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Nancy Martorano Miller  
*University of Dayton*, nmiller1@udayton.edu

Ronald D. Hedlund  
*Northeastern University*

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### eCommons Citation

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**One Tough Nut:  
The Development of Legislative Structure and Procedure  
in the Constitution of the Buckeye State**

By,

Nancy Martorano Miller, University of Dayton  
Department of Political Science  
[Nancy.Martorano@notes.udayton.edu](mailto:Nancy.Martorano@notes.udayton.edu)

Ronald D. Hedlund, Northeastern University  
Department of Political Science  
[r.hedlund@neu.edu](mailto:r.hedlund@neu.edu)

**ABSTRACT:** American state legislatures have evolved dramatically throughout their history. In particular, the structures, rules and procedures governing the operations legislatures have changed significantly over the course of the 20<sup>th</sup> and 21<sup>st</sup> Centuries. The purpose of this paper is to present a theoretical framework for studying the development and evolution of American state legislatures. We then apply that framework to the case of constitutional provisions impacting the legislative branch in Ohio and conclude that the initial decision to invest significant authority in the legislative branch significantly impacted the evolution of legislative evolution and development in the state.

Paper prepared for presentation at the 2012 meeting of the State Politics and Policy Conference, Rice University/University of Houston, February 16-18.

## Introduction

Scholars have been long fascinated by the evolution and development of legislatures in the United States. Understanding the origins and evolution of these governing institutions is an important, but often understudied topic at the American state level. A better appreciation of the foundations and development of governing institutions has significant implications for fully understanding the policies adopted by those serving in these institutions.

Quite a lot is known about how Congress and its structures have developed and evolved over time. Countless books and journal articles have focused on the development of congressional committee systems (Shepsle 1986; Weingast and Marshall 1988; Baron and Ferejohn 1989; Maass 1983; Gilligan and Krehbiel 1987, 1989, 1990; Krehbiel 1991; Kiewiet and McCubbins 1991; Cox and McCubbins 1993; Maltzman 1997), political party structures (Rohde 1994; Aldrich 1995), leadership (Davidson, Hammond and Smock 1998; Peabody 1967, 1984; Peters 1997; Cooper and Brady 1981b; Sinclair 1999; Evans and Oleszek 1999, 2004; Ripley 1967) and procedural rules (Bach and Smith 1988; Sinclair 1994; Krehbiel 1991, 1997; Dion and Huber 1997; Binder and Smith 1997; Binder 1997; Dion 1997). Other works have addressed generally the process of congressional institutionalization (Polsby 1968; Froman 1968; Davidson and Oleszek 1976).

Disproportionately less scholarly attention has been given to the evolution and development of state legislatures. Many of the studies of state legislative evolution and development that do exist were conducted long ago and typically focus on the development of a legislative institution in a single state (Lewis 1952; Rosenthal 1968). More modern explorations of state legislatures have focused on explaining institutional differences

across state legislatures, with little attempt to track institutions over time or determine the evolution of these institutional differences (Rosenthal 1973; 1974; 1997; 2004; 2008; Francis 1989). Recently in *101 Chambers: Congress, State Legislatures and the Future of Legislative Studies*, Peverill Squire and Keith Hamm outline how American state legislatures have come to differ from one another as well as Congress over time. They end their book by challenging future scholars to explain the causes or evolution of these differences, and Squire has undertaken the task of exploring the evolution of American state legislatures from the pre-colonial to modern period in a forthcoming text.

Our goal in this paper is to present a case-study of the state of Ohio that is part of a larger project that aims to explore how constitutional and statutory law have influenced the development of state legislative institutions. Our central contention in this work is that the evolution and development of American state legislatures is path-dependent in nature, and that the institutions and norms that guide the legislative process in the states today is highly contingent upon past historical events and the choices made by past legislators and citizens in reaction to relevant events. Choices made concerning institutional design in American state legislatures have been driven by events both exogenous and endogenous to the bodies as well as the behavior and reactions of the individuals within those bodies, and future choices concerning institutional design will be constrained by these past choices.

This paper will proceed as follows – first, we will discuss common theories regarding changing legislative institutions. Second, we will discuss in more detail our theory regarding the roles of path dependency and bounded rationality in the development of state legislatures. We will then proceed by applying this theory to the case of Ohio. We will finish by providing some concluding observations.

