear to be the last survivor of all the members of the Legislature of 1836 who voted for that bill. I know there are many still living, they seem to have been afflicted – perhaps in judgement for their political sins – with a loss of their memories. [Laughter]."[31] Kilgore went on to articulate not only an explanation of what happened in 1836, but how it could be prevented in the future:

[31]Kilgore Speech, Thursday, Nov. 21, *Debates*, [1850], vol. 1, p. 676.

> If, with the light of the past to guide them, with the heavy burthens of the present to remind them of past errors, the people coolly and deliberately decide at the ballot-boxes to again borrow money, I shall aid to place no Constitutional barriers in their way to prohibit them from carrying out their will; *provided,* sir, that at the time they give the Legislature authority to contract a debt they provide by direct taxation for the payment of the interest, and the canceling of the principal, within twenty-five years. Right here, sir, and nowhere's else, was the great error committed by the people and their representatives in 1836. Gentlemen may confine themselves to the simple assertion that the people of that day were mad; I shall not deny it; they were mad, and very mad; but, Mr. President, had a provision been made before the public debt was created that a direct tax must be levied, high enough to pay the interest and to wipe out the whole debt in eighteen or twenty-five years, all would have been comparatively well. A provision of this kind, sir, would have brought the people to their right senses, and my word for it, before State Bonds to the amount of four millions of dollars had been sold, they would have risen and denounced the whole system as projected.[32]

Judge Kilgore called for benefit taxation and castigated the perils of taxless finance, and called for a direct tax, which in 1850 meant *ad valorem* property taxation, before any future debt could be issued.

The constitutional principles mandating general laws went far beyond the tax implications Judge Kilgore described. The legislature was prevented from carving up the population into smaller groups and then arranging deals between the groups to obtain a majority. This was true at the higher level of forming a party that could, potentially, create a durable faction that denied outsiders effective representation, the old fear of systematic corruption. But is was also true at the prosaic lower level of individual pieces of legislation. Under the general law provisions the same rules affected everyone. It became much easier to understand what the implications of any particular rule was if it applied equally to everyone. The costs and benefits of legislation became clearer in a relative sense, if by no means perfectly understood.

[32] Ibid, p. 676.

How did the states manage to enforce the generality provisions? That is a question I cannot answer here, because I have not done the specific legal research in the case law.[33] It appears that it took decades for the principle of general laws to spread, as implied by Table 11.

> In 1870 a delegate to the Illinois Constitutional Convention declared that the most recent legislature of his state enacted three large volumes of special legislation and one slender volume of general laws, while three years later the governor of New Jersey complained that his state's most recent legislature enacted but 100 pages of general public legislation while producing more than 1,250 pages of special legislation. A delegate to the 1872-1873 Pennsylvania constitutional convention asserted that between 1866 and 1872, the Pennsylvania legislature enacted 475 general laws and 8,755 special laws, while the *New York Times* reported in the same year that almost ninety percent of the New York legislative output for the previous four years had been special statutes. Critics of special legislation noted similar patterns throughout the nation-including California, North Carolina, Kentucky, Tennessee, Alabama, and Maryland. (Ireland, 2004, p. 272)

What did happen after the 1840s was increasing competition throughout the economy. This happened at both the state level and the national level. When we focus on the national level, the rise of national markets and firms, and the need for national government regulation of those markets and firms, we forget that all of the firms and most of the law governing the markets exists at the state level. Economic competition made political limits on government actions more effective. Legislators could not control or manipulate the constellation of economic interests they faced. This in no way prevented the legislators and legislatures from attempting to manipulate markets and firms. What appears to have happened is that political competition sustained by economic competition gradually made people aware that attempts to manipulate economic interests on a large scale were likely not to work, and so the number of attempts at systematic corruption decreased. Again, I am not saying in any way that politicians and legislators stopped trying to manipulate the economy, I am saying that they became much

[33] The work of Binney (1894) and Ireland (2004) are places to start, and I will make progress before the next conference.

less effective and doing so because they had to pass laws that applied generally, not personally. Partly because of the formal limits embodied in the constitutional provisions, and partly because free entry and general laws changed the social environment legislatures faced.

Evidence? Table 12A and 12B present what seems to be important, but statistically ambiguous evidence. Table 12A list states and whether they had secure property rights, limited government in the classic constitutional sense, democracy (in the form of elections and representation), and inclusion/suffrage. The institution is marked with an "I." Free white male suffrage is very common by 1830, but a some states still had some form of tax paying or property requirement. I have marked the states with tax requirements as "IT," the states with property requiremensts as "IP," and the states with both as "ITP."[34] The tax requirements simply required that people pay any taxes they owed in the previous year before they could vote. The property requirements could be a bar to voting, as they were in Rhode Island and Virginia. As you can see, it is the original states who were still in the process of getting rid of their tax and property requirements. States outside the original 13 had moved to essentially free white male suffrage.

The last three columns indicate whether three kinds of bad things happened in the state between 1800 and 1860. Did the state pursue blatant political manipulation of the economy. Federalist bankers in Massachusetts or the Albany Regency in New York are examples. Creating a monopoly state bank is an example, as well as deliberate manipulation of entry into banking as in Pennsylvania or Maryland. The second is did the state default on it bonds? The third, is did the state promote civil war by seceding from the Union? A state gets an "X" in one

[34]The restriction data was taken from Keyssay (2000), Table A.2, pp. 330-33t.

of the columns if at any point between 1800 and 1860/1 they did one of those things at some point in time.

All of the states have the classic institutions, secure property rights, rule of law, and the classic limits on government in their constitutions. They all have elections, they all have checks and balances, they all have separation of powers, they all deliberately put those institutions in their first constitutions (Kruman, 1997). Almost all of them had one or more instances of blatant manipulation of the economy (and these are just the instances I am aware of, there are certainly more). The defaults and secessions are public knowledge. There are a lot of “X’s” in Table 12A.

Table 12B collapses the classic institutions into one column. The next three columns list whether and when the states adopted constitutional provisions for corporations, municipal government, or general law provisions, the same data as in Tables 9, 10, and 11. If the state had a provision in place before 1860 the state has an “I,” if it adopted the provision after 1860 the date of the adoption is given. The last three columns give the same bad outcomes as Table 12A. The confederate states all get an “X” for secession.

