

Countermajoritarianism in the Antebellum Senate

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The countermajoritarian potential of the U.S. Senate long has been a concern of scholars, reformers, and the public.¹ For one, the decision to base Senate representation on states with widely different populations and to provide each one with equal representation can produce outcomes where the winning side on a matter represents only a minority of the overall population. Fewer than 600 thousand people now reside in Wyoming, for instance, while the population of California is nearly 40 million. Yet both states have the same voice within the U.S. Senate. In addition to the effects of Senate apportionment, many decisions within the body are determined by a supermajority threshold. By constitutional fiat, constitutional amendments, treaties, veto overrides, and motions to impeach require two-thirds support to pass. A two-thirds supermajority is likewise required to suspend the rules of the Senate. Over the course of American history, Senators themselves have created a myriad of supermajority nodes, such as the 60 votes now needed to invoke cloture or waive certain budgetary procedures. In recent years, the unanimous consent agreements that Senators use to conduct most chamber business often stipulate 60 vote thresholds to avoid dealing with the inconveniences of cloture. Given all of this, observers often ask, just how democratic is the upper chamber of the U.S. Congress?

This paper is part of a broader study of countermajoritarianism within the Senate (Evans nd). Here, the focus is on the antebellum period, extending from the first Congress in 1789 to the outbreak of the Civil War in 1861. Senate decision making during these years occasionally featured supermajority thresholds for settling a motion. Treaties were a significant part of the floor agenda, for example, and there were periodic attempts to amend the Constitution, override presidential vetoes, adopt articles of impeachment, or suspend the rules. In addition, Senators utilized chamber procedure and the constraints of time to filibuster initiatives potentially backed by a majority. But by most accounts, the most significant manifestations of countermajoritarianism during these decades were rooted in malapportionment. The western expansion of slavery, for example, often met substantial opposition within the House, where seats were roughly based on population (enslaved people counting for just three-fifths, of course). In the Senate, in contrast, southern states were generally able to block efforts at containing the peculiar institution because of their overrepresentation within the body. As a

¹ Among others, consult Smith (2014), Wirls (2022), and Jentleson (2021).

source of countermajoritarian potential, in other words, Senate apportionment was particularly consequential for lawmaking during the antebellum period.

In this paper, we explore several related questions about how malapportionment affected Senate decision making prior to the Civil War. How often during these years did the winning side on a roll call vote represent only a minority of the U.S. population? Does the prevalence of such roll calls rise or fall when we exclude from population estimates enslaved people, women, and other individuals denied full citizenship rights? What contextual factors influence the rise and fall of countermajoritarian roll calls over time? Does the incidence vary by motion type (amendments, procedural questions, the passage of measures) or issue area? Who typically were the winners and the losers when a countermajoritarian roll call occurred during 1789-1861, and how did this vary over time? Finally, looking back, what are the implications for the representational capacity of the modern chamber?

Constitutional Compromises

In another paper associated with this project (Evans 2023), we found that so-called countermajoritarian roll calls have been common over the course of Senate history.² To be precise, a roll call is characterized as *countermajoritarian* if one of two conditions hold: (1) the number of yea votes exceeds the number of nays but the population represented by the “yea” side is smaller than the population represented by the nays; or (2) the number of nay votes equals or exceeds the number of yeas, but most of the population resides in the states of members voting yea.³ Overall, on about 12 percent of the votes that have taken place within the chamber, the side with a numerical majority within the body represented a minority of the U.S. population in aggregate. Incremental adjustments in the threshold for characterizing a vote as countermajoritarian, (requiring that the size of the population differential be 5 percent, or 10 percent), do not appear to make much of a difference, so in this project we mostly opt for the least restrictive requirement.

² A long tradition of research in this area exists in political science. See, for example, Moffett (1895) and Woody (1926), and more recently, Ross (1996), Lee and Oppenheimer (1999), and Griffin (2006).

³ For now, we do not treat differently roll call decisions that required a 2/3 supermajority. Our main goal is to gauge the countermajoritarian potential rooted in malapportionment, as opposed to the consequences of different vote thresholds. These procedural sources of countermajoritarianism are explored in depth elsewhere the broader project of which this paper is a part. But if the antebellum votes with supermajority requirements are dropped or otherwise treated separately, the results reported in this paper are largely unaffected.

Evans (2023) also demonstrates that the incidence of such roll calls varies substantially over time and is closely associated with two main factors. First, the level of conflict in the agenda matters a great deal. During a two-year Congress, the prevalence of “close votes” (roll calls where the difference between the yes and no sides was less than 20 percent) is a strong predictor of the fraction of roll calls characterized as countermajoritarian. As close votes become more common, so does the incidence of countermajoritarian outcomes. In addition, countermajoritarian roll calls tend to increase substantially when the percentage of the national population represented by members of the majority party within the chamber falls. As often is the case in the contemporary Senate, for example, Republicans may have an organizational majority but together represent only a minority of the U.S. population. Under such conditions, countermajoritarian votes are more common.

When we consider the expanse of congressional history, the proportion of the Senate roll call record that can be characterized as countermajoritarian is especially high during the contemporary era, *but also during the antebellum period*. From 1789 until 1861, countermajoritarian roll calls constituted nearly 15 percent of the floor agenda; from 1861 until 1979, the percentage dropped to under ten; and from 1979 through 2022 it was nearly 14 percent. Given the considerable variance that occurs from congress to congress, however, the more revealing indicator may be the range over time. During the antebellum period, countermajoritarian incidence per two-year Senate ranged from a low of just over three percent to a maximum of 31 percent. During 1861 until 1979, the indicator ranged from 2.5 percent to about 15 percent. And during the congresses since 1979, the range was from roughly 2.5 percent all the way to 40 percent. Along with the contemporary era, in other words, we have something to learn by examining in depth countermajoritarian politics prior to the Civil War.

Table 1 provides summary information about the Senates of the era. Included are the size of the chamber, the identity of the party or coalition organizing the Senate, the size of that majority, and the fraction of the chamber represented by those members. The identity of the organizing majority coincides nicely with the partisan eras and party systems that structure scholarship about American political history.⁴ The decade or so extending from 1789 to 1801 was dominated by a coalition supportive of the Washington administration, and then the nascent Federalist party. These groupings were structurally weak by contemporary standards but

⁴ Major studies include Aldrich (2011) and Sundquist (1983).

sufficient to organize the Senate and House (Aldrich, 2011). The period from 1801-1815 can be referred to as the “Jeffersonian” era, where Republicans loyal to the Virginian had the upper hand within the chamber. “The Era of Good Feelings” (1815-1823) featured the functional equivalent of one-party rule, with the successors of the Jeffersonians maintaining their organizational grip within the Senate. Majority party margins were high throughout the first two decades of the 19th century, but especially during this period. Table 1 also indicates that the size of the body increased steadily during the antebellum era due to the admission of new states, but the pace stepped up during the Era of Good Feelings. The years spanning 1823-53 produced a party system largely structured around Jacksonian coalitions, and those who opposed them. Indeed, Andrew Jackson’s political opponents secured majority status within the Senate during three congresses – the 23rd (1833-55), the 27th (1841-43) and the 28th (1843-45). These shifts in majority control, we will see, had consequences for the incidence of countermajoritarian outcomes and the issue areas that were affected. During the Jacksonian era, the rapid pace of state admission also continued, with consequences for membership size and Senate politics. Compared to the Era of Good Feelings, party margins were tighter. Finally, for want of better nomenclature, the years from 1853 to 1861 can be labeled the “prelude to war.” Although Democrats retained organizational control of the Senate, their fragile intersectional coalition was imploding.

To begin identifying the linkages between Senate apportionment and the roll call record, consider Figure 1, which is a scatterplot juxtaposing the percent of the chamber voting yes on a question and the percent of the population covered by the states of those members.⁵ Each point reflects the votes-population combination for a single roll call. Not surprisingly, the points cluster around the 45-degree line, indicating rough parity between votes cast and population covered. But there also is considerable spread around that line, especially toward the center where closer votes are located. For a large share of the Senate roll call record during this era, there was considerable disparity between the size of a voting coalition within the chamber and

⁵ Population data derive from Census totals by state, which were accessed in via *Social Explorer*. The Census values, of course, are decennial and thus do not vary within decades. This creates problems for the antebellum period because populations in an area often increased dramatically following statehood. The pre-statehood figures, in other words, may significantly undercount population in the years until the next Census is taken. As a result, we impose a linear progression on population estimates between censuses. In calculating the size of the population on each side of a vote, individual members are allocated one-half of the relevant state population. Roll call data were downloaded from voteview.com.

the proportion of the national population that it covered. Even when the majority of votes and most of the population covered are on the same side of a question, this disparity may indicate the presence of malapportionment-induced distortions elsewhere in the legislative process, for instance, as alternatives are constructed and coalitions formed. Of particular normative interest, however, are those outcomes located in the quadrants in the upper left and lower right of the figure. For these roll calls, the majority coalition within the chamber represented a minority of the population, and as mentioned, there were many cases during the antebellum years. This subset of the roll call record will be the focus of the remainder of this paper.

Especially during the antebellum period, however, it is normatively crucial that we consider precisely what is meant by *population*. African Americans, of course, could not vote, and southern states included large populations of enslaved people. If the identification of a countermajoritarian roll call outcome is based on state populations that include large numbers of the enslaved, excessive weight will be placed on the votes cast by southern members. Clearly, the political interests of the enslaved were not reflected in the roll calls cast by Senators from those states. A roll call that appears countermajoritarian, with the south mostly on the losing side, may no longer be so if enslaved individuals are dropped from the totals. Moreover, throughout the antebellum era, women were unable to vote and otherwise enjoy the benefits of full citizenship. Nor were recent immigrants and people lacking property for the earliest congresses. Should they be included in the population totals for the purpose identifying outcomes characterized as countermajoritarian?

For these reasons, in this paper we integrate estimates of the “potential electorate” produced by Burnham (2010) for his classic studies of historical turnout during the 19th Century.⁶ His measure incorporates the legal disenfranchisement of African Americans prior to adoption of the 15th Amendment in 1870, as well as the absence of suffrage for women. Unfortunately, he was unable to include restrictions based on immigrant or property status, but the measure is still a useful first step toward considering the interactions that may exist between the denial of citizenship rights, Senate apportionment, and who tended to prevail in the antebellum Senate. In the analysis that follows, we generally juxtapose results based on (1) total population and (2) Burnham’s measure of the voting eligible population. Often, there will be major differences depending on the population baseline that is used.

⁶ A detailed discussion of the strengths and limits of the measure is provided by Burnham (1986.)