## **Institutionalization and Change: The Stickiness of Institutional Arrangements**

Institutionalized structures are a vital component of an effective governing system.

Nelson Polsby made this assertion in his work regarding the institutionalization of the U.S. House of Representatives (Polsby 1968). In this work he asserts:

“Most people who study politics are in general agreement, it seems to me, on at least two propositions. First, we agree that for a political system to be viable, for it to succeed in performing tasks of authoritative resource allocation, problem solving, conflict settlement, and so on, in behalf of a population of any substantial size, it must be institutionalized. That is to say, organizations must be created and sustained that are specialized to political activity. Otherwise, the political system is likely to be unstable, weak and incapable of servicing the demands or protecting the interests of the constituent groups. Secondly, it is generally agreed that for a political system to be in some sense free and democratic, means must be found for institutionalizing representativeness with all the diversity that this implies, and for legitimizing yet at the same time containing political opposition within the system (Polsby, 1968: 144).”

During this period much of the research concerning Congress focused on identifying and explaining the causes and patterns in the institutionalization of legislative structures and procedures (Froman 1968; Cooper 1988; Davidson and Oleszek 1976; see Schickler 2001 for an in-depth discussion of the institutionalization of Congress). Common to many of these studies is the notion that the creation and institutionalization of structures and procedures is closely tied to forces both inside and outside the legislative environment. Many of the ideas presented in this work were borrowed from organizational theory.

In particular, scholars focusing their studies on the state legislatures championed the ability of organizational theory to be adapted to the study of the legislative process. For example, Hedlund writes that

Collectively this work demonstrates, first, that concepts derived from organizational theory can be applied to legislatures. These concepts include organizational autonomy, division of labor, task environment, organizational technology, “buffering” between inputs and outputs, institutional “imperatives”, organizational uncertainty, adaptation, consolidation, organizational elaboration, organizational productivity, organizational expeditiousness and organizational efficiency (Hedlund 1984).

The bulk of the of research applying organizational theory to the study of legislatures argues that in order to survive, a legislative body must change its practices and procedures in reaction to changes in the legislature’s external and internal environments (Froman 1968; Davidson and Oleszek 1976; Moncrief and Jewell 1980; Cooper and Brady 1981a; Thompson and Moncrief 1992). Legislative scholars have used this perspective to successfully study the existence of and changes in legislative institutions (Cooper 1977, 1981; Cooper and Brady 1981a; Hedlund and Freeman 1981; Moncrief and Jewell 1980; Harder and Davis 1979; Hedlund 1978; Hedlund and Hamm 1976, 1977, 1978; Davidson and Oleszek 1976; Froman 1968).

Specifically these studies have tested hypotheses developed from organizational theory and find that legislative organizations adapt in reaction to stress and strain from their internal and external environments (Davidson and Oleszek 1976). These studies identify two types of change occurring in legislatures: adaptation and consolidation. Adaptation occurs when legislative structures and procedures are changed in reaction to changes in the external environments. In contrast, consolidation occurs when legislative structures and procedures are changed to deal with internal stresses (Davidson and Oleszek 1976; Thompson and Moncrief 1992). Additionally, these external strains may cause internal stresses by changing the incentive structure of the institution’s members.

This change in member incentive structures may ultimately lead to changes in the body's internal structures and procedures (Katz and Sala 1996; Binder and Smith 1997, 1998).

It must be noted that the process of institutionalization and subsequent alterations in adopted institutions is not a process that occurs quickly. Rather, institutions take quite some time to evolve and once institutionalized are not easily or quickly altered (Polsby 1968; Froman 1968; Davidson and Oleszek 1976). Thus, institutions can be clearly described as “sticky” in the sense that once adopted and entrenched they are very difficult to “shake.”

### **Bounded by the Past: Path-Dependency and Institutional Change<sup>1</sup>**

Institutionalization and change rarely occurs in a vacuum. Where an institution starts greatly influences where it can go. That is to say, that the ability to adopt new institutional structures and procedures or alter existing ones is highly dependent upon earlier choices regarding institutional development. Scholars who have addressed institutional adoption and change seem to acknowledge this limitation.