There aren’t many “X’s” in the last three columns. The one for New Jersey is a clear example of systematic corruption. The state chartered a railroad and canal to run between Camden and Amboy in the 1820s. The canal and railroad came back to the state and asked for a new charter, combining the companies. The combined company asked for a monopoly on the route between Camden and Amboy, which was also the route between New York and Philadelphia. In return for the monopoly, the company gave the state stock in the railroad and agreed to pay a transit duties on all cars hauled over its lines. By the 1840s, more than half of the revenues of New Jersey came from divided and transit duties, and New Jersey became known as the state of Camden and Amboy. Railroads in New Jersey ran from east to west and fed into the Camden and Amboy (there is a map in Figure 5). It was not until the 1870s that the Pennsylvania Railroad managed to acquire a controlling interest in the Camden and Amboy, at which point the state promptly revoked the railroad's charter.[35]

Were the last three columns of Table 12B really that empty, or am I just too ignorant? Summers (2004) retells the tale of party competition in the gilded age, the late 19th century. The stories are fascinating and there is no doubt that the two major parties, the Democrats and Republicans, manipulated institutions, particularly electoral rules, to eliminate third party competition. But all of this occurred within a framework of intense political competition and Summers' history is all about political corruption (rigged elections, etc.) rather than systematic attempts to control the economy to gain an electoral majority. Even in the late 19th century era of political excess, politicians were not able to manipulate the economy, cities, or the laws in the way that they had in the early 19th century: by treating different people differently. Politics still looked messy and unsavory, but the outcomes got better. Or, at least, they got less worse.

VI. Conclusion

This preliminary version of the paper argues that the classic limits on governments embedded in the early national and state constitutions were insufficient to prevent political actors from manipulating the economy for political purposes by creating special privileges in a systematic way. A series of examples in banking and infrastructure were presented. When the states faced a serious fiscal crisis in the early 1840s, nine defaulted on their debts, five

[35]The New Jersey experience is described in Cadman (1949) which was one of the CREH volumes. See Grandy (1989) for the fiscal effects of revoking the charter.

repudiated all or part of their debts, and several others narrowly avoided default. In the aftermath of the fiscal crisis, states began changing their constitutions. The initial wave of changes focused on limiting taxless finance. They included procedural debt restrictions, mandatory general incorporation acts, and general taxation provisions. Indiana also created the first "general law provision" requiring the legislature to pass general laws for 17 purposes.

Although focused on the debt crisis, these changes implemented a partial remedy for systematic corruption: the political manipulation of the economy for political purposes. The new general law requirements spread to municipalities (the first was Wisconsin in 1848), incorporation, and general law provisions like Indiana. There is clear evidence that states learned about how these limits worked, and deliberately adopted them to curb political manipulation of many aspects of social life. The limits did not stop the political system from manipulating economic interests. A regulation could be passed that made group A better off than group B. But the regulation had to apply equally to group A and group B, unlike the earlier regime where different regulations could be passed for A and B. The limits were not intended to produce modern economic and political development, they were intended to prevent democratic societies from making stupid decisions and bad mistakes. The limits were intended to stop narrow interests from influencing the interests of the majority to the benefit of the narrow interest by crafting a set of privileges that differed across groups. While there is not doubt that late 19th century American politics remained unsavory, it nonetheless exhibited robust competition and did not repeat the seriously bad outcomes of the early 19th century.

All of the classic limits on government were in place in the early national and state constitutions. They didn't work. It was only after the auxilliary limits requiring general laws and impersonal rules that modern "democracy" emerged in the United States.

Table 1
National Public Land Sales, Indiana Land Sales,
Indiana Land Values and Taxable Acres
1834 to 1843

Year	National Land Sales	Indiana Land Sales	Acres Taxed	Value of Land & Improvements	Value Town Lots	Value Per Acre Land	Value Per Acre Land + Town	Total Taxes Received
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1833	3,856	555	4,329					$40,758
1834	4,658	674	4,651					$36,459
1835	12,564	1,587	5,447	$29,451	$2,991	$5.41	$5.96	$44,537
1836	20,074	3,245						$51,279
1837	4,805	1,250	6,186	$61,033	$9,181	$9.87	$11.35	$64,437
1838	3,414	602	7,130	$60,612	$14,171	$8.50	$10.49	$164,633
1839	4,976	618						$171,636
1840	2,236	118	8,273	$58,344	$12,504	$7.05	$8.56	$300,481
1841	1,164		10,188					$168,898
1842	1,129		13,646	$73,297	$12,482	$5.37	$6.28	$393,248
1843	1,605		14,675	$76,133	$12,399	$5.19	$6.03	$490,265

Notes:
Acres in thousands of acres, value in thousands of dollars, and value per acre in dollars.
Land Sales from Gates.
All other information from Annual Report of the Auditor of State, Indiana, various years. These numbers are taken from the totals reported by the State Auditor, they differ in minor respects from other totals reported in the paper which represent the sum of the county figures reported by the Auditor.
Total Taxes includes all revenues collected in each fiscal year.

Table 2
Regression of the Ratio of *Ad Valorem* taxes levied in 1835
to the Per Acre taxes levied in 1834
on County Characteristics
(Standard errors)

Internal Improvement	.33 (.15)	---	---	---
Terminus	---	.73 (.18)	---	---
Town Lands as Share of Total Value	---	---	2.45 (.45)	---
Latitude	---	---	---	.20 (.10)
Intercept	.78 (.12)	.86 (.07)	.71 (.08)	-7.08 (3.9)
N	53	53	53	53
R2	0.09	0.24	0.36	.08

Notes: Dependent variable in all regressions "Ratio of Taxes in 1835/1834," a continuous variable measuring the ratio of *ad valorem* taxes levied in 1835 to the per acre taxes levied in 1834.

All observations are county means or dummy variables.

"Internal Improvement" is a dummy variable equal to 1 if a county has a canal, railroad, or turnpike.

"Terminus" is a dummy variable equal to 1 if a county contains an intersection of a canal, railroad, turnpike, and/or river.

"Town Lands" is a continuous variable measuring the share of town lands in total value of all lands in 1835.

"Latitude" is the latitude of the center point of each county.

Table 3
Difference in Difference Estimates
Change in Average Land Value Per Acre
Indiana Counties

	1835 to 1837	1837 to 1842
All Counties	$3.90	-$4.21
Internal Improvement Counties	$4.55	-$5.49
Non-Internal Improvement Counties	$2.74	-$2.80
Difference	$1.81	-$2.69
N	60	75
Terminus Counties	$8.29	-$9.06
Non-Terminus Counties	$2.93	-$3.11
Difference	$5.36	-$5.95
N	60	75
High Tax Ratio Counties Ad valorem > 1.2 Per Acre	$4.91	-$5.38
Low Tax Counties Ad Valorem < .8 Per Acre	$2.99	-$2.14
Difference	$1.92	-$3.24
N	52	51

Notes:

Average land values per acre are calculated for land and improvements. They do no include town lots or personal property.