Figure 2 shows the proportion of Senate roll calls during a two-year Congress where a majority within the chamber represented fewer people than the members voting the other way. Again, either the “yeas” outnumbered the “nays” and most of the population was within the states of the “naysayers,” or the nays exceeded the yeas but the members voting affirmatively represented more people. The trend in black shows the proportion when the entire population of a state is used as the basis for calculation. So measured, there was considerable counter-majoritarian incidence during the Federalist period. During the Jeffersonian years, counter-majoritarian outcomes were less evident. With the Era of Good Feelings, the incidence began to rise, and it continued to do so during the first half of the Jacksonian system. Midway through that remarkable period of political transformation, however, the trend becomes choppy and rises or falls depending on which party coalition was in power. When the Jacksonians and their successors lacked organizational control over the Senate, the incidence of counter-majoritarian results tended to spike, first during 1833-35, when an anti-Jackson coalition organized the Senate, and then during 1841-43, the beginning of what would be a four-year Whig majority within the chamber. With the demise of the intersectional Jacksonian coalition in the 1850s, the incidence of counter-majoritarianism dropped somewhat overall.

The incidence of counter-majoritarian roll calls based on the Burnham measure is also included in Figure 2. Importantly, there are noteworthy differences between the two trend lines that are mostly consistent with expectations. During the early Congresses, organized first by forces friendly to the Washington Administration and then by the Federalists, excluding individuals who lacked voting rights generally reduced the incidence of counter-majoritarianism. States outside the south tended to prevail on Senate roll calls during these years and adjusting downward the populations attributed to slave states reduced the fraction of counter-majoritarian outcomes. As we move into the Jeffersonian and Jacksonian systems, however, the levels are generally higher using the Burnham measure. When enslaved individuals are removed from the population totals attributed to Southern states, the incidence of counter-majoritarianism rises accordingly. The only exceptions are the 19th (1825-27) and 22nd (1831-33) Congresses, both organized by inter-sectional Jacksonian majorities.

The temporal variance apparent in Figure 2 is rooted in the location of state boundaries, the admission of new states, the politics of westward expansion, and the geography of slavery and other violations of natural rights. In his masterful analysis of the territorial expansion of the

U.S., Frymer (2018) demonstrates that proponents envisioned an essentially White republic, made possible by the careful delineation of territorial and state boundaries and other instruments of population management. The employment of such instruments was highly tactical and inseparable from party politics and sectional divisions over slavery. In other words, politically constructed state boundaries, population migration toward the west, and systematic restrictions on citizenship rights likely produced the political alignments behind the trends reflected in Figure 2.

For context further context, consider Figure 3, which shows the distribution of population across states in the congresses prior to the Civil War. For now, we use the standard Census totals. States are arrayed horizontally in order of admittance into the Union, beginning with the original thirteen during the first Congress, and then proceeding through time to the 33 in place at the onset of secession. Congresses are arrayed vertically. Each cell indicates the share of the national population for a state that congress, ranging from the darkest shading ($\geq 10\%$) to the lightest shading ($\leq 2.5\%$), with successive gradations reflecting intermediate levels of population share. The solid border to the right indicates which states had representation within the Senate during a particular congress, which of course depends on the timing of admittance.

In the first Congress, much of the population was clustered in just four of the 13 original states – Pennsylvania, Massachusetts, Virginia, and North Carolina. Depending on how enslaved people are counted, Virginia was by far the largest state in terms of population, with North Carolina placing third. Three states were relatively sparsely populated at the time – Delaware, Georgia, and Rhode Island. The remaining six fell somewhere in the middle. Among the initial 13, seven were free states while just six were slave states. For early congresses, then, Senate malapportionment appeared to give the north a slight advantage. Southerners, ironically, viewed the House as a potential counterweight because of the large fraction of the country then residing in Virginia and North Carolina (Wirls, 2022).

Over the decades that ensued, the consequences of Senate apportionment mostly flipped. In Figure 3, from roughly the 9th Congress (1805-06) to the 19th (1825-27), the states with 10 percent or more of the population included Virginia, to be sure, but also Pennsylvania and New York, and by 1811, New York had surpassed Virginia as the most populous state. Free states also became increasingly common in the intermediate shading gradations. Notice, however, that the main driver here was not so much which states were admitted and when, but the dramatic

population increases that occurred in the north and west, largely due to immigration and internal migration. These population swings were reflected in the apportionment of House seats, but not so much in the Senate, where states were admitted in a manner that promoted parity between enslavers and the rest of the nation.

The basic strategy was unambiguous and is well-known to students of American history. As the population swung toward the so-called free areas, southerners used the admittance of new states to protect their region's voting power within the Senate. The consequences are apparent in the figure. First came the joint admission of Kentucky and Vermont for the 2nd Congress. Tennessee's admission for the 4th Congress was balanced by the inclusion of Ohio, with Senate representation for Ohioans commencing in the 8th. The admission of Louisiana, a slave state, in time for the 12th Congress, was followed by three famous pairings in quick succession -- Indiana (with Senators first voting in the 14th Congress) and Mississippi (Senate representation starting in the 15th); Illinois (Senate representation also from the 15th) and Alabama (beginning with the 16th); Maine (commencing with the 16th) and Missouri (the 17th Congress onward); and finally Michigan and Arkansas (both in the Senate for the 24th Congress). Due to the gradual exhaustion of territory conducive to slavery and various idiosyncratic factors, the pairing game broke down, and by 1861 the Union included 15 slave states out of a total of 33. Both the number and the composition of states, however, were shaped by the political cleavages and sectional disputes at the heart of antebellum politics. The effects of Senate malapportionment are inseparable from the political construction of state boundaries and the constituencies they contain.

Evans (2023) isolates the causal impact of three factors for understanding the rise and fall of countermajoritarianism over the entirety of Senate history – the dispersion of population across states, the level of conflict in the floor agenda, and the share of the population “covered” by the majority party at the time. Do the same relationships hold for the antebellum subset of the roll call record?

An accurate indicator of population dispersion can be created by calculating something akin to the Gini coefficients that economists use to measure disparities in the distribution of income or wealth. A value of zero for the coefficient indicates perfect equality within a frequency distribution, while a value of one indicates complete inequality. So, a population Gini coefficient of zero would obtain when there is little difference in population across states, whereas a one would occur if everyone lived in a single state. To incorporate restrictions on

citizenship rights throughout the antebellum period, coefficients are calculated twice, using the total and voting eligible populations, respectively, as the basis. Figure 4 portrays these data by congress, 1789-1861. As you can see, the overall trend using both measures is upward, but there was a sharp increase during the second decade of the 19th Century due to the admission of new states, immigration, and migratory patterns across state boundaries. Interestingly, the two trend lines tend to move together, but the coefficient based on the Burnham measure is always higher. Including the enslaved and others lacking citizenship rights in population totals tends to make the distribution across states look more equitable than was actually the case, with possible implications for discerning when population majorities are on the losing ends of Senate votes.

Along those lines, if conflict is high in the roll call record, the size of the chamber majority on the prevailing side of a vote should fall, which obviously makes more likely an outcome where most of the population is represented by the opposition. Conversely, when most roll call outcomes are relatively lopsided, the likelihood that the coalition on the losing side within the chamber will represent most of the nation should be slim. To operationalize agenda conflict, Evans (2023) relies on the fraction of close votes for a Congress, where a vote is deemed to be close if the margin was less than twenty percent (e.g., less than 60-40 in a chamber with 100 members voting). For the antebellum Senate, the fraction of roll calls that were close within each congress is portrayed in Figure 5. Notice that the trend ranges from lows of about 22 percent during the early years of the Jeffersonian period to over half during the intense political battles of the Jacksonian era. During the era of Good Feelings, the overall level of conflict in the Senate agenda was somewhat muted.

As mentioned, we also should consider the fraction of the population represented by the partisan majority within the Senate. Population can be attributed to members by taking the Census total for a state (or the Burnham measure) and dividing it evenly between the two Senators from that constituency. The estimates for members associated with the majority party at the time are then aggregated and divided by the total population, producing the “majority party population coverage” variable. The results for the antebellum period are portrayed in Figure 6. Calculations based on both the total and voting eligible populations are included for purposes of comparison. Clearly, there is considerable variance in both trends over time. During the Jeffersonian era, and continuing into the Era of Good Feelings, large majority margins regularly produced population coverage of 80 percent or above. Roll calls where the side with most of the

votes represented only a minority of the population should be rare under such conditions. Conversely, there are several congresses where the margin for the party organizing the chamber was .55 or lower, and a few dipped below 50 percent because of the presence of third parties or functionally independent members. Not surprisingly, population coverage fell during such congresses. These years should be especially ripe for countermajoritarianism in the roll call record. Notice also that the population and voting eligible trends diverge in instructive ways. During 1789-1801, the population coverage of the Federalist majority appears larger if enslaved people are dropped from the southern totals. From 1801 onward, majority population coverage based on the Burnham measure is generally lower than the analogous trend relying on raw Census totals, although the two are similar during the 1830s and 1840s.

Table 2 reports the results of a multivariate analysis with the proportion of countermajoritarian outcomes as the dependent variable and three main independent variables – the Gini coefficient of population dispersion, the proportion of close votes, and the share of the population represented by members of the partisan majority. The unit of analysis is the two-year congress. The estimator is ordinary least squares, and all variables are differenced by congress to minimize serial correlation and other problems associated with time series evidence. So, for the 2nd Congress, the value of the dependent variable is the proportion of countermajoritarian roll calls associated with that two-year period minus the proportion associated with the 1st Congress, and so on over time and for the other variables as well. As a result, the number of observations is now 35, or one less than the 36 congresses that took place prior to the Civil War. The analysis was conducted twice – once with the Census population totals as the basis for calculating countermajoritarian incidence, population Gini, and majority population coverage, and a second time using voting eligible population for constructing each measure. The indicator for close votes is the same across models.

As you can see, with both measures of countermajoritarianism, strong and statistically significant relationships are apparent for close votes and majority population coverage – even though the evidence is organized so that only 35 observations are included. As expected, in both cases, an increase in the prevalence of close floor votes has a strong and positive impact on the level of countermajoritarianism in the roll call record. And as the proportion of the population represented by the partisan majority rises, the prevalence of countermajoritarian votes goes down. Interestingly, the results are especially strong when the voting eligible population is

utilized, rather than raw Census totals. Most likely, the voting eligible indicators better reflect the political forces at work within the chamber during this period, and as a result the fit with the evidence is improved using these measures. Given the complexity of coalition building within the Senate and the presence of only 35 units of observation, it is striking that fully half of the variance in countermajoritarian incidence across antebellum congresses can be explained by the voting eligible indicators included in model 2.

Along those lines, the lack of explanatory power attributed to the population Gini's in both models is also highly instructive. By itself, population dispersion across states does not contribute all that much to countermajoritarianism in the roll call record. Instead, the impact of Senate malapportionment appears to be inseparable from the underlying political configuration. These findings, it should be emphasized, are fully consistent with similar multivariate tests reported in Evans (2023) but encompassing all of Senate history. That the relationships hold up for an important subset of the broader dataset reinforces our confidence in the underlying argument.

Motions, Issues, and States

The finding that countermajoritarian roll calls are closely associated with close votes raises questions about the kinds of motions that are affected. A long line of congressional research has demonstrated that roll call outcomes on final passage motions are more likely to be lopsided than are roll calls on amendments, procedures, or other matters (Roberts and Smith, 2003). In a recent study, Curry and Lee (2020) show that final passage votes remain prone to large margins, typically including significant support from the minority side of the partisan aisle. One critique of the analysis reported in this paper might be that countermajoritarian roll calls should be rare on passage votes because they are not all that close. Final votes on legislation, then, may be disproportionately majoritarian, with implications for normative assessments about antidemocratic biases rooted in Senate malapportionment.