For example, in their discussion of institutional change in the U.S. House of Representatives, Davidson and Oleszek (1976) assert: “History is strewn with examples of one generation’s reforms which exacerbate the next generation’s problems (1976: 38).” Further, C. Lawrence Evans in a literature review of scholarship regarding rule and structural arrangements in Congress asserts that “important areas of structural development within Congress appear to exhibit significant path dependencies, in which

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<sup>1</sup> This section is largely taken from a conference paper drafted by the authors in 2009: Martorano Miller, Nancy, Ronald D. Hedlund and Keith E. Hamm. 2009. “Paths, Events and Strategic Choices: The Evolution of American State Legislatures,” Paper presented at the annual meeting of the American Political Science Association, September, Toronto, ON, Canada.

current decisions about rules are shaped and constrained by previous episodes of procedural choice (Evans 1999: 632).”

More recently, scholars have asserted that political processes are by their nature path dependent and that any attempt to account for phenomenon associated with these processes must take this path dependency into account (Pierson 2004; Jervis 2000; Thelen 2000; Bridges 2000). Comparative politics scholars studying democratization and the adoption of other governing institutions as well as scholars studying American political development have long acknowledged the importance of path dependency in their work (e.g., Lipset and Rokkan 1967; North 1990; Schickler 2001; Skocpol 1992; Collier and Collier 1991; Ertman 1996; Hacker 1998).

Paul Pierson has been the most vocal advocate for correctly including temporality or path dependence into explanations of political processes. Pierson states:

“The notion of path dependence is generally used to support a few key claims: Specific patterns of timing and sequence matter; starting from similar conditions, a wide range of social outcomes may be possible; large consequences may result from relatively “small” or contingent events; particular courses of action, once introduced, can be virtually impossible to reverse; and consequently, political development is often punctuated by critical moments or junctures that shape the basic contours of social life (Collier and Collier 1991; Ikenberry 1994; Krasner 1989). All these features stand in sharp contrast to prominent modes of argument and explanation in political science, which attributes “large” outcomes to “large” causes and emphasize the prevalence of unique, predictable political outcomes, the irrelevance of timing and sequence, and the capacity of rational actors to design and implement optimal solutions (given their resources and constraints) to the problems that confront them (Pierson 2000a: 251).”

Pierson’s reference to “large” causes accounting for “large” outcomes is aimed in part at rational choice scholars who assert that the choices made regarding institutions in political processes have been done purposely by individuals who choose the institutional



arrangements that best suit their needs. For example, in the congressional literature three schools of thought exist regarding the purpose of committees in the legislative process. Each school treats members as rational actors with a specific purpose for the committee system. The distributive school asserts that the committee system exists as a venue for individual members to secure reelection by securing benefits for their constituents (Sheplse 1986; Weingast and Marshall 1988). The informational school asserts that the purpose of the committee system is to reduce information costs for members and thus make the legislative process more efficient by reducing uncertainty over outcomes in the legislative process (Krehbiel 1991). Finally, the partisan school suggests that the purpose of the committee system is to secure the power and future success of the majority political party through agenda control (Cox and McCubbins 1993).

Common to these three schools of thought is the notion that the past simply does not matter – what is important are the objectives sought by the relevant actors for the institution. In fact, most studies that address institutional structure and procedure through a rational choice perspective assume that structures and procedures will change if those who have control over them discover that a different configuration of structures and procedures will allow them to more efficiently attain their goals. Very little consideration is given to the notion that change in certain directions may not be possible or that options for change may be tied to decisions made long ago.

In his work, Pierson makes two important assertions. First, he argues that it isn't always “large” events that lead to “large” outcomes. Rather, a “small” event can have a significant impact or lead to a “large” outcome. Secondly, he asserts that simply stating that the present situation is informed by the past is not enough; rather he argues our theories

need to account for why, where and how the past has informed the present (Pierson 2000a, 2000b).

The notion of path dependency means that we must go farther than saying “history matters.” In order to understand the significance of a variable/institution/process in the present, it is necessary that we understand how the variable/institution/process got there in the first place – the path it took (Pierson 2000a). When considering the placing of an institution or political process in time several concepts must be taken into account. We must come to understand the impact of critical junctures, sequencing, events, time horizons, duration, timing, and unintended consequences on the path of the institution or process of interest. The ability to analyze an institution or political process in this manner will greatly enhance our understanding of that institution or process (Pierson 2000b).