The number of observations in each cell varies. All differences are statistically significant at the 10 percent level or higher.

Table 4
Variable Means

Variable	Year	N	Mean	Standard Deviation
Total acreage taxed	1834	63	73,873	50,708
Total acreage taxed	1835	63	86,663	97,443
Total acreage taxed	1837	79	77,033	62,464
Total acreage taxed	1842	86	158,679	76,444
Value of Land & Improvements	1835	62	$479,086	$420,870
Value of Land & Improvements	1837	79	$772,601	$756,841
Value of Land & Improvements	1842	84	$867,064	$615,253
Value of Land Per Acre	1835	62	$5.82	$2.23
Value of Land Per Acre	1837	79	$9.37	$4.91
Value of Land Per Acre	1842	84	$5.17	$2.18
Change in value per acre	1835 to 1837	61	$3.90	$4.46
Change in value per acre	1837 to 1842	76	-$4.21	$4.28
Number of polls	1835	60	1,071	550
Number of polls	1837	82	1,016	626
Number of polls	1842	85	1,319	690
Latitude		92	39.84	1.07
Dummy Variables				
Terminus		92	0.15	0.36
Turnpike		92	0.39	0.49
Wabash and Erie Canal		92	0.22	0.41
Whitewater Canal		92	0.04	0.21
Central Canal				
Railroad				
Ohio River				

Table 5
States That Wrote New Constitutions
Or Amended Constitutions between 1842 and 1852,
And whether the changes affected Debt, Corporations, and Taxation.

Wrote New Constitutions		Debt	Corporations	Taxation
Rhode Island	1842	Y	Y	Y
New Jersey	1844	Y	Y	Y
Louisiana	1845	Y	Y	Y
	1851	Y	Y	Y
New York	1846	Y	Y	
Illinois	1848	Y	Y	Y
Kentucky	1850	Y	Y	
Michigan	1850	Y	Y	Y
Virginia	1850			Y
Indiana	1851	Y	Y	Y
Maryland	1851	Y	Y	Y
Ohio	1851	Y	Y	Y
Wrote First Constitution				
Iowa	1847	Y	Y	
	1857	Y	Y	
California	1849	Y	Y	Y
Wisconsin	1848	Y	Y	Y
Florida	1838		Y	Y
Amended Constitutions				
Arkansas	1846			
Pennsylvania	1857	Y		
Michigan	1843			

Source: see notes to Table 6. "Y" means that the state adopted some provisions regarding debt, corporations, or taxation. See appendix tables for specific features of the constitutions.

Table 6
Constitutional Restrictions on State Debts

New Const.		Procedural Restriction	Credit Not Loaned	Short Term Limit	Absolute Limit	Refer-enda	Time Limit	Ways and Means	Single Object	No Repeal
Rhode Island	1842	Y		50,000	N	Y				
New Jersey	1844	Y	Y	100,000	N	Y	35	Y	Y	Y
Louisiana	1845	Y		100,000	N			Y	Y	Y
	1851	Y		100,000	8,000,000			Y	Y	Y*
New York	1846	Y		1,000,000	N	Y	18	Direct Tax	Y	Y
Illinois	1848	Y		50,000		Y		Y		Y
Kentucky	1850	Y	Y	500,000		Y	30	Y		
Michigan	1843	Y				Y			Y	
Michigan	1850	NO II	Y	50,000						
Virginia	1850		Y				34			
Indiana	1851	Prohibited		Prohibited						
Maryland	1851	Y	Y	100,000	100,000		15	Y		
Ohio	1851	NO II	Y							

First Const.		Procedural Restriction	Credit Not Loaned	Short Term Limit	Absolute Limit	Refer-enda	Time Limit	Ways and Means	Single Object	No Repeal
Iowa	1847	Y		100,000	N	Y	20	Y	Y	
	1857	Y	Y	250,000	N	Y	20	Direct Tax	Y	
California	1849	Y		300,000		Y	20	Y	Y	Y
Wisconsin	1848	Y		100,000			5	Y	Y	Y
Florida	1838	nothing								
Amended										
Pennsylvania	1857	Limited	Y	750,000						

Notes:
Constitutional provisions were taken from the text of the relevant constitutions. The texts are available online at Wallis, NBER/Maryland Constitution project or from Thorpe, *Constitutions*.

Procedural Restriction is Yes "Y" if state legislature cannot increase debt unilaterally.
"No II" if state cannot issue debt for internal improvements.
Credit Not Loaned is "Y" if state cannot loan credit to private individual or corporation.
Short Term Limit is the dollar limit on "casual debt"
Absolute Limit is limit of the total amount of debt outstanding, regardless of purpose.
Referenda is "Y" if voter approval is required for debt issue (aside from casual debt).
Time Limit is the maximum number of years bonds can be issued for.
Ways and Means is "Y" if a taxes must be provided to service the debt.
Direct Tax is "Y" if a property tax increase must be provided.
Single Object is "Y"s if legislation authorizing debt must be constrained to one object.
No Repeal is "Y" if the laws authorizing taxation cannot be repealed, are "irrepealable."

Table 7
State Constitutional Provisions with Regard to Corporations

New Constitutions		Investment Prohibited	General Laws	Special Prohibited	Special Absolute	Repeal or Revoke	Banks
Rhode Island	1842	Y					
New Jersey	1844	Y (local)	Y	Y			
Louisiana	1845	Y	Y	Y			No
	1851	Y*		Y, not Banks			
New York	1846		Y	Y	No No Banks		
Illinois	1848	In Banks	Y	Y	NO		No State Bank General Voters
Kentucky	1850	Y					
Michigan	1850	Y	Y				General Voters
Virginia	1850						
Indiana	1851	Y (S & L)	Y	Y			General
Maryland	1851		Y	Y	NO	Y	General
Ohio	1851	Y (S & L)	Y	Y	Y	Y	General Voters

First Constitution		Investment Prohibited	General Laws	Special Prohibited	Special Absolute	Repeal or Revoke	Banks
Iowa	1847	Y	Y	Y	Y		No
	1857	Y	Y	Y	Y	Y	
California	1849	Y	Y	N	Y		No Deposit
Wisconsin	1848	Y	Y	Y	N	Y	General Voters
Florida	1838	Y		N 2/3 majority			
Amended							
Pennsylvania	1838					Y	6 months
	1857	Y				Y	

Notes:

The Louisiana constitution in 1851 allowed investment in Internal Improvement Companies up to 1/5 of their capital.