In response, we would make two points. First, it is instructive to consider how the presence or absence of countermajoritarianism varies across different kinds of motions and questions. Preliminary evidence is provided in Table 3, which separates Senate roll calls prior to 1861 into five main categories. First are amendments to bills or resolutions, or motions that clearly related to portions of larger measures. The second category is for mostly procedural

matters, such as motions to proceed to consideration of an item or other efforts that concern the process through which more overtly substantive items are considered. The third category is for motions for first, second, or third readings of a bill, often including engrossment. During the antebellum period, such “readings” were regularly subject to roll calls on the floor. These motions could have been grouped with the procedural decisions, but since they often have substantive consequences and relate to a measure in full, they are treated as a separate category in the table. The fourth category is for motions to pass or defeat entire bills, resolutions, treaties, or other measures. The final category is for a range of motions that relate to reconciling the differences between Senate and House bills.⁷ The percentage of countermajoritarian roll calls within each category is denoted for both the population and voting eligible baselines.

As you can see, across motion categories countermajoritarian impact tended to be higher for the voting eligible measure (interbranch motions were the only exception). And countermajoritarian roll calls were somewhat elevated for procedural matters and other questions that largely concerned the process of lawmaking. But overall, the consequences of Senate malapportionment were apparent across motion categories, including passage. Clearly, as the project develops, we need to distinguish between bills based on their substantive importance, but for now it does not appear that countermajoritarianism during the antebellum years was muted on passage motions.

In addition, we also are not convinced that efforts to isolate the impact of Senate apportionment and equal state representation should focus disproportionately on passage motions. Consider the matter from a spatial perspective, in which member preferences, legislative proposals, and legislative outcomes are arrayed along some underlying dimension of evaluation, say the standard liberal-conservative continuum that structures leading models of lawmaking. Viewed from this perspective, a passage vote confronts a member with a choice between two alternatives, the full measure on the table and what will occur if the measure fails – typically the status quo of existing law, or in the case of appropriations, no funding for the

⁷ This coding scheme is preliminary and likely to be adjusted somewhat as our research program develops. There are some ambiguities. For instance, roll calls relating to the printing of items were common during the antebellum period. In certain instances, these motions were primarily procedural and concerned the process, rather than the substance, of lawmaking. But others took the form of resolutions, often with accompanying substantive language. We used our best judgement about categorizing such motions. For this coding wave, votes on nominations were lumped into the passage category, as were motions to impeach. Overall, the judgement calls were sufficiently rare or sufficiently restricted to subsets of the data, that the gist of Table 3 is unlikely to be affected.

affected programs. Given that legislation must clear many hurdles before arriving at a vote on passage, even lawmakers whose preferences diverge significantly from the location of the measure on the underlying ideological line often vote yes. Amendments, in contrast, often entail more incremental adjustments in the underlying measure. Rather than an all-or-nothing roll call on the entire measure, they concern more incremental adjustments in components of the broader matter. Not surprisingly, votes on amendments tend to be closer – and thus more likely to be countermajoritarian. But the fate of amendments has obvious consequences for the contents of legislation, regardless of how close the final passage roll call turns out to be.

An analogous argument can be made about procedural matters, which often have consequences for the contents of legislation. There is a reason why former Representative John Dingell once remarked, “If you let me write the procedure, and I let you write the substance, I’ll [screw] you every time.”⁸ Procedure has consequence for substance, and the presence of countermajoritarianism on matters of process can shape the content of legislation even when the accompanying passage roll call is lopsided and majoritarian. Clearly, further research needs to be conducted into the linkages between the type of motion and the impact of Senate apportionment, but this initial foray into motion type reinforces our claim that countermajoritarianism was an important aspect of chamber decision making during the antebellum period.

It also is instructive to look behind the aggregate results reported so far and consider the issue areas where Senate apportionment may matter the most. As part of their foundational research about the congressional roll call record, Keith Poole and Howard Rosenthal coded roll call votes from 1789-2015 according to over 100 distinct issue topics.⁹ Their issue codes were not meant to be exhaustive. Indeed, roughly half of the votes that occurred on the Senate floor were not coded – often procedural or other topics that were not substantively important to the roll call history of Congress. Still, they did prioritize coding the more historically consequential topic areas, and the research employing their coding scheme has produced a succession of landmark studies. For these reasons, we adopt it here. During the antebellum period, if the uncoded items are dropped, 46 distinct issue areas remain. In declining order, the ten most frequent are treaties (853), public lands (823), public works (649), tariffs and trade regulation (569), banking and finance (384), slavery (272), the national bank (259), judiciary (201), military pensions and

⁸ Quoted in *National Review*, February 27, 1987, 24.

⁹ The Poole-Rosenthal issue codes were downloaded from https://legacy.voteview.com/dw-nominate_textfile.htm.

veterans' benefits (167), and congressional pay and benefits (122). These topics were central to the congressional agenda at various points before the Civil War.

In Table 4, we provide summary information about the incidence of these and other topic areas among the roll calls categorized as countermajoritarian, once again distinguishing between the population and voting eligible measures. For further context, we partition the information by party period. For the Jacksonian era, the evidence is further divided based on which partisan coalition organized the chamber (Democrats from 1823-33; an anti-Jackson coalition in 1833-35; Democrats again during 1835-51; Whigs during 1841-45, and then Democratic control in 1845-53). For each period and both measures of countermajoritarianism, we denoted the top five issue areas by frequency. For now, our interpretation is not that these topics produced disproportionately high *rates* of countermajoritarian impact – for the most part, they were among the most common issues on the floor agenda more generally. Instead, the lists inform our understanding of the contents of this subset of the roll call record.

Except for the Era of Good Feelings, where it was number two in both columns (population and voting eligible), note that slavery only surfaced among the top five for the voting eligible calculation. With that measure, the populations of southern states were sharply reduced, which made countermajoritarian impact more likely when their Senators were on the winning side of a vote. But overall, looking across the periods, a substantial amount of continuity is apparent in the issue lists. Mostly we do not observe dramatic shifts in the affected issue areas across seven decades of early American history. Instead, the consequences of Senate apportionment appear to be spread across the chamber agenda.

The National Bank is an exception. This critical issue in early U.S. economic development was the subject of 259 roll calls on the Senate floor, but fully 101 occurred in the 27th Congress (1841-43), during the Jacksonian era but with the Whigs organizing the chamber. Indeed, over 97 percent of the national bank votes occurred in just five congresses (the 13th, 14th, 22nd, 23rd, along with the 27th). Not surprisingly, the issue also surfaced disproportionately among the countermajoritarian outcomes during these congresses. Another exception is roll calls related to the allocation of representatives by state, the size of the House, and the ratio of members to population. Motions touching on such matters (denoted by “Represent/Pop”) in Table 4 were the subject of over 100 roll calls during the antebellum period but tended to be

concentrated in a few congresses. Seventy-seven of the votes occurred in just three (the 2nd, 27th, and 35th), and thus the item surfaces only sporadically on the top-five lists.

It also is instructive to consider the percentage of votes within each issue area that were associated with a countermajoritarian result. Were the issues included on the Table 4 lists because of their prevalence on the roll call agenda in general, or because they were particularly conducive to countermajoritarian politics? Figure 7 shows the percentage of roll calls in an issue area that resulted in a countermajoritarian outcome (relying on the total population measure) across the entire antebellum period. Here, all items denoted as “other” in the Poole-Rosenthal issue codes are dropped, as are issue areas with fewer than 100 votes in total, primarily to avoid idiosyncratic factors. Interestingly, by this measure, the National Bank and House apportionment were the most likely issue topics to produce a countermajoritarian roll call. In future research, we will delve more deeply into the issue-specific roots of Senate countermajoritarianism, but for now the evidence reported in Table 4 and Figure 7 is instructive. (And before concluding, we will take a closer look at the National Bank).

Further insight into the sources of Senate countermajoritarianism can be gained by considering which states were most likely to be on the majority side of roll calls while most of the population was on the other. These states were the main gainers from Senate malapportionment. The information is provided in Tables 5-8, once again broken down by party period (Table 5 for the first three, Table 6 for the Jacksonian system, and Table 7 for the years leading up to the Civil War). Within each table, the first column lists the states with representation in the Senate at the time, in order of when they first had members voting within the chamber. The entries to the right are the percent of all countermajoritarian votes cast by the Senators from each state. Here, we identified which roll calls had a countermajoritarian outcome and determined which Senators were part of the voting majority on these items. These totals were summed for a congress, and the percentage associated with each state calculated. The percentages are averaged by congress because a state may not have been present in the Senate for the entirety of a party period, and we did not want to bias their entries downward. Obviously, as the number of states in the union expanded and the membership of the Senate grew, the proportion of countermajoritarian roll calls cast by an individual state tended to fall. But by comparing average percentages across states within a party period, we can gain some insight into which states tended to benefit when these outcomes occurred. For each party period, we shade

the five highest entries. And once again, the calculations are conducted twice, once with total population and once relying on the voting eligible.

As you can see, there are important differences over time, and across the two population measures. During the Federalist era, the states most likely to be on the prevailing side tended to be from the north. As we advance to the Jeffersonian years, the pattern continues. But notice that here, when we use the voting eligible populace as the baseline, southern states become more prominent. Here, the top five include Georgia, North Carolina, and Tennessee. During the Era of Good Feelings, southerners are even more prevalent, especially for the voting eligible measure. The various partisan configurations that characterized the Jacksonian party system exhibit considerable variance in which states were on the prevailing side of countermajoritarian roll calls. This is not surprising given the intersectional character of that coalition during these years. For the first decade or so (1823-33), based on the Census measure, the winners disproportionately were northern states, but also Ohio and Louisiana. For the voting eligible baseline, the slave states of Mississippi and Missouri were also near the top. The anti-Jackson Congress of 1833-35 featured northern states among the top five, regardless of the population measure. With the Democrats back in the majority during 1835-41, the winners once again tended to be southern. The Whig interlude between 1841 and 1845 resembled the patterns for the earlier congress when the anti-Jackson coalition organized the Senate. With the Democrats back in control during 1845-53, the top five states were exclusively southern. The southern tilt continued in the eight years leading up to the Civil War. The only exception is California, which surfaced among the top five when the Census totals are used to gauge population. Otherwise, the clear winners were slave states.

Overall, the evidence reported in Tables 5-7 suggests that the consequences of Senate apportionment – conditioned by the structure of conflict in the Senate agenda and the geographic strengths of the major parties – was far from neutral. Over time, the pro-southern tilt seemed to increase. This tilt varied considerably, however, depending on who was organizing the Senate. When the organizing majority was disproportionately comprised of northern or western interests, the winners on countermajoritarian roll calls shifted in that direction. And the southern cast of Senate countermajoritarianism was particularly apparent when people denied full citizenship rights are dropped from the population totals. The roll call consequences of Senate

malapportionment, in other words, were an important ingredient of the sectional conflicts that helped define the antebellum period.