An important component of path dependency is how “increasing returns” dynamics influence the ability of institutional structures and processes to evolve over time. Increasing returns dynamics are positive feedback processes that 1) illustrate how and why the costs of altering institutions will increase over time; and 2) help draw attention to timing and sequencing issues by distinguishing between formative moments from periods that reinforce divergent paths (Pierson 2000a). Pierson writes:

“This conception of path dependence, in which preceding steps in a particular direction induce further movement in the same direction, is well captured by the idea of increasing returns. In an increasing returns process, the probability of further steps along the same path increases with each move down that path. This is because the *relative* benefits of the current activity compared with other possible options increase over time. To put it a different way, the costs of exit – of switching to some previously plausible alternative – rise (Pierson 2000a: 252).”

Therefore, early decisions concerning the adoption of institutional structures and procedures will greatly influence the ability of future actors to adopt new structures and institutions and/or alter existing ones. Previous work on institutional design has alluded to this concept when it asserts that there are high costs to the creation of new institutions in the form of learning effects, coordination effects and adaptive expectations, resulting in an increase in the attractiveness of existing institutional structures (Pierson 2000a; North 1990). In the end, political actors are more likely to stick with potentially inefficient institutions due to the high costs of changing existing structures.

The following example illustrates how scholars have incorporated path dependency into their explanations of institutional development and evolution. Eric Shickler (2001) in his analysis of the institutional development of the U.S. Congress makes a number of claims concerning the forces of change in congressional structures and processes. One of his claims is that congressional institutions develop via the layering of structures/processes that are informed by the competing motives of different groups of members – thus new structures are often layered over old structures. He goes on to assert that the choices available for new institutions are dependent upon prior choices. Hence, it is easier to adopt a new institution than it is to change an existing institution as existing institutions have too much support from those that benefit from them as they are.

To illustrate this claim, Schickler references the creation of budget committees in 1974. These committees were meant to provide integrated fiscal policy. However, since these committees were superimposed onto the existing structure of authorization, appropriations and revenue committees, they had difficulty succeeding because those who had an entrenched interest in the existing structures had no incentive to see the budget

committees' work. The point here is that if it had been possible to start anew, it is highly unlikely that a system would be adopted that gave control over this process to a three-layered system of committees. But since too many members of Congress had vested interests in power bases of the existing committees, there was no alternative but to layer the new structure on top of the old. Thus, choices available to reform congressional structures in this example were in fact constrained by choices made in the past (Schickler 2001).

To our knowledge no published studies to date have attempted to apply these principles to the development of state legislatures. However, Peverill Squire is currently drafting a manuscript that highlights the importance of “where” a state legislature begins tremendously influences how it will evolve over time. Specifically, he argues that the path that a state took to statehood (e.g., original colony, territory to state, or direct admittance) has a significant impact on the legislatures' evolution and development over time (Squire, 2012).

### **Path Dependency, Significant Events, and Constrained Choices<sup>2</sup>**

The goal of this present endeavor is to develop a theory of institutional development and evolution for American state legislatures which can be applied to the evolution of any aspect of state legislatures. We propose that elements of path dependency, organizational

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<sup>2</sup> This section is largely taken from a conference paper drafted by the authors in 2009: Martorano Miller, Nancy, Ronald D. Hedlund and Keith E. Hamm. 2009. “Paths, Events and Strategic Choices: The Evolution of American State Legislatures,” Paper presented at the annual meeting of the American Political Science Association, September, Toronto, ON, Canada.

theory, and rational choice theory interact to account for the development and evolution of institutional structures and processes at the state-level.

How the institutional structures and processes that compose a legislative body develop and evolve is certainly related to its starting point. It is not likely the case that the members of an institution would simply abandon existing structures and processes and start from scratch every time reform is warranted. History proves that this is in fact the case. The legislative institutions and processes adopted by colonists resembled the legislative institutions and processes of Great Britain. Further, the structures and processes adopted by the American state legislatures closely resemble those adopted by colonists. Finally, the basic structures and processes adopted for the U.S. Congress were also greatly informed by the colonial and early state legislative experiences (Squire and Hamm 2005). Clearly, the development and evolution of American state legislatures has been greatly influenced by the past experiences of those members serving in them.