Investment Prohibited: State (Local) government prohibited from investing in corporations.
General Laws: Corporations can be created under General Incorporation Acts.
Special Prohibited: State cannot, under usual circumstances, create corporations by Special Act.
Special Absolute: State can never create corporations by Special Act.

Banks:
No - Banks Prohibited
General - Banks allowed under General Act only
General/Voters - Banks allowed only if voters approve a General Incorporation Act.
Deposit - In California the only banks allowed are deposit banks, no money creating banks.
6 months - In Pennsylvania, bank charters had a 6 month waiting period.

Table 8
State Constitutional Provisions with regard to Taxation

Wrote New Constitutions			Uniform Rules	Taxed By Value	Equal Rate
Rhode Island	1842				
New Jersey	1844		Y	Y	
Louisiana	1845		Y	Y	
	1851		Y	Y	
New York*	1846	nothing			
Illinois	1848		Y (local)	Y	
Kentucky	1850	nothing			
Michigan*	1850		Y	Y	Y
Virginia	1850		Y	Y	Y
Indiana	1851		Y	Y	Y
Maryland	1851			Y	
Ohio	1851		Y		
Wrote First Constitution					
Iowa	1847	nothing			
	1857	nothing			
California	1849		Y	Y	Y
Wisconsin	1848		Y		
Florida	1838		Y		Y
Other States					
Tennessee	1834		Y	Y	
Maine*	1819			Y	Y

Table 9
First Year of Corporation Provision, Sorted by Year of Corporation Provision

State	Year	1840s	1850s	1860s	1870s	1880s	1890s	1900s	1910s	1920s+
Louisiana	1845	X								
New York	1846	X								
Iowa	1846	X								
Wisconsin	1848	X								
Illinois	1848	X								
California	1849	X								
Michigan	1850		X							
Maryland	1851		X							
Ohio	1851		X							
Indiana	1851		X							
Oregon	1857		X							
Minnesota	1857		X							
Kansas	1859		X							
West Virginia	1863			X						
Nevada	1864			X						
Georgia	1865			X						
Missouri	1865			X						
Nebraska	1866			X						
Alabama	1867			X						
Arkansas	1868			X						
North Carolina	1868			X						
South Carolina	1868			X						
Tennessee	1870				X					
Pennsylvania	1874				X					
New Jersey	1875				X					
Colorado	1876				X					
Texas	1876				X					
Montana	1889					X				
North Dakota	1889					X				
Washington	1889					X				
South Dakota	1889					X				
Idaho	1889					X				
Wyoming	1889					X				
Mississippi	1890						X			
Kentucky	1891						X			
Rhode Island	1892						X			
Utah	1896						X			
Delaware	1897						X			
New Mexico	1911								X	
Arizona	1912								X	
Florida	1968									X
Connecticut	none									
Oklahoma	none									
Massachusetts	none									
New Hampshire	none									

Note: Row order is by first year of a corporation provision, column order is by first year of corporation provision.

Table 10
First Year of Municipal Provision, Sorted by Year of Municipal Provision

State	Statehood	First Municipal	1840s	1850	1860s	1870s	1880s	1890s	1900s	1910s	1920+
Wisconsin	1848	1848	X								
Indiana	1816	1851		X							
Ohio	1803	1851		X							
Iowa	1846	1857		X							
Kansas	1861	1859		X							
Florida	1845	1861			X						
Nevada	1864	1864			X						
Maryland	1788	1864			X						
Missouri	1821	1865			X						
Nebraska	1867	1866			X						
Arkansas	1836	1868			X						
Texas	1845	1869			X						
Illinois	1818	1870				X					
West Virginia	1863	1872				X					
New York	1788	1874				X					
Pennsylvania	1787	1874				X					
New Jersey	1787	1875				X					
Colorado	1876	1876				X					
California	1850	1879				X					
Minnesota	1858	1881					X				
Montana	1889	1889					X				
Idaho	1890	1889					X				
South Dakota	1889	1889					X				
North Dakota	1889	1889					X				
Washington	1889	1889					X				
Wyoming	1890	1889					X				
Mississippi	1817	1890						X			
Kentucky	1792	1891						X			
Utah	1896	1896						X			
South Carolina	1788	1896						X			
Alabama	1819	1901							X		
Oklahoma	1907	1907							X		
Michigan	1837	1909							X		
New Mexico	1912	1911								X	
Arizona	1912	1912								X	
North Carolina	1789	1916								X	
Rhode Island	1790	1951									X
Connecticut	1788	1965									X
New Hampshire	1788	1966									X
Louisiana	1812	1974									X
Tennessee	1796										
Massachusetts	1788										
Delaware	1787										
Georgia	1788										
Oregon	1859										

Note: Row order is by first year of a municipal provision, column order is by first year of municipal provision.

Table 11
First Year of General or Special Law Provision, Sorted by Year of General or Special Law Provision

State	Statehood	General Laws	1840s	1850	1860s	1870s	1880s	1890s	1900s	1910s	1920+
Michigan	1837	1850		X							
Indiana	1816	1851		X							
Iowa	1846	1857		X							
Oregon	1859	1857		X							
Kansas	1861	1859		X							
Alabama	1819	1861			X						
Maryland	1788	1864			X						
Nevada	1864	1864			X						
Georgia	1788	1865			X						
Missouri	1821	1865			X						
Florida	1845	1868			X						
Texas	1845	1869			X						
Tennessee	1796	1870				X					
Illinois	1818	1870				X					
Wisconsin	1848	1871				X					
West Virginia	1863	1872				X					
Arkansas	1836	1874				X					
Pennsylvania	1787	1874				X					
New York	1788	1874				X					
Nebraska	1867	1875				X					
New Jersey	1787	1875				X					
Colorado	1876	1876				X					
Louisiana	1812	1879				X					
California	1850	1879				X					
Minnesota	1858	1881					X				
South Dakota	1889	1889					X				
Wyoming	1890	1889					X				
Idaho	1890	1889					X				
Washington	1889	1889					X				
North Dakota	1889	1889					X				
Montana	1889	1889					X				
Mississippi	1817	1890						X			
Kentucky	1792	1891						X			
South Carolina	1788	1896						X			
Utah	1896	1896						X			
Oklahoma	1907	1907							X		
New Mexico	1912	1911								X	
Arizona	1912	1912								X	
North Carolina	1789	1916								X	
New Hampshire	1788										
Massachusetts	1788										
Ohio	1803										
Delaware	1787										
Rhode Island	1790										
Connecticut	1788										

Note: Row order is by first year of a general or special law provision, column order is by first year of general or special law provision. A special law prohibits special laws for specific actions and a general law mandates a general law for specific actions.