The National Bank

Before concluding, we take a closer look at the incidence of countermajoritarian roll calls that concerned the National Bank. The issue was particularly associated with such outcomes, both in terms of the overall number of votes and the likelihood that an individual roll call would result in a countermajoritarian result. Figure 8 shows the incidence of roll calls on the national bank from 1789 to 1843. The figure includes the number of roll calls dealing with the issue per congress, distinguishing between votes that produced a countermajoritarian result and those that did not. The evidence is presented twice, once for the total population measure and again using voting eligible.

As mentioned, there is considerable variance over time. During the Federalist period, in the early years of the first national bank, such votes were not frequent, but when they occurred were especially likely to produce a countermajoritarian result. Through the Jeffersonian period and the Era of Good Feelings, bank votes became more frequent, but tilted majoritarian. During the Jacksonian period, bank votes were occasionally a large portion of the floor agenda, and the results often countermajoritarian. For these reasons, the bank offers a useful window into the contours of countermajoritarianism on an historically important issue across a span of political alignments.

A national bank was one in a package of financial innovations advocated by Alexander Hamilton to increase the public and private credit of the early nation. In the plan he submitted to the First Congress as Treasury Secretary in 1790, Hamilton proposed a bank based in Philadelphia, chartered for 20 years, with \$10 million of capital— at the time, five times more than all other American banks combined. In Hamilton’s vision, the bank’s primary purpose would be to safely hold deposits, establish a uniform currency, and issue credit to the government and private interests for internal improvements. In the Senate, Hamilton’s report was referred to and hastily reported out of a friendly committee of five that included Philip Schuyler of New York, Hamilton’s own father-in-law.¹⁰

¹⁰ Hammond (1957,) 113-15.

In debate within both chambers, the bank bill was met with immediate opposition on both ideological and sectional lines. James Madison, then a member of the House from Virginia, argued that the bank would “directly interfere with the rights of states to prohibit as well as establish banks.”¹¹ Madison and Thomas Jefferson, then Secretary of State, argued also that the initiative violated the Constitution, which did not explicitly delegate authority to Congress to incorporate a bank. Opposition to the bank also became a matter of regional tensions. Agrarian opponents viewed any bank as a potentially corrupting influence on the national government. Moreover, as stated by Georgia representative James Jackson, the bank was “calculated to benefit a small part of the United States— the mercantile interests only; the farmers, the yeomanry of the country, will derive no advantage from it.”¹² The bank bill in the First Congress was also inseparable from the capital’s forthcoming move to the District of Columbia. Southerners were concerned that with its Philadelphia location, the bank might hinder moving the capital south.¹³ Despite these concerns, opposition to the bill was relatively weak in the Senate, and it passed by voice vote on January 20, 1791. After a much more raucous debate in the House, where the South had a larger share of representatives, the bank bill passed 39-20, with most of the opposition coming from Georgia, Virginia, and the Carolinas. After a lengthy period of consideration— even going so far as to have Madison write a drafted veto statement— Washington signed the bill on February 25.

Throughout the Federalist era, national bank votes in the Senate continued to be sectional, partisan, and highly controversial. In the Fourth Congress, which had the narrowest party division of the Federalist period, Senator William B. Giles, a virulent opponent of the bank, forced a narrow vote on a constitutional amendment to ban officeholders and shareholders of the bank (who were mostly Federalists and included several senators) from being members of Congress. In the Third Congress, again spearheaded by Anti-Federalists, several votes occurred to sell government shares in the bank. Critically, throughout the Federalist period, the national bank was a salient political divide with a consistent source of opposition before, during, and after the bank’s charter. According to one account, it “brought to the surface an issue that had been around since the adoption of the constitution. The clash of rights between the individual states

¹¹ Ibid.

¹² Ibid, 116.

¹³ Cowen (2000, 18.

and the federal government always lurked somewhere near the surface, and in this case, it was whether the state legislatures or Congress should issue bank charters.”¹⁴ Indeed, in the third and Fourth Congresses, every single vote on the national bank was close by our 20 percent standard.

Entering the Jeffersonian period and the Era of Good Feelings, though, the political coalitions associated with the national bank shifted. By the time the bank’s charter was set to expire in 1811, the government was controlled by the same Jeffersonian faction that had opposed it twenty years before. But between chartering and expiration, the Jeffersonians had split three ways on the matter.¹⁵ First, the “unreconstructed agrarians” including Giles and J.W. Eppes (Jefferson’s son-in-law), continued to espouse the First Bank’s unconstitutionality, ineffectiveness, and corruption. A second group, including Senator Henry Clay of Kentucky, was opposed to the bank, and involved in business themselves. Representative Andrew Gregg of Pennsylvania, who voted against rechartering, soon resigned from Congress to become president of a state bank. Third, and in contrast, the “administration wing” of Jeffersonians now gave its half-hearted support. President Jefferson had approved of and expanded the bank into the Louisiana territory out of “expediency and almost necessity.”¹⁶ Madison, now President, had come around to supporting the bank and tabled the issue of constitutionality, and it went mostly uncontested throughout the period. In the Senate, the bank’s re-chartering was sponsored by William Crawford of Georgia, an agrarian upland planter and Jeffersonian. Other key advocates included William Findley, a representative of Pennsylvania, Senator John Taylor of South Carolina, and Senator John Pope of Kentucky. Curiously, many of these agrarian Jeffersonians utilize the same language in *support* for the bank that was leveraged in its 1790 opposition (Hammond 1957, 209-14). As the number of state banks flourished, these senators grew concerned that the national bank’s de-chartering would shift influence toward powerful urban centers. Arguing for the necessity of the bank, Taylor associated state banks with “the city influence, the London and Paris influence,” and held up national banks – surprisingly – as a potential advocate for agricultural concerns.

Nonetheless, when its charter was set to expire in 1811, Congress waited three more years before debate began in both chambers. The Senate debated the motion for ten days, and on

¹⁴ Cowen (2000), 17.

¹⁵ Hammond (1957).

¹⁶ *Ibid*, 210).

February 5, 1811, it voted 18-17 against extending the charter, with a tie-breaking vote cast by Vice President George Clinton. Relative to the party-line and sectional bank votes of the Federalist era, this vote was surprising. While the Federalists voted unanimously to renew the charter, the Democratic-Republicans voted 17-10 against, and the agrarian South—the bank’s longtime nemesis— was split. The vote was countermajoritarian according to both of our measures.

Still, while the bank died, the level of Jeffersonian support for it was surprising, given the party’s whopping 27-7 majority in the chamber, the majority party’s 88 percent population coverage, and the paucity of close votes that Congress (only 31 percent). Notably, while the bank was not rechartered, a critical reason why countermajoritarianism in this area was rare under Jefferson, Madison, and Monroe was that the need for a national bank had become, on net, less controversial, less sectional, and less ideological. These votes were more lopsided, and the Jeffersonians marshaled impressive levels of population coverage. The vote against rechartering, in fact, was the only countermajoritarian bank vote in the 11th Congress.

Support for a national bank stepped up during the War of 1812, when calls for another bank began anew. To fund the war, Congress relied on short-term Treasury notes and long-term Treasury bonds without raising new taxes, while imports and exports declined precipitously. By 1815, the government found itself in massive war debt, with an unstable currency and need for government funds. Unlike 1790, however, both sides largely agreed on the necessity of a bank and merely disagreed on specifics. After three failed attempts to pass a bank bill in the House, the Senate reported a bill, accepted a number of House amendments, and passed it. Madison vetoed the bill, arguing that the capital provided was not enough to enhance public credit. In his annual report, Madison’s Secretary of the Treasury, Albert Gallatin, argued that a strong national bank would be “the best and perhaps the only adequate resource to relieve the country and the government from the present embarrassment.”¹⁷ He urged Congress to adopt a strong bank, again in Philadelphia, with the power to erect branches and muster a significant amount of capital. Senator John C. Calhoun of South Carolina, taking leadership on bank legislation, proposed a bill that passed the House. The Senate assented in a 22-12 vote, with most yeas coming from the South and West, and the North, this time, mostly in opposition.

¹⁷ Ibid, 233.

The Second Bank of the United States opened in January 1817 during a steep economic downturn. The fallout of the War of 1812 had brought stark economic contraction. Moreover, the eighteen branches of the Second Bank operated with little oversight, largely due to a Republican philosophy of democratizing credit practices. As western land speculation increased, the bubble eventually burst in 1819, plummeting land values. In response, the second bank, which had funded and financed much of the speculation itself, initiated a severe contraction in credit and began to call in outstanding loans. As bankruptcy and unemployment skyrocketed in the wake of the economic “Panic” that ensued, public support for the bank plummeted.¹⁸

The bank’s unpopularity was a critical element in the many countermajoritarian bank votes that occurred during the Jacksonian era. While Jefferson and Madison came to support the bank, Jackson made his opposition a political cornerstone. Profiting off the sentiment from the Panic of 1819, the Jacksonian vision of America was agrarian and ruggedly individualistic, with little room for elitist urban interests that he associated with the bank. As president, Jackson doubted the bank’s constitutionality and pushed for a weaker alternative. Jackson’s opponents, meanwhile, having nominated now-bank-advocate Henry Clay for president, coalesced around the bank’s rechartering as a party issue, convinced that it would be embarrassing for the President to choose between a recharter and a veto.¹⁹

The bank’s recharter was laid before Congress in January 1832. Several countermajoritarian votes occurred on defeated Jacksonian amendments to weaken and shorten the charter. Eventually, the charter passed on a vote of 28-20, categorized as countermajoritarian according to our measure, with significant reforms on the bank’s ability to hold real estate and create new branches. Jackson vetoed it, with a statement that would become a famous articulation of his principles. According to the president, the national bank was elitist, unfair, unconstitutional, unnecessary, overly foreign, and inconsistent with the desires of the American people. While all these points are contestable, the last is perhaps the most credible. In the Senate’s final passage vote to renew the charter, Jacksonian senators did indeed represent more of the American people, as they also did on a subsequent 22-19 failure to override the veto. And when the national bank became the central issue of the 1832 elections, Jackson handily defeated Clay with 219 electoral votes.

¹⁸ Catterall (1902), 59-64.

¹⁹ Hammond (1957), 385.

After the election, Jackson moved to withdraw federal funds from the bank. When Jackson's Secretary of the Treasury refused, Jackson replaced him with Attorney General Roger B. Taney, who carried out Jackson's order, moving federal deposits to a number of state banks. Once again, the Senate—now under the control of Clay's anti-administration coalition—was displeased. Clay introduced a resolution to censure the president, stating that Jackson had “assumed the exercise of a power over the Treasury of the United States not granted him by the Constitution and laws.” After 10 weeks of debate, censure passed on a 26-20, party-line vote. Once again, based on our measure, the outcome was countermajoritarian when we consider the U.S. population. When Jackson protested the outcome, the Senate—in another unprecedented move—refused to print the president's response in the congressional record. This vote, once again, was party-line and countermajoritarian.