This is not to imply that once adopted a legislative structure or process cannot be abandoned, altered or newly created. Path dependence does not “freeze” institutional structures and processes in place – all it does is constrain the potential options for change by limiting the available alternative institutional structures and procedures (Pierson 2000b).

The development and evolution of legislative structures and procedures will also be influenced by – to use Pierson’s (2000a) terminology – events both large and small. In order to survive as an organization, these legislative bodies will have to adapt and consolidate institutional structures and procedures in ways that will allow it to maintain itself. These events can be of such magnitude that they impact virtually all state

legislatures or they can be influential in just one or a small number of state legislatures. An example of an event that impacted virtually all state legislatures was the mandatory apportionment of legislatures that occurred in the mid-1960s. The one-man, one-vote decision greatly changed the composition of the membership within virtually every state legislature. Many state legislatures increased the size of their chambers in order to comply with the order while others choose some different path of accommodation (Squire and Hamm 2005).

Events may dictate when institutional structures and procedures need to be reformed, and path dependency may constrain the choice set of possible reforms, but the concepts of rational choice can still be applied to the decisions made regarding institutional structures and procedures in legislatures. The difference is that the members of the legislature will have to choose from a “bounded” set of options. Just because the choice set is limited, does not mean that members cannot be strategic with the choices they make. The members of the legislature will still adopt those institutional structures and procedures that will allow them to best attain their goals in the legislative process.

The area of minority party procedural rights provides one example where rational choice theory can intersect with path dependence. In the congressional literature there are two theories concerning when a legislative body will choose to expand/contract the ability of the minority party to potentially obstruct or influence the legislative process. One school of thought asserts that minority party procedural rights will be expanded when the size (and thus strength) of the majority political party is small. Minority party procedural rights are expanded because the majority party fears that it will soon be in the minority and hopes that if it expands minority rights now, reciprocity will rule in the future (Binder

1997). The other school of thought asserts that minority party procedural rights will be contracted when the size (and thus strength) of the majority political party is small and acting cohesively. The goal now is to restrict the ability of the minority party to obstruct or influence the process in an effort for the majority party to protect its advantage in future electoral contests (Dion 1997). These theories have been tested to some extent at the state legislative level with the first school receiving more empirical support (Martorano 2004). The expansion/contraction of minority party procedural rights is accomplished by slightly altering structures and procedures that already exist – such as the committee system, debate rules, etc. rather than creating new institutions. The purpose of this example is to show that change and alteration of structures and procedures informed by rational choice principles is still possible, even when the available choices may be constrained. We will now apply these concepts to the case of Ohio by exploring the evolution of Article II (Legislature) of the Ohio Constitution.

### **Territorial Government Oppression: Progressivism and the Ohio Constitution**

The state of Ohio was the seventeenth state admitted into the union in 1803. Ohio was one of five states carved from the Northwest Territory which was created by the Northwest Ordinance in 1787.<sup>3</sup> The Northwest Ordinance laid out a staged process for transitioning from a territory to a state. In stage one, the territory was to be governed by a governor, secretary and judiciary all appointed by the Continental Congress. Once a territory reached a population of 5,000 free, male adults, it could enter stage two. In stage

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<sup>3</sup> The other four states were: Indiana, Illinois, Michigan and Wisconsin.

two, the territory could elect representatives to a general assembly. The territorial governor as well as a five-member legislative council appointed by Congress would also be included. Bills passed by the general assembly could be vetoed by the governor with no ability for the legislature to overturn. The third stage, statehood occurred once the population reached 60,000 free, male adults. A territory could be granted statehood with a population less than 60,000 through an act of Congress (Steinglass and Scarselli, 2004).

Since its admittance to the union, the state of Ohio has had four constitutional conventions. Two of these conventions resulted in the original and a new constitution (1802 and 1851), one produced a new constitution that failed to be ratified by the citizenry (1873-74), and the final constitutional convention (1912) led to significant changes to the Constitution of 1851 via the adoption of thirty-four separate amendments. Additionally, the 1851 Constitution has been amended many times via action initiated by the general assembly or the people (Steinglass and Scarselli 2004).