Table 12A
Classic Institutions and Bad Things that Happen
1800 to 1860

	Institutions				Bad things Happen		
	Secure Property	Limited Government	Democracy	Inclusion\ Suffrage	Blatant Political Manipulation	Government Default	Civil War Secede
Connecticut	I	I	I	IT			
Massachusetts	I	I	I	IT	X		
New Hampshire	I	I	I	IT			
Rhode Island	I	I	I	IP			
Delaware	I	I	I	IT			
New Jersey	I	I	I	ITP	X		
Pennsylvania	I	I	I	I	X	X	
Maryland	I	I	I	I	X	X	
New York	I	I	I	I	X		
South Carolina	I	I	I	IP	X		X
North Carolina	I	I	I	ITP	X		X
Virginia	I	I	I	IP	X		X
Georgia	I	I	I	IT	X		X
Louisiana	I	I	I	IT	X	X	X
Mississippi	I	I	I	I	X	X	X
Alabama	I	I	I	I	X		X
Missouri	I	I	I	I	X		X
Arkansas	I	I	I	I	X	X	X
Florida	I	I	I	I	X	X	X
Kentucky	I	I	I	I	X		
Tennessee	I	I	I	I	X		X
Ohio	I	I	I	IT			
Indiana	I	I	I	I	X	X	
Illinois	I	I	I	I	X	X	
Michigan	I	I	I	I		X	

Table 12B
Classic Institutions, General Law Instittuions, and Bad Things that Happen
1860 to 1900
X = Present in 1860

	Classic Insitutions	Corporations	General law Instituions Municipal	General Provisions	Bad things Happen Blatant Political Manipulation	Government Default	Civil War Secede
Connecticut	I		1965				
Massachusetts	I						
New Hampshire	I		1966				
Rhode Island	I	1892	1951				
Delaware	I	1897	I				
New Jersey	I	I	1875	1875	X		
Pennsylvania	I	I	1874	1874			
Maryland	I	I	1864	1864			
New York	I	I	1874	1874			
South Carolina	I	1868	1896	1896			X
North Carolina	I	1868	1916	1916			X
Virginia	I	?	?	?			X
Georgia	I	1865	1865	1865			X
Louisiana	I	I	1974	1879			X
Mississippi	I	1890	1890	1890			X
Alabama	I	1867	1867	1901			X
Missouri	I	1865	1865	1865			X
Arkansas	I	1868	1868	1874			X
Florida	I	1968	1861	1868			X
Kentucky	I	1891	1891	1891			
Tennessee	I	1870	1870	1870			X
Ohio	I	I	I	I			
Indiana	I	I	I	I			
Illinois		I	1870	1870			
Michigan	I	I	1909	I			

Appendix Table A1
Ratio of Taxes Paid under Per Acre and *Ad Valorem* taxes

County	Ratio 1835/34	Percent Town Lots	Terminus County
Martin	0.42	0.10	0
Scott	0.49	0.08	0
Pike	0.54	0.06	0
Daviess	0.58	0.12	1
Johnson	0.58	0.04	0
Bartholomew	0.60	0.00	0
Jennings	0.61	0.09	0
Harrison	0.61	0.07	0
Sullivan	0.62	0.07	0
Gibson	0.63	0.10	0
Randolph	0.65	0.03	0
Lawrence	0.67	0.06	0
Orange	0.68	0.12	0
Fountain	0.68	0.04	0
Rush	0.69	0.03	0
Owen	0.69	0.07	0
Jackson	0.70	0.06	0
Greene	0.70	0.11	0
Ripley	0.73	0.07	0
Knox	0.73	0.37	0
Hendricks	0.75	0.05	0
Clarke	0.75	0.13	0
Morgan	0.75	0.06	0
Warrick	0.76	0.11	0
Perry	0.80	0.09	0
Hamilton	0.83	0.06	0
Washington	0.83	0.14	0
Parke	0.87	0.07	0
Monroe	0.88	0.11	0
Marion	0.88	0.35	1
Shelby	0.88	0.04	0
Switzerland	0.91	0.10	0
Boone	0.92	0.07	0
Carroll	0.93	0.08	0
Vermilion	0.96	0.12	0
Clinton	0.97	0.06	0
Putnam	0.98	0.06	1
Vigo	0.99	0.26	1
Tippecanoe	1.10	0.18	1
Clay	1.12	0.09	0
Union	1.12	0.02	0
Madison	1.15	0.04	0
Henry	1.18	0.05	0

Hancock	1.20	0.10	0
Warren	1.21	0.03	0
Fayette	1.22	0.05	0
Delaware	1.23	0.06	0
Wayne	1.43	0.13	1
Dearborn	1.54	0.14	1
St. Joseph	1.62	0.08	1
Grant	1.67	0.07	0
Franklin	2.01	0.04	0
Cass	2.14	0.80	1
Jefferson	4.12	0.63	1

Notes:

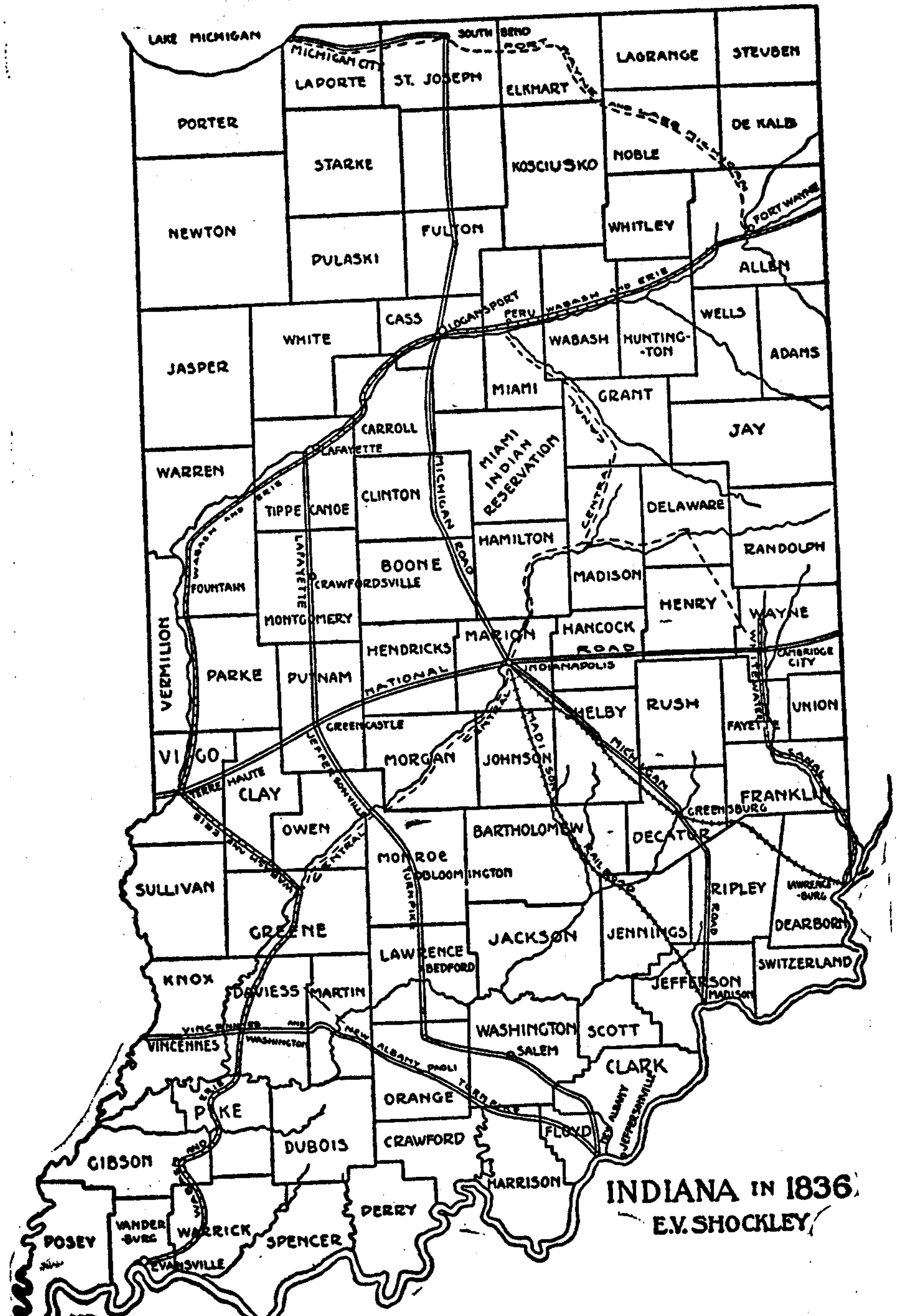
Ratio 1835/34 is the ratio of taxes paid under the proposed *ad valorem* tax in 1835 to taxes paid by the county in 1834 under the per acre land tax. Both figures are taken from the Report of the State Auditor for 1834 and 1835.

The table only includes counties with complete information in the 1834 and 1835 reports.

Town Lots is the share of all land value reported as town lots in 1835.

Terminus equals 1 if the county contains the junction of two transportation lines.

Figure 1



INTERNAL IMPROVEMENTS

Figure 2

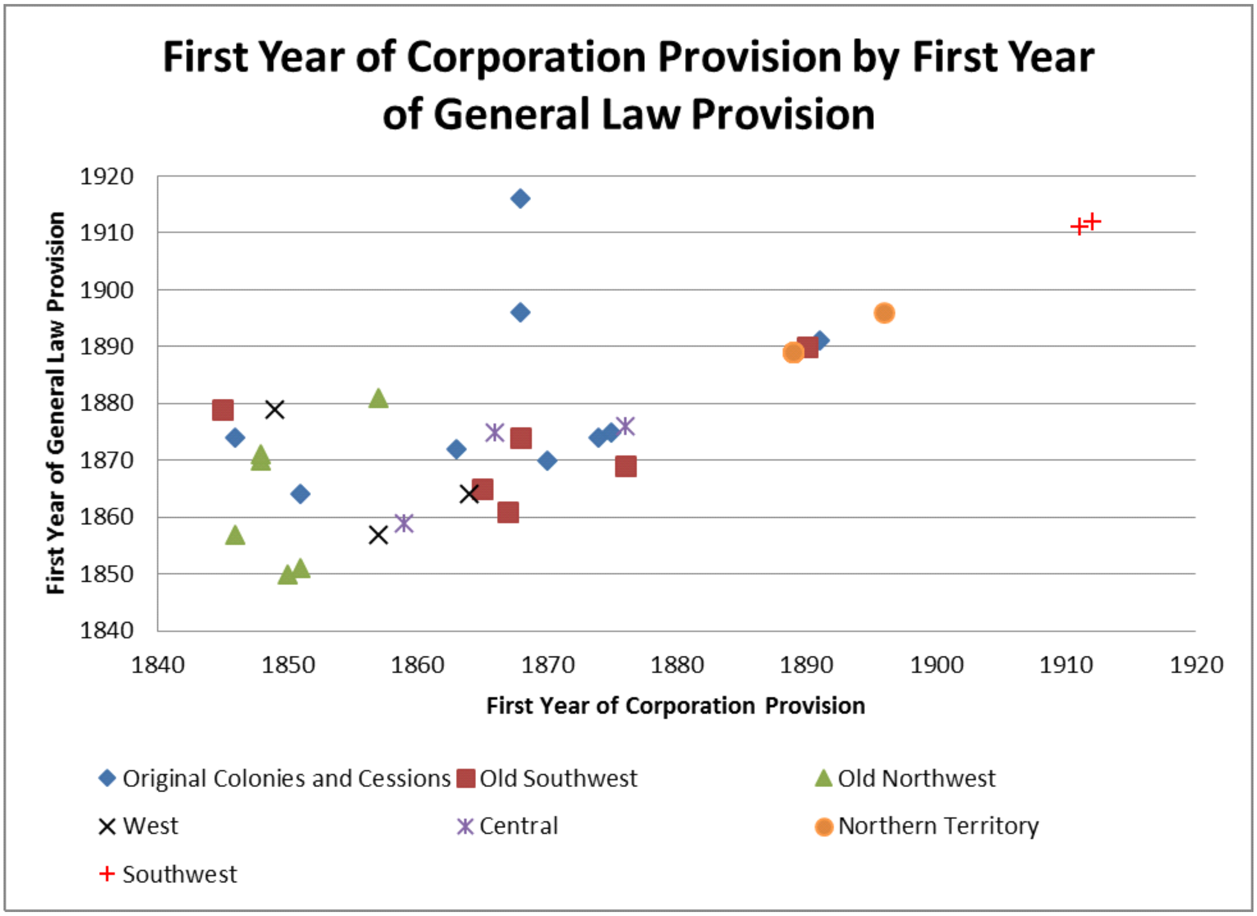

First Year of Corporation Provision by First Year of General Law Provision
First Year of General Law Provision
1920
1910
1900
1890
1880
1870
1860
1850
1840
1840
1850
1860
1870
1880
1890
1900
1910
1920
First Year of Corporation Provision
Original Colonies and Cessions
Old Southwest
Old Northwest
West
Central
Northern Territory
Southwest