At that point, the issue of the national bank was settled until 1841, when Henry Clay led a series of attempt to revive it. President John Tyler, who had assumed office after the death of William Henry Harrison, betrayed his own Whig party by vetoing the bill. When Clay failed to override Tyler's veto, he passed an adjusted bill through both chambers, which Tyler in turn vetoed. In response, the president's entire Whig cabinet, except then-Secretary of State Webster, resigned in protest, and Tyler was expelled from the party. As you can see in Figure 8, the number of bank related roll calls in the senate spiked during the 27th Congress, 1841-42. Moreover, a large fraction was countermajoritarian, especially by the voting eligible measure.

Taking the Jacksonian period as a whole, why was it so common on bank votes for a majority within the chamber to represent only a minority of the U.S. population, however gauged? Again, the bank had become a source of controversy and partisan tensions, even more than during the Federalist era. Particularly after the Panic of 1819, voters had little tolerance for an institution that often produced contractions of the economy. Unlike Washington, Madison, and Jefferson—none of whom were great admirers of the bank—Jackson moved aggressively against it, turning his opposition into a campaign issue, and a successful one at that. Jackson, widely seen as a champion of the common man, also led a coalition of Senate supporters who represented most of the nation. Like the Federalist era, countermajoritarian votes routinely came from a stable source of partisan opposition—first the Anti-Jacksonians and then the Whigs—that, when triumphant, benefited from the Senate's antidemocratic bias. Predictably, when these factions took control of the chamber in 1833 and again in 1841 and prioritized defending the

bank while representing a minority of the population, countermajoritarian outcomes increased sharply.

Across each period, then, countermajoritarianism on bank votes had less to do with population dispersion among the states *a la* Gini coefficients than it did with the level of party conflict and the precise nature of the partisan cleavage. The issue of a national bank was a partisan and sectional matter for the Anti-Federalists, a point of division within the Jeffersonians, and an outright struggle for survival between the Jacksonians and Whigs.

Figure 9 summarizes our initial foray into the countermajoritarian politics of the national bank. Each point represents an individual roll call, with the location reflecting the combination of “percent yes” on the vote and the fraction of the population the yes voters represented (using the raw Census count). As with Figure 1 for all roll calls, the points tend to cluster around the 45-degree line, which indicates parity between votes and population covered, but there is a substantial spread. Of particular interest are the points located in the quadrants to the upper left and the lower right – here the voting majority within the Senate did not represent most of the population. For further perspective, the roll calls are distinguished by partisan period, with the Federalist era in black; the Jeffersonian years and Era of Good Feelings combined in gray; the Democratically controlled Senates of the Jacksonian era in red; and the periods of Anti-Jackson or Whip control in blue. The figure captures well the shifting countermajoritarian tides in this policy area over time. Notice the cluster of blue points in the upper-left and lower-right quadrants during the Jacksonian era when the pro-bank forces of Henry Clay held sway. Clearly, the frequency and characteristics of countermajoritarian impact were a function of the partisan tensions of the time, mapped onto the populations that the parties claimed to represent. What is beyond dispute, however, is that Senate apportionment often had substantial consequences for roll call outcomes on the floor.

Conclusion

The analysis we have reported is preliminary, but informative. During the antebellum Senate, countermajoritarian tendencies are apparent throughout the roll call record if our focus is on the discrepancy between the percent of members voting one way and the proportion of the population that coalition represents. Of particular normative interest, however, are roll calls where a majority of the chamber voted yes, but represented only a minority of the citizenry, or

most Senators voted no and together covered less than half of the population. Importantly, if we use raw Census totals as the basis for calculation, the proportion of overtly countermajoritarian results (the side with most of the votes represented a minority of the total population) was nearly 15 percent during the antebellum period and ranged widely, from a low of about three percent to a high over thirty percent. The temporal variance of the measure is somewhat different when the people who were denied full Census rights (especially enslaved individuals and women) are excluded from population counts. When they are removed, the population totals for Southern states significantly drop, and the incidence of countermajoritarianism when that section prevailed on the floor rises accordingly.

We can explain much of the overtime variance in both measures of countermajoritarianism, it turns out, with just two variables – the level of conflict in the roll call record and the fraction of the population represented by the party or coalition organizing the Senate. Importantly, the dispersion of population across states – as measured by population Gini coefficients – does not appear to matter all that much after the two overtly political variables are taken into account. These results are fully consistent with findings for the entirety of Senate history as reported in Evans (2023). That they also hold for this subset of the data, and for a critical period in the political development of the nation, is noteworthy and reinforces our confidence in the results.

The analysis reported here also addresses how countermajoritarianism might vary across motions and issue areas, and explores which states tended to be on the winning side of countermajoritarian fights on the Senate floor. There is some variance across motion categories, but countermajoritarian outcomes are not clustered primarily around amendments or procedural motions, as opposed to passage votes. At least during the antebellum years, they appear to be distributed broadly across different kinds of motions. To gauge incidence by issue, we used the issue codes developed by Poole and Rosenthal, and once again found instructive patterns. Roll calls related to the National Bank, the apportionment of the House, tariffs and trade, disputed elections, public lands, military pensions and veterans' affairs, public lands and works, and various aspects of the judiciary were particularly common among roll calls categorized as countermajoritarian. The national bank and House apportionment, in particular, produced disproportionately high rates of countermajoritarianism. Clearly, we need to dig deeper into the

issue content behind these roll calls, but the results reported here suggest that further work will bear fruit.

Our attempts to discern which states and interests were on the winning side of votes deemed countermajoritarian also are instructive. There are clear sectional effects throughout the antebellum period. But as we proceed from the Federalist era through succeeding party systems, ending with the Civil War, the likelihood that southern states would gain increased steadily, especially when countermajoritarianism is calculated based on eligible voters, rather than raw Census totals. The exceptions are congresses during the extended Jacksonian era when Jackson's forces were in the minority within the Senate chamber. During these years, the main gainers were outside the South.

The bottom line? Observers of the contemporary Senate often highlight the potential distortions created by apportionment along state lines and equal representation per state. Indeed, from the 1980s onward, roll calls where the winning side represents only a minority of the population have been common, and as reported in Evans (2023) and others primarily concentrated in Senates organized by Republicans. One consequence has been sustained calls for major reform. As reinforced in this paper, however, the potential distortions associated with Senate malapportionment are an enduring feature of American history. The magnitude and impact of these effects varies over time, and in ways that reflect the political configurations and interests of the day. Senate countermajoritarianism, in short, is important but *contingent*. As observers debate options for structural change and otherwise cast normative judgement on the Senate, they should keep such contingencies firmly in mind.

Figure 1. Votes and Population in the Antebellum Senate

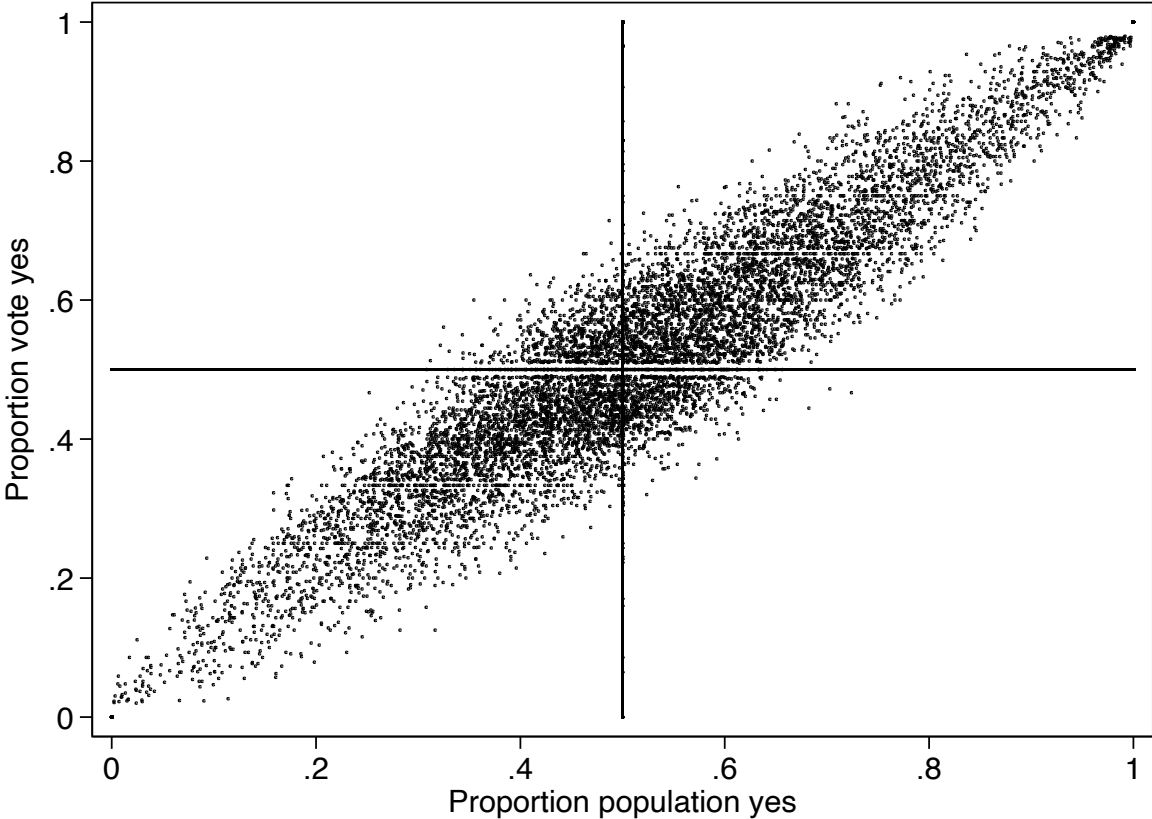


Figure 2. Countermajoritarian roll calls by two-year Senate, total versus voting eligible population