Steven H. Steinglass and Gino J. Scarselli (2004) have drafted a thorough history of the evolution of Ohio constitutional law. They have asserted that the most significant events with regards to the state's constitutional document – the initial adoption in 1802, the new Constitution of 1851 and the amendments following the Constitutional Convention of 1912 – were driven largely by past experiences as well as political forces at work at the time. Steinglass and Scarselli (2004) explain that the initial constitution adopted in 1802 was inspired largely by the recently drafted constitutions of Tennessee, Kentucky and Pennsylvania. However, they argue that when compared on the whole to the constitutions of these states, Ohio's constitution was “a much more radically democratic document (Steinglass and Scarselli 2004: 16).”



In fact, the 1802 Constitution vested nearly all government power into the legislative branch. This was a conscious decision on the part of the Ohioans sitting at the Constitutional Convention of 1802. This decision to vest inordinate, unchecked power in the legislative branch was made in reaction to the territorial government experience of those settling the area between the adoption of the Northwest Ordinance in 1787 and the granting of statehood in 1803. During this period, the battle was raging nationally between the Federalists and the Jeffersonian Republicans. The Federalists desired to maintain strong federal government control in the new territories to the west, while the Jeffersonian Republicans desired a more decentralized governing arrangement. The settlers in what would become Ohio were largely Scotch-Irish settlers from Pennsylvania and Virginia. These settlers were committed to individual freedom and economic independence – thus they were more inclined to support the ideals of the Jeffersonian Republicans over the Federalists (Steinglass and Scarselli 2004).

Unfortunately for the settlers of the Ohio Territory, the Congress-appointed governor, Arthur St. Clair, was an ardent Federalist. The settlers of the Ohio territory were not fans of St. Clair's autocratic governing style. The real trouble began after the establishment of the territorial legislature – St. Clair routinely vetoed the legislation passed by the body. As the Jeffersonian Republicans gained political strength, and Jefferson was elected president, Ohio's territorial political leaders petitioned Congress for an enabling act and admittance to the union as a full-fledged state. Thus, fearful of a powerful governor, the 1802 Constitution gave the legislature the power to make law without interference from the executive branch, the power to appoint almost all civil officers and judges, apportion itself, create new counties, and act on anything else not specifically prohibited by

the Constitution (Steinglass and Scarselli 2004).<sup>4</sup> Thus, to use Pierson's (2004) terminology, a "large" event – oppression by a Federalist territorial governor – significantly colored how Ohio chose to initially organize its legislature.

While this all powerful legislature ensured that a single official in the form of the governor could not overturn the will of the people (i.e., the legislature), vesting that much authority in one institution of governance without any institutional check on that authority proved to be problematic. Some of the issues that emerged were unrestricted spending and the creation of an enormous state debt, using the ability to create counties and appoint county judges as a form of political patronage as well as enacting unnecessary legislation as a mechanism for elongating sessions and increasing legislator compensation. There were also issues with regards to judicial inefficiency as well as the difficult process for amending the constitution (Steinglass and Scarselli 2004). In his work on path dependency, Pierson (2004) addresses that the path taken may result in unintended consequences. In Ohio's case, there were substantial unintended consequences for creating an extremely powerful legislative branch. Over time, the body became quite corrupt. To further exasperate the issue, the initial constitution made amending the document extremely difficult. In fact, change would not come until thirteen years after the initial calls for it.

The impetus to finally make changes to the constitution came in the wake of the Panic of 1837, which resulted in the failure of a number of banks. Citizens in Ohio blamed the panic on the legislature's banking and fiscal policies. At this time, there was also a push

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<sup>4</sup>The delegation sent to Washington D.C. to lobby for Ohio's admittance as a state was sent with a drafted constitution to use as proof that the territory was ready for statehood. Turns out it was unnecessary as the Jeffersonian-Republicans in D.C. were more than happy to admit a Jeffersonian-Republican dominated territory to the Union.