Figure 3

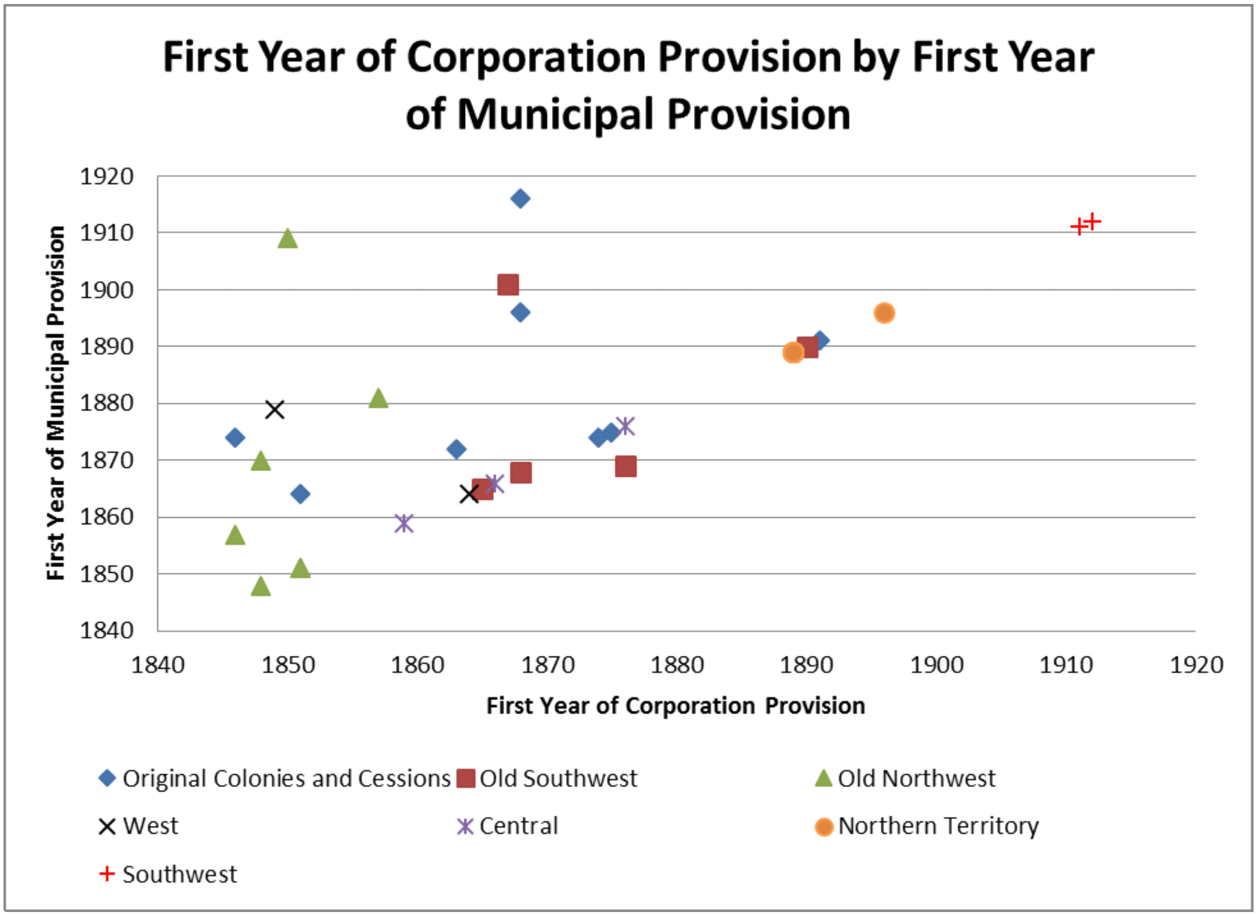
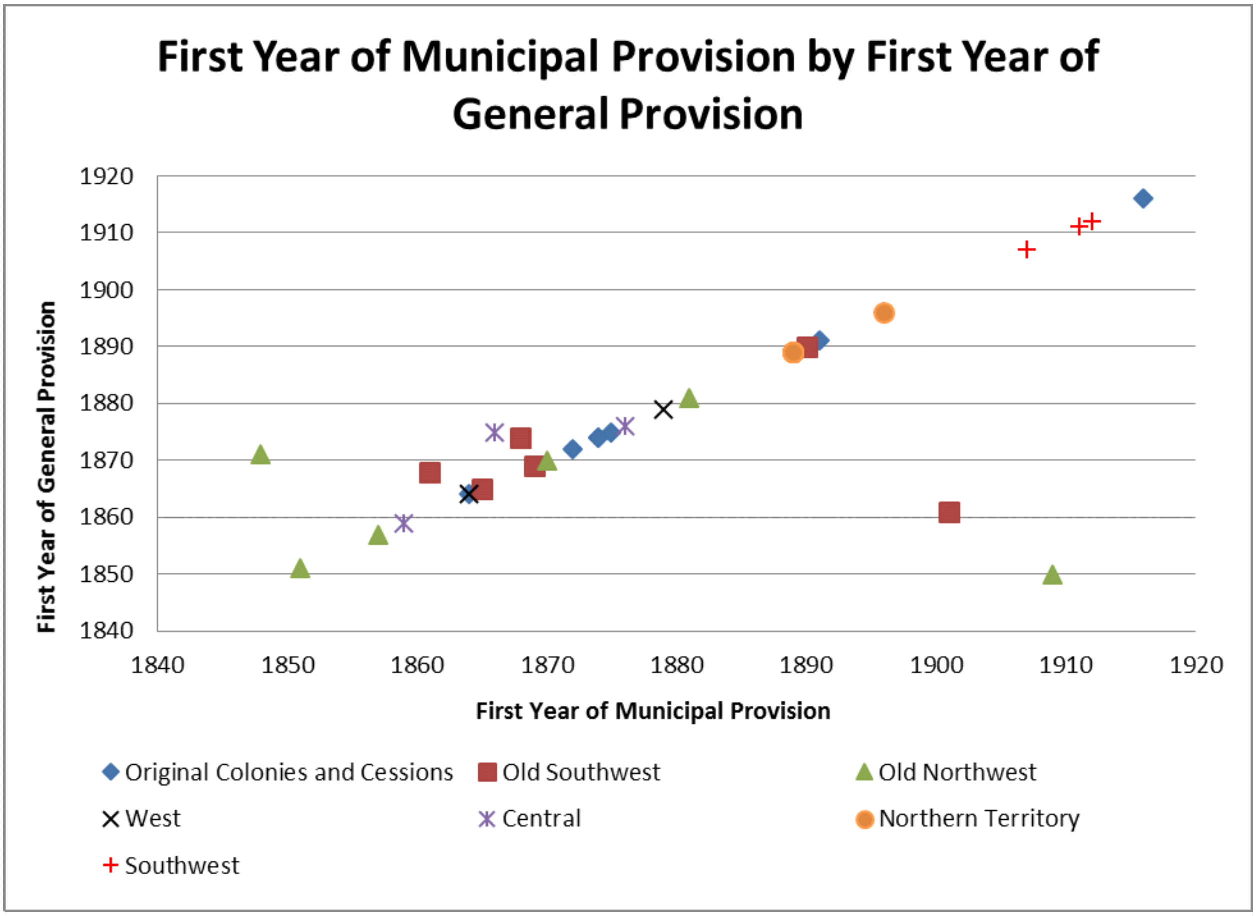
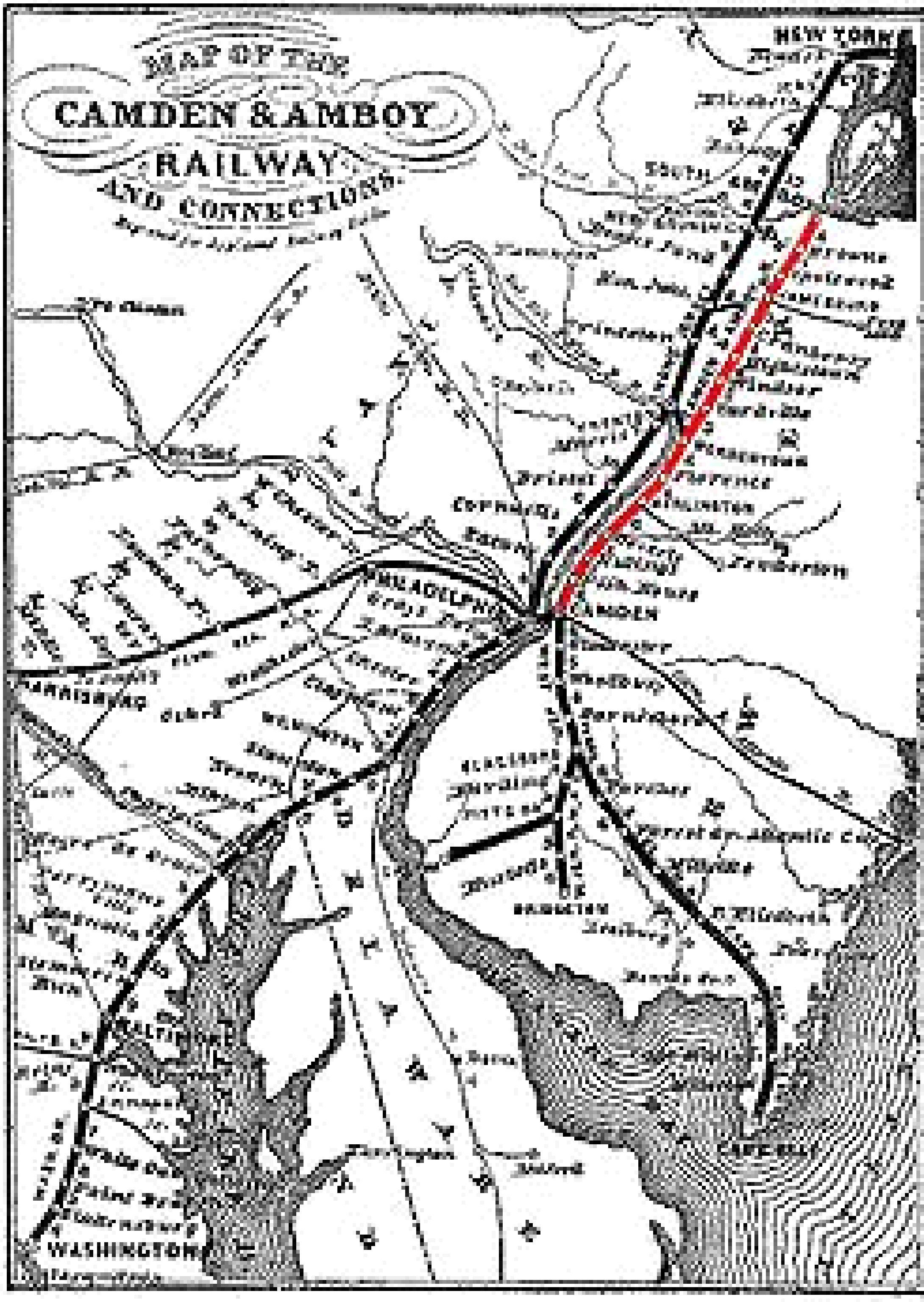

First Year of Corporation Provision by First Year of Municipal Provision
First Year of Municipal Provision
1920
1910
1900
1890
1880
1870
1860
1850
1840
1840
1850
1860
1870
1880
1890
1900
1910
1920
First Year of Corporation Provision
Original Colonies and Cessions
Old Southwest
Old Northwest
West
Central
Northern Territory
Southwest

Figure 4



First Year of Municipal Provision by First Year of General Provision
First Year of General Provision
1920
1910
1900
1890
1880
1870
1860
1850
1840
1840
1850
1860
1870
1880
1890
1900
1910
1920
First Year of Municipal Provision
Original Colonies and Cessions
Old Southwest
Old Northwest
West
Central
Northern Territory
Southwest

Figure 5


MAP OF THE
CAMDEN & AMBOY
RAILWAY
AND CONNECTIONS
NEW YORK
PHILADELPHIA
CAMDEN
HARRISBURG
BALTIMORE
WASHINGTON

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Add Riker, Weingast, Lamorequx and Wallis,
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