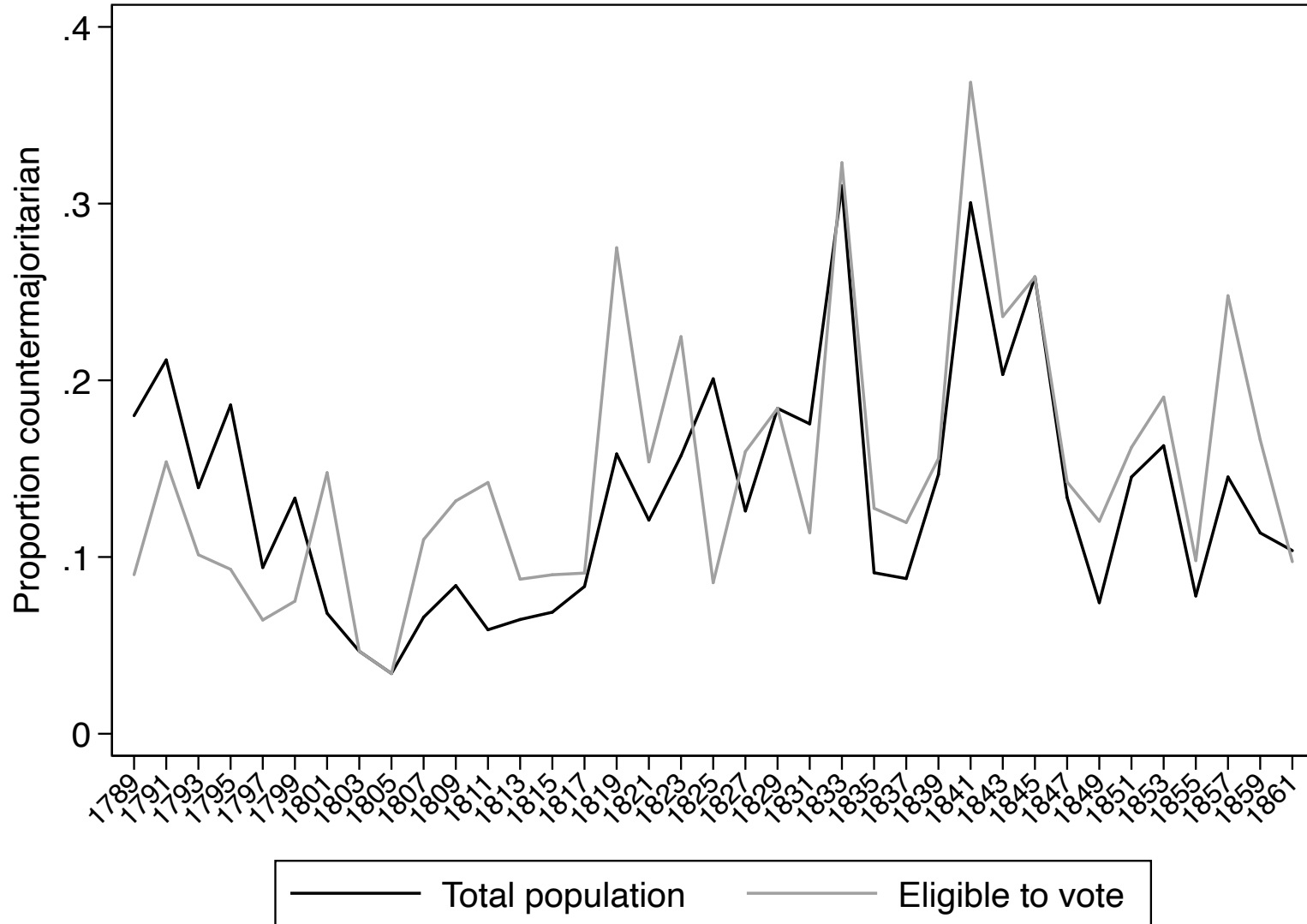


Figure 3. State shares of national population (estimated) by Congress, 1789-1861

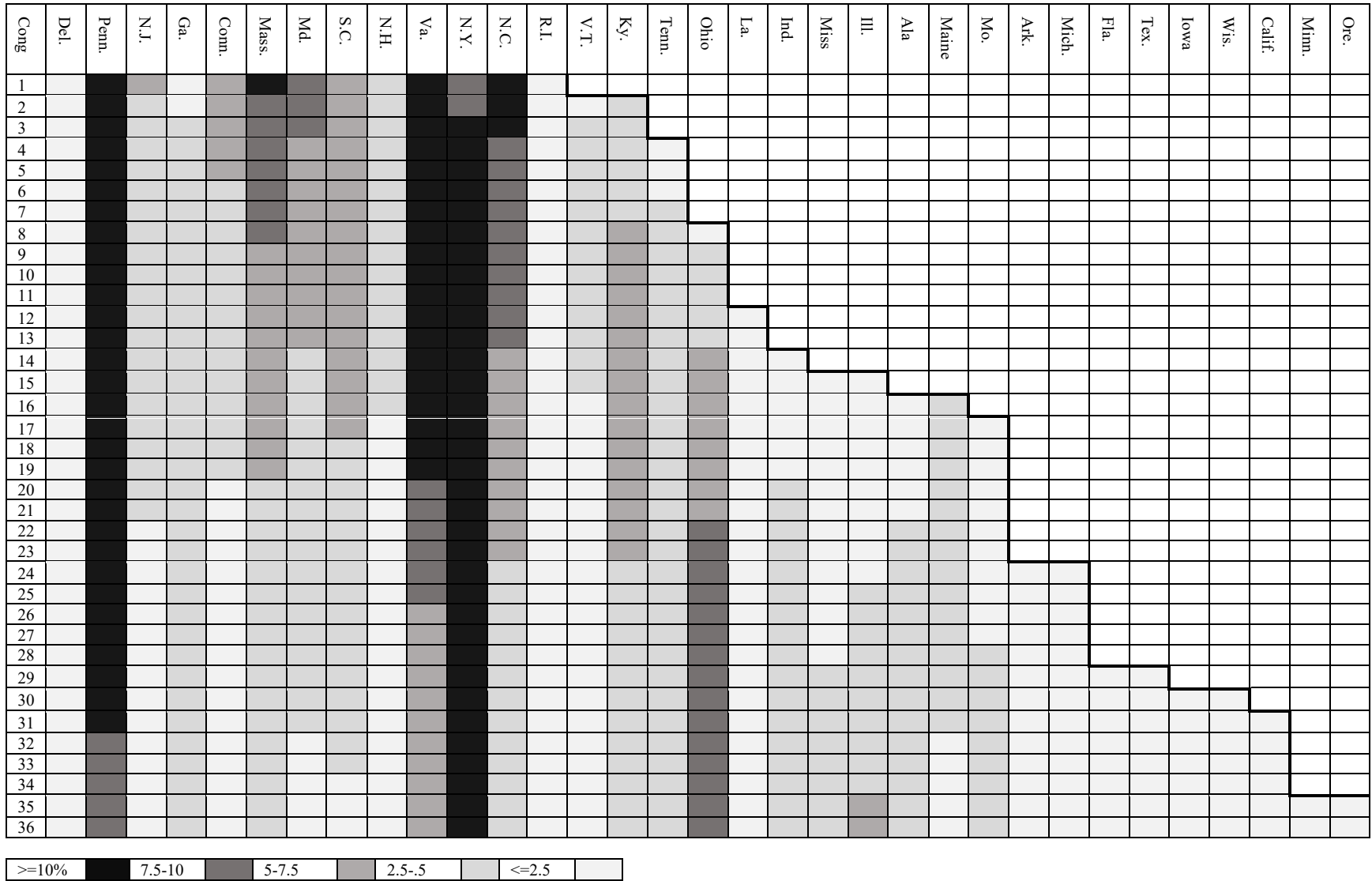


Figure 4. State population Gini coefficient, 1789-1861

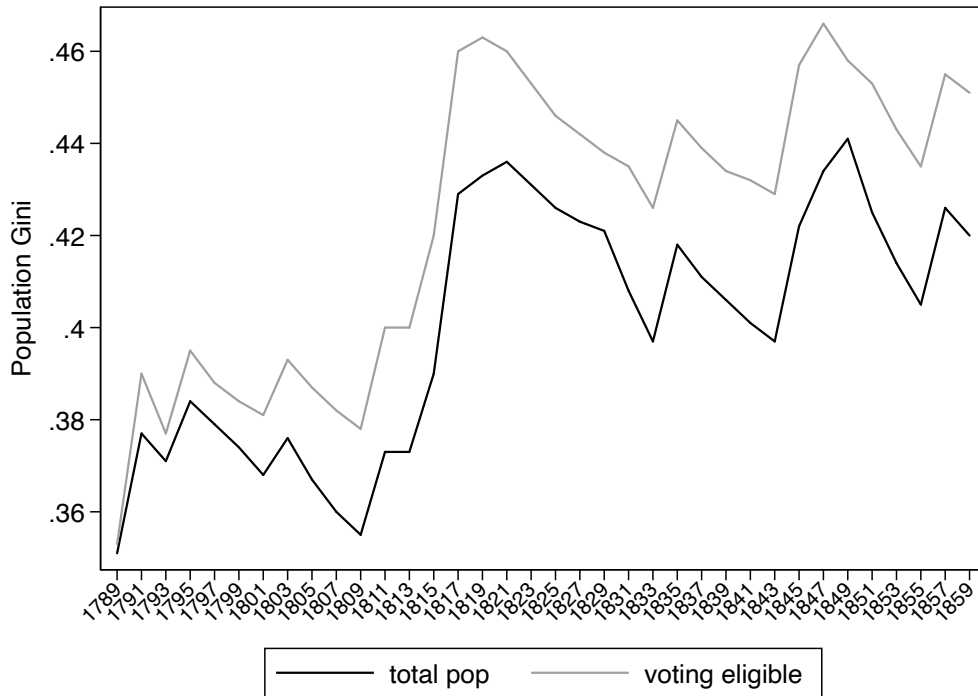


Figure 5. Proportion of “close roll calls by two-year Senate, 1789-1861