to revise constitutions in a number of states that were experiencing economic and structural problems similar to those occurring in Ohio. It took supporters of constitutional revision thirteen years to muster the necessary two-thirds vote in the legislature to pass a resolution calling for a constitutional convention because during this time period legislative power was split evenly between the Whigs and Jacksonian Democrats. Thus, both parties were more concerned with securing the next election and control of the legislature than instigating constitutional revision. Ultimately, a coalition of Whigs and Free Soil Party legislators adopted the resolution and the voters overwhelmingly supported the convening of a constitutional convention in May 1850 (Steinglass and Scarselli 2004). The somewhat lengthy wait for revisions between 1837 and 1850 provides evidence for Pierson's (2004) arguments regarding the role of increasing returns. From the time of constitutions adoption in 1802 until the Panic of 1837, the institutions in place had become quite entrenched and there were many that benefitted from those institutions. Despite calls for reform, it appears that there was quite a bit of reluctance to make alterations.

The primary purpose of the 1851 Constitutional Convention was to scale back the significant power held by the legislature. Several reforms were adopted that achieved this goal. First, the power to appoint executive branch officials and judges was taken away, and these offices became elected positions. Second, the ability of the legislature to pass legislation regarding economic and special matters was significantly curtailed. And finally, the 1851 Constitution limited the ability of the legislature to apportion house and senate districts. Additionally, the revised document mandated that legislator compensation be fixed by law, ending the practice of extending the session just to increase compensation and

established biennial rather than annual sessions to decrease the enactment of unnecessary legislation. Despite these significant reductions in legislative authority, the executive and judicial branches were not strengthened. In fact, even though additional offices (lieutenant governor, auditor, treasurer and attorney general) were added to the executive branch, the governor was still not afforded any veto power over legislative decision-making (Steinglass and Scarselli 2004). The lack of a gubernatorial veto provides more evidence of the path dependency of institutional design – fifty years later and the experiences of territorial governance continued to influence decision-making with regards to the balance between legislative and executive branch power.

Another constitutional convention was convened in 1873-74. The revised constitution that emerged from that convention failed to be ratified by the voters. The primary reason for the convention was to alter the provisions of the judicial branch, which suffered from sufficient workload and inefficiency issues. Several alterations impacting the legislative branch were also proposed. These included the veto power for the governor, requiring a recorded yea/nay vote on any appropriation item if requested by any legislator, and prohibiting anyone interested in a state contract from becoming a legislator (Steinglass and Scarselli 2004).

No significant changes would again be made to Article II (Legislative Branch) until 1903, when the Governor was finally given the power to veto legislation passed by the General Assembly. This was a proposal that originated in the General Assembly and was approved by the voters. A gubernatorial veto could be overridden by a two-thirds vote of both chambers (Steinglass and Scarselli 2004).

Ohio held its final constitutional convention in 1912. This convention was part of a larger movement nationwide instigated by the Progressive movement to give citizens a more direct voice in government. However, rather than completely redraft and put forth a new constitution for voter ratification, the participants opted to put forth a series of amendments to the 1851 Constitution. The participants at this convention learned from the experience of the 1874 convention. In that case, the voters clearly were not willing to completely abandon the existing constitution, and thus the 1912 convention opted to propose amendments to the 1851 Constitution rather than draft a new document. Forty-two amendments were proposed and thirty-four were adopted by the voters. One of the most significant amendments regarded the adoption of the initiative and referendum. Citizens were now able to propose amendments to the constitution and pass judgment on laws passed by the general assembly. This was the only amendment that dealt generally with legislative structure and procedures. The other amendments altering Article II dealt largely with granting the legislature the power to legislate with regards to allowing certain professions to place liens on property with regards to payment, regulating the hours and pay for employees working on public projects, providing for the removal of public officials from office, regulating the use of expert witnesses and testimony in criminal trials and proceedings and registering, transferring, insuring and guaranteeing land titles (Steinglass and Scarselli 2004).

A number of amendments were passed following those that came out of the 1912 Convention. The major changes that impacted the legislative branch included amendments that increased senate terms from two to four years (1956) and an amendment via citizen petition that limited the terms of state house members and legislatures (1992).

Additionally, the legislative article of the constitution was reorganized in 1973 largely through the amendment process – these amendments did not result in many significant changes to legislative structure and process. The only change of interest was that the addition that the presiding officers of both chambers could call the legislature into special session. Prior to 1973, only the governor possessed that power (Steinglass and Scarselli 2004).