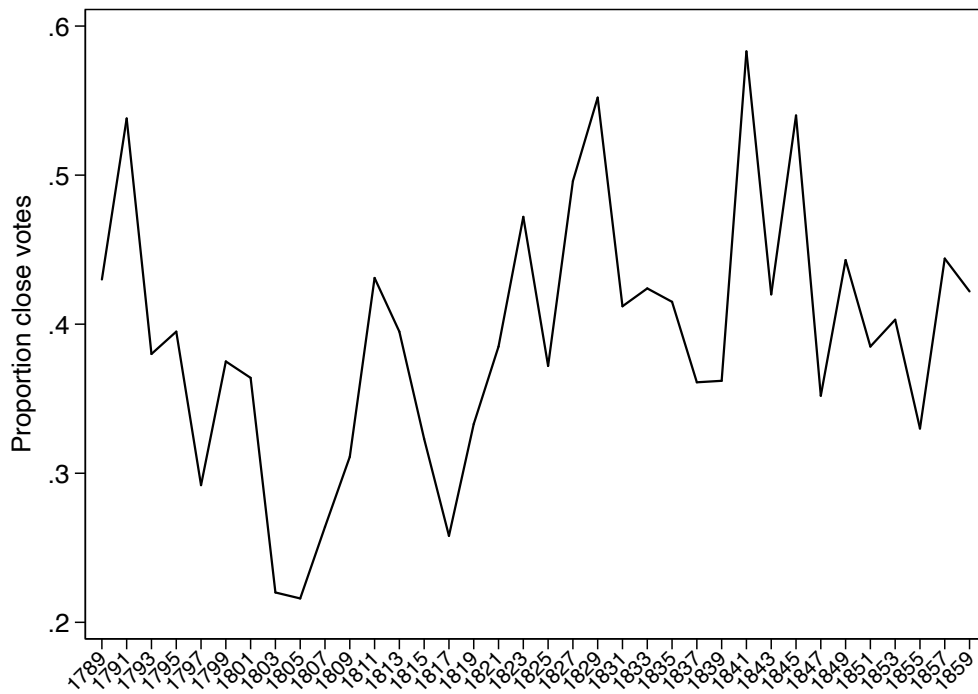


Figure 6. Majority party population coverage, 1789-1861

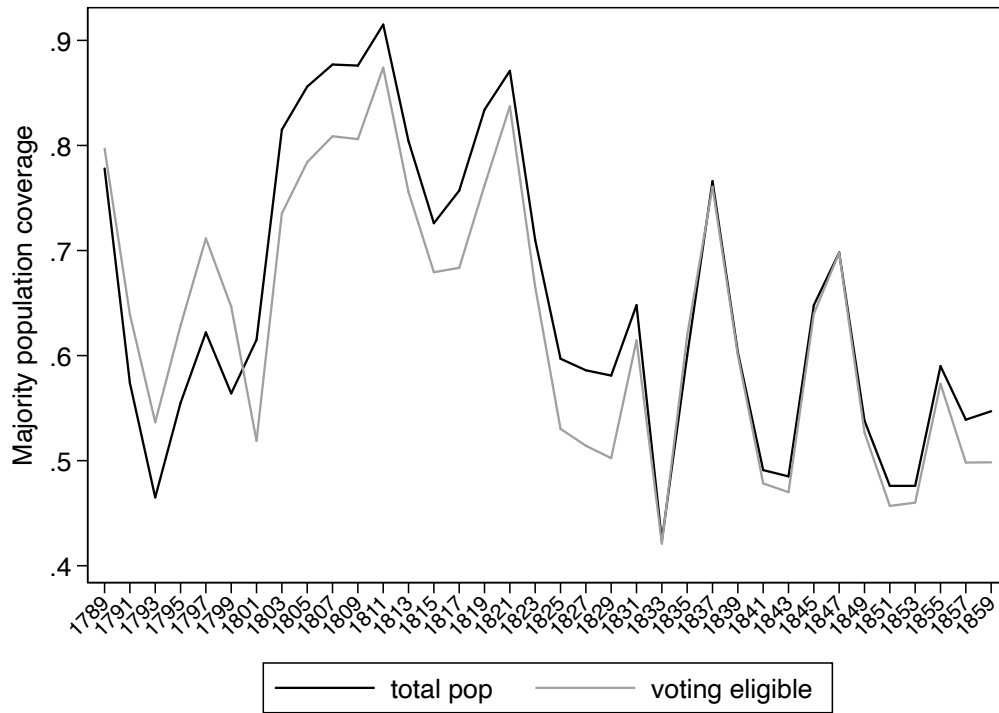


Figure 7. Proportion of roll calls with a countermajoritarian result, selected issue areas

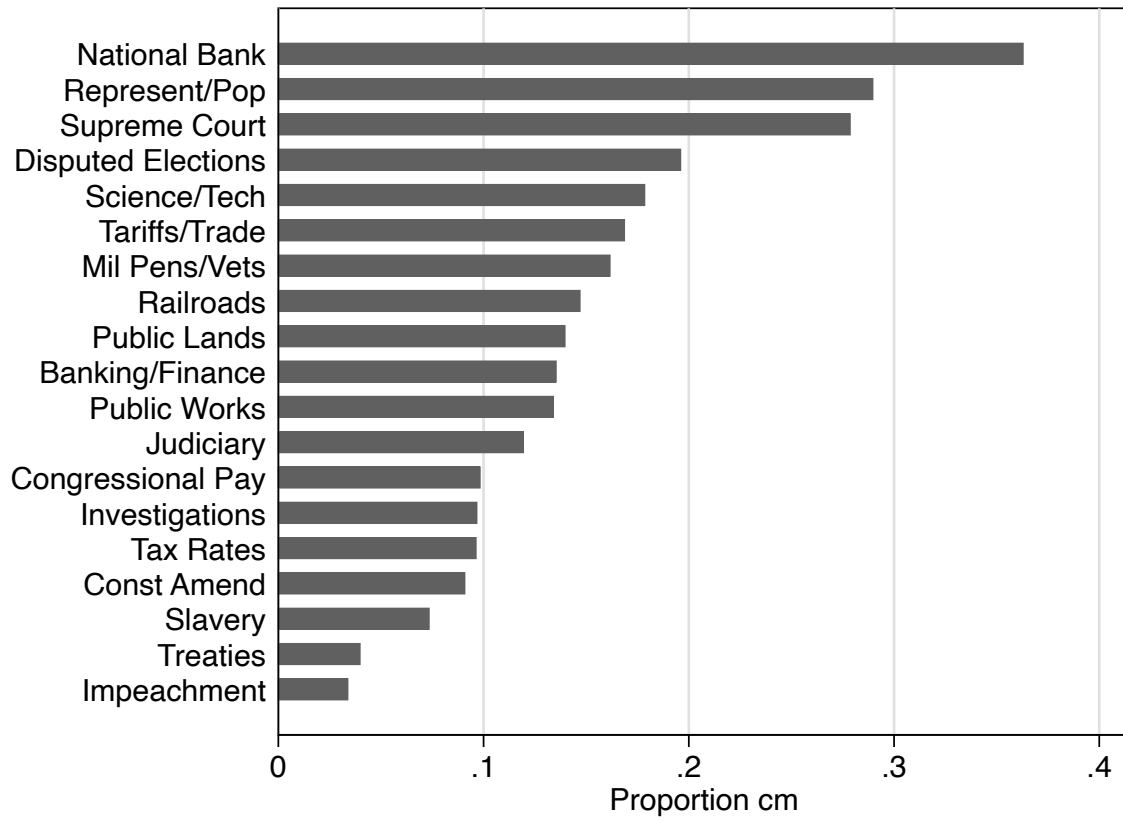


Figure 8. Incidence of roll calls on the National Bank, 1789-1843, cm versus majoritarian