### **Path Dependency, Rationality and the Case of Ohio**

Clearly path dependent forces have impacted the evolution of Article II of Ohio's constitution. Specifically, in Ohio there were a series of critical junctures that led to the initial organization of the legislature as well as changes to its structures and procedures. The first and possibly most significant was the experience of the citizenry under territorial governance. Significant repression by an authoritarian territorial governor led to the new state establishing an extremely powerful legislative body that was left largely unchecked by the other branches of government. Further, the territorial government experience as well as Ohio's admittance as a state was set within the larger context of the national power struggle between the Federalists and the Jeffersonian-Republicans.

This initial decision regarding the relative power of the legislative branch would have a number of unintended consequences that would endure and impact future alterations to structures and procedures. Specifically, the resulting corrupt legislative practices led to significant calls from citizens to reign in the power of the institution. However, given the difficulty of amending the constitution as well as the legislators' desire to maintain an institution that benefitted them (i.e., they were acting rationally), it took

many years for reform to actually occur. Further, while the changes did limit the power of the legislature, it did little to provide any real check (e.g., gubernatorial veto) on legislative action.

The Progressive Movement of the early twentieth century provided a second critical juncture. Progressives were able to secure support for a constitutional convention in 1912 that led to increased power for the people via the adoption of the initiative and referendum. The citizens of Ohio could now serve as a check on legislative power with their ability to directly alter the constitution as well as their ability to hold referendum votes on legislative activity. Article II has rarely been amended through the initiative process. However, when Ohioans have chosen to exercise this power, the citizens have used it to restrict the power of the legislature. Most notably, in 1992 the terms of state legislatures were limited via the citizen initiative process.<sup>5</sup> Ohioans have also rarely used their referenda power. In 2011, citizens overturned a controversial law that would have severely limited the ability of public employee unions to collectively bargain.

### **Conclusions and Discussion**

Our plans for future research are to explore two other cases in detail – Rhode Island and Texas. Rhode Island provides a case where we can explore how status as one of the original thirteen colonies impacted the evolution of constitutional language regarding the

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<sup>5</sup> Every twenty years, the citizens of Ohio are required to decide whether or not they wish to convene a constitutional convention – citizens have chosen not to exercise this power since 1912. However, in the 1970s the citizens opted for a constitutional review commission that proposed a number of constitutional amendments. Interestingly, this year citizens are required to decide on a constitutional convention. Most are recommending a constitutional review commission and many are calling for that commission to repeal term limits, arguing that term limits have led to the unintended consequence of actually increasing the power of special interests in the state.

legislative branch, while Texas provides a case where we can explore these settings in the context of direct admittance to Union as a state. We also hope to be able to extend this analysis to statutory law.

Clearly, the path that Ohio took to statehood influenced the evolution and development of its governing institutions. The initial decision to vest supreme power in the legislative branch led to serious consequences that impacted the state in many ways and for a very long time. Once the state started down that path, it was very difficult to alter course. Even when there was support for reform, those making changes had a limited choice of acceptable options for change. The source of the change also matters. Alterations from constitutional conventions and through citizen initiative often reigned in the power of the legislature. Those instigated by the legislature itself for voter approval sometimes limited their power in small ways (the exception being the gubernatorial veto) and sometimes actually worked to the benefit of the legislature. The case of Ohio provides compelling evidence that appreciating how an institution has evolved and developed is vital to understanding that institution and its impact.

Further, these findings call into question many of our theories regarding legislative structure and procedure. Many of our theories – especially those at the congressional level – are rooted in rational choice tradition. Therefore, the central assumption of these theories is that the structures and procedures that exist in the legislature are there because the members want and need them to fulfill their goals, and can be altered whenever necessary. The evidence presented regarding Ohio indicate that this may not always be true. This forces us to ask ourselves a series of questions including: how valid/applicable are these theories to state legislatures if this basic assumption regarding institutional



adoption and alteration is simply not true? Can we continue to apply congressional theories to state legislative research as long as we make the appropriate alterations? Or, do we need to begin to construct theories with regards to state legislative institutions that are unique to the state legislative setting? At this time we do not have the definitive answers to these questions, but they are questions that we are pondering and that all who study state legislative institutions must now consider.

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