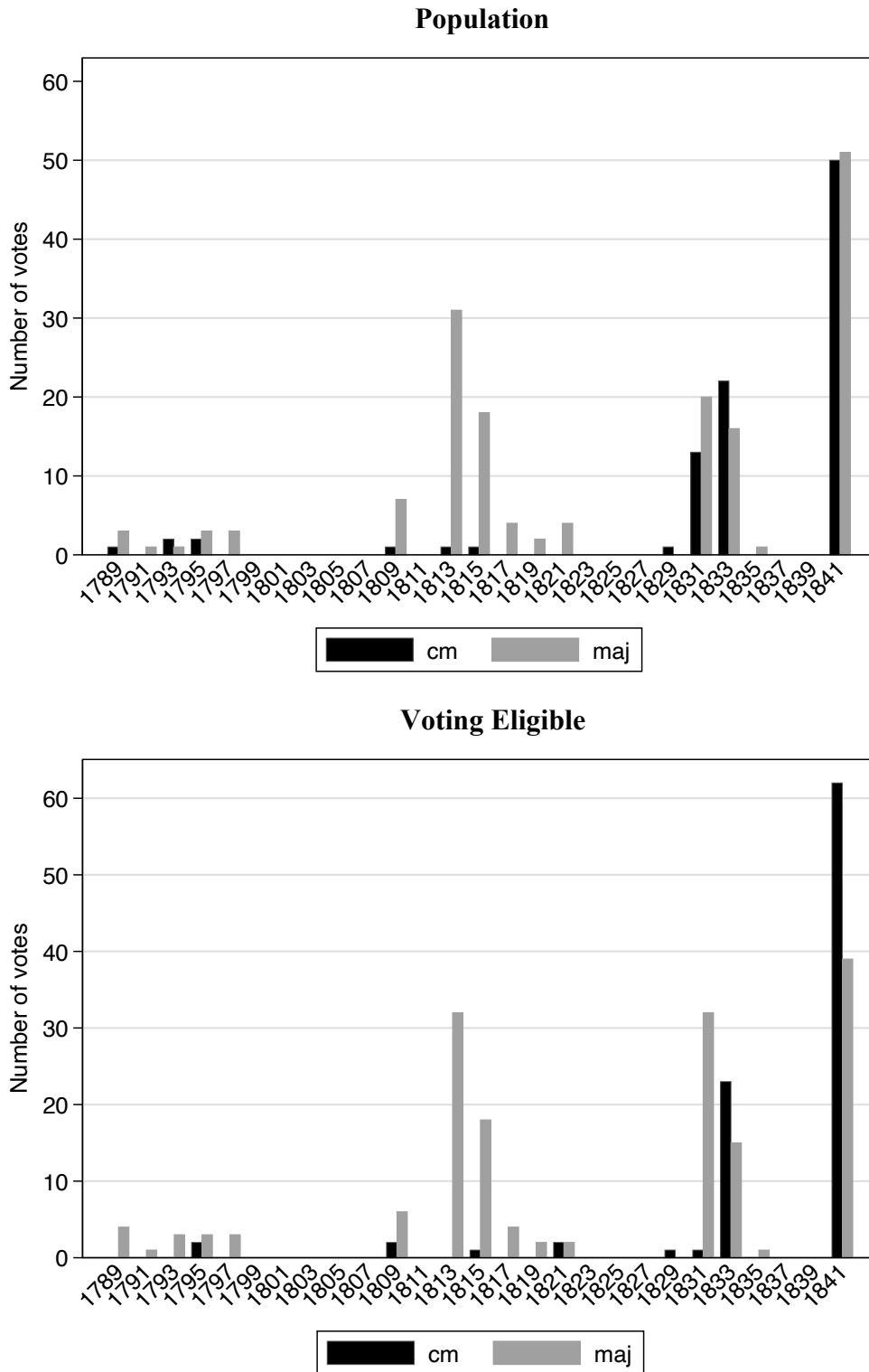


Figure 9. Votes and population on National Bank roll calls, 1879-1843

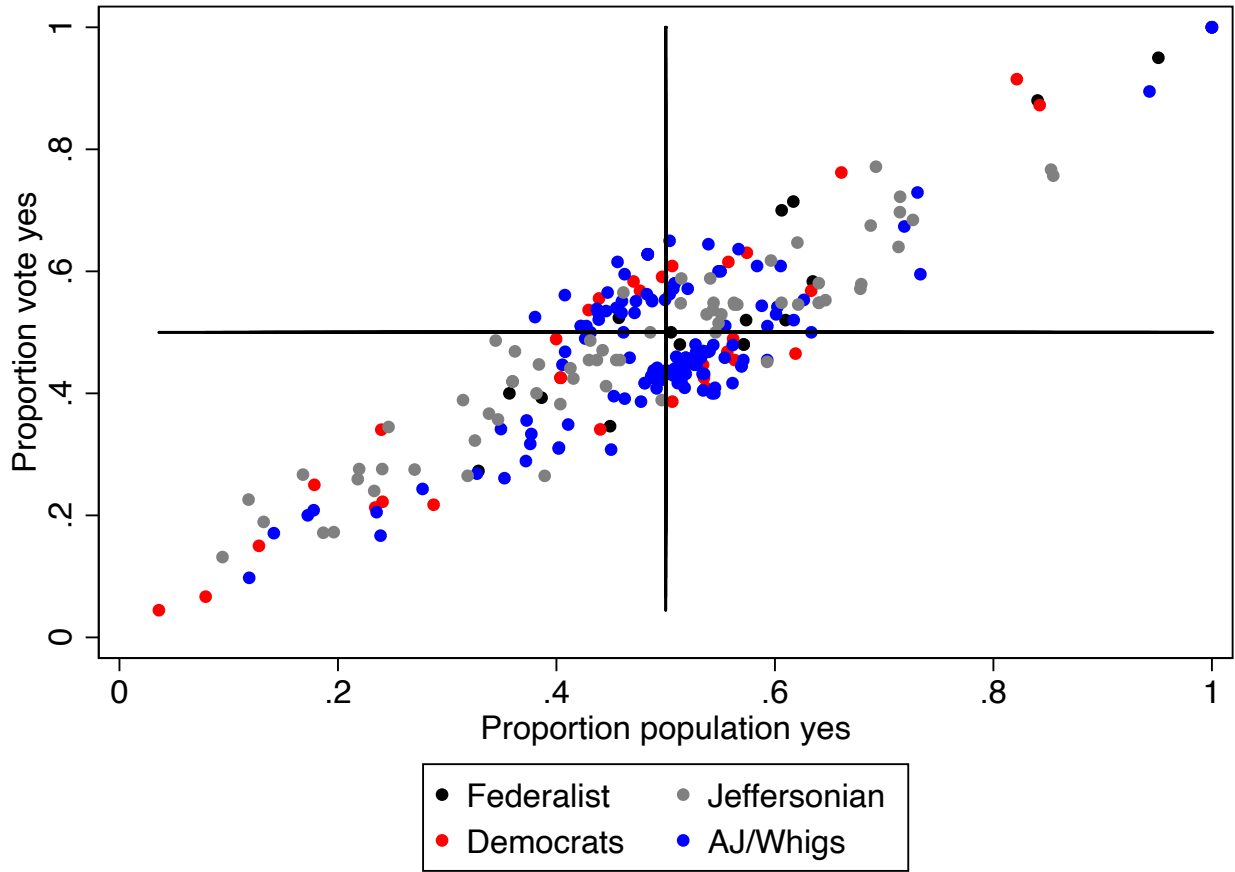


Table 1. Antebellum Senates: Some key characteristics

Congress	Mem Size	Majority Party	Maj Size	Maj Margin
1 (1789-91)	26	Pro-admin	18	0.69
2 (1791-93)	30	Pro-admin	16	0.53
3 (1793-95)	30	Pro-admin	16	0.53
4 (1795-97)	32	Federalist	21	0.66
5 (1797-99)	32	Federalist	22	0.69
6 (1799-01)	32	Federalist	22	0.69
7 (1801-03)	34	Republicans	17	0.50
8 (1803-05)	34	Republicans	25	0.74
9 (1805-07)	34	Republicans	27	0.79
10 (1807-09)	34	Republicans	28	0.82
11 (1809-11)	34	Republicans	27	0.79
12 (1811-13)	36	Republicans	30	0.83
13 (1813-15)	36	Republicans	28	0.78
14 (1815-17)	38	Republicans	26	0.68
15 (1817-19)	42	Republicans	30	0.71
16 (1819-21)	46	Republicans	37	0.80
17 (1821-23)	48	Republicans	44	0.92
18 (1823-25)	48	Jackson/Crawford	31	0.65
19 (1825-27)	48	Jacksonians	26	0.54
20 (1827-29)	48	Jacksonians	27	0.56
21 (1829-31)	48	Jacksonians	25	0.52
22 (1831-33)	48	Jacksonians	24	0.50
23 (1833-35)	48	Anti-Jacksons	26	0.54
24 (1835-37)	52	Jacksonians	26	0.50
25 (1837-39)	52	Democrats	35	0.67
26 (1839-41)	52	Democrats	30	0.58
27 (1841-43)	52	Whigs	29	0.56
28 (1843-45)	52	Whigs	29	0.56
29 (1845-47)	58	Democrats	34	0.59
30 (1847-49)	60	Democrats	38	0.63
31 (1849-51)	62	Democrats	35	0.56
32 (1851-53)	62	Democrats	36	0.58
33 (1853-55)	62	Democrats	38	0.61
34 (1855-57)	62	Democrats	39	0.63
35 (1857-59)	66	Democrats	41	0.62
36 (1859-61)	66	Democrats	38	0.58

Table 2. Explaining the incidence of countermajoritarian roll calls (ordinary least squares, all variables differenced)

VARIABLES	(1) population	(2) voting eligible
Population Gini	-0.76 (0.85)	-0.12 (0.93)
Close votes	0.32** (0.12)	0.57*** (0.13)
Majority coverage	-0.21* (0.10)	-0.25** (0.12)
Constant	-0.00 (0.01)	0.00 (0.01)
Observations	35	35
R-squared	0.35	0.50

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Table 3. Percent countermajoritarian by motion type, population versus eligible electorate, 1789-1861

Motion type	% Countermajoritarian (population)	% Countermajoritarian (voting eligible)
Amendment	14.7	17.8
Procedure/process	17.3	20.9
Readings/engrossment	14.5	17.0
Passage	12.3	13.4
Conference/reconciling Senate-House differences	17.7	17.2

Table 4. Top five issues for countermajoritarian roll calls, organized by party era

Party period		Population	Voting eligible
Federalist 1789-1801		1.Represent/Pop 2.National Bank 3.Treaties 4.Public Lands 5.Tax Rates	1.Represent/Pop 2.Public Lands 3.Banking/Fin 4.National Bank 5.Slavery
Jeffersonian 1801-15		1.Public Lands 2.Public Works 3.Banking/Fin 4.National Bank 5.Represent/Pop	1.Judiciary 2.Public Lands 3.Tariffs/Trade 4.Banking/Fin 5.Public Works
Era of Good Feeling 1815-23		1.Mil pens/Vets 2.Slavery 3.Public Lands 4.Congressional pay 5.Judiciary	1.Mil pens/Vets 2.Slavery 3.National Bank 4.Tax rates 5.Judiciary (tie) 5.Public Lands (tie)
Jacksonian 1823-53	Democrats 1823-33	1.Tariffs/Trade 2.Public Works 3.National Bank 4.Public Lands 5.Judiciary	1.Tariffs/Trade 2.Public Works 3.Public Lands 4.Mil pens/Vets 5.Judiciary
	Anti-Jacksons 1833-35	1.National Bank 2.Public Lands 3.Public Works 4.Supreme Court 5. 4-way tie	1. National Bank 2.Public Lands 3.Investigations (tie) 3.Mil pens/Vets (tie) 3.Supreme Court (tie) 3.Public Works (tie)
	Democrats 1835-41	1.Public Lands 2.Banking/Fin 3.Public Works 4.Treaties 5.Tariffs/Trade	1.Public Lands 2.Banking/Fin 3.Public Works 4.Treaties 5.Tariffs/Trade

Party Period		Population	Voting eligible
Jacksonian cont.	Whigs 1841-45	1.National Bank 2.Tariffs/Trade 3.Public Lands 4.Represent/Pop 5.Banking/Fin	1.National Bank 2.Public Lands 3.Tariffs/Trade 4.Banking/Fin 5.Represent/pop
	Democrats 1845-53	1.Public Lands 2.Public Works 3.Tariffs/Trade 4.Science/Tech 5.Banking/Fin (tie) 5.Treaties (tie)	1.Public Lands 2.Public Works 3.Slavery 4.Treaties 5.Science/Tech
Prelude to War 1853-61		1.Supreme Court 2.Public Works 3.Tariffs/Trade 4.Treaties 5.Public Lands (tie) 5. Banking/Fin (tie)	1.Public Works 2.Treaties 3.Tax Rates 4.Public Lands 5.Tariffs/Trade

Table 5. First three party eras (1789-1823) – Percent of all countermajoritarian votes cast by each state, averaged by Congress.

	Federalist 1789-1801		Jeffersonian 1801-1815		Good Feeling 1815-1823	
	Population	Voting eligible	Population	Voting eligible	Population	Voting eligible
<i>Del.</i>	8.3	6.1	7.5	4.5	6.6	5.2
<i>Penn.</i>	5.4	1.6	3.8	3.9	1.8	2.7
<i>N.J.</i>	8.5	4.4	6.3	4.6	3.9	3.6
<i>Ga.</i>	3	6.5	5.4	8.1	4.7	5.1
<i>Conn.</i>	12.3	7.5	7.9	3.9	4.4	3.2
<i>Mass.</i>	11.4	5.8	7.4	4.5	4.3	2.5
<i>Md.</i>	4.8	4.2	6.1	5.5	4.1	3.8
<i>S.C.</i>	5.6	5.8	6.4	8.1	4.8	5.4
<i>N.H.</i>	8.2	10.1	8.5	4.8	5	3.4
<i>Va.</i>	1.1	6.8	1.8	5	3.4	5.9
<i>N.Y.</i>	6.9	5	3.8	2.3	3.3	1.9
<i>N.C.</i>	2.3	7.7	5.4	7.7	3.8	5.2
<i>R.I.</i>	11.7	10.7	7.2	8.2	5.7	4.6
<i>Vt.</i>	8.2	9.4	6.4	6.1	4.5	4.3
<i>Ky.</i>	3.2	7.4	4	6.9	5.2	6.4
<i>Tenn.</i>	2	7.4	5.5	8.2	4.9	6.3
<i>Ohio</i>			5.2	6.6	4.4	4.7
<i>La.</i>			7.2	7.1	6.3	6.3
<i>Ind.</i>					4.6	4.3
<i>Miss.</i>					5.4	6.4
<i>Ill.</i>					4.5	5.2
<i>Ala.</i>					5.6	5.8
<i>Maine</i>					4.1	3.6
<i>Mo.</i>					8.5	7.9

Note: Averages only include Congresses where a state was in the Union. The five highest entries are shaded.

Table 6. Jacksonian period (1823-53) – Percent of all countermajoritarian votes cast by each state, averaged by Congress.

	Jacksonians 1823-33		Anti-Jackson 1833-35		Democrats 1835-41		Whigs 1841-45		Democrats 1845-53	
	Pop	Elig	Pop	Elig	Pop	Elig	Pop	Elig	Pop	Elig
<i>Del.</i>	5.5	5.1	7.4	7.1	4.2	3.9	6.9	6.6	4.6	4
<i>Penn.</i>	4	2.2	1.2	.8	1.7	1.7	.4	.6	1.7	1.7
<i>N.J.</i>	4.2	3.2	7	6.9	3.4	2.9	7.2	6.9	3.7	3.2
<i>Ga.</i>	1.5	3.6	.7	1.1	3.4	3.9	3.4	3.7	3.5	4.2
<i>Conn.</i>	6.1	4.6	7.9	7.7	4.2	3.7	4.1	3.9	3.9	3.1
<i>Mass.</i>	5.9	4.3	7.5	7.2	3.7	3.2	7.3	7	3.8	3.2
<i>Md.</i>	4.7	4.6	6.6	6.3	3.5	3.6	5	5	3.6	3.7
<i>S.C.</i>	2.7	5.2	5.1	5.5	4.1	4.5	2.1	2.5	3.4	4.2
<i>N.H.</i>	3.8	3.7	2.9	2.9	3.2	3	.6	.6	3.3	2.8
<i>Va.</i>	1.6	3.8	4.4	4.6	3	3.7	4.2	4.7	3.2	4
<i>N.Y.</i>	1.3	1.3	.1	.1	2.1	2.1	2.3	2.2	1	1.1
<i>N.C.</i>	1.6	3.8	2.6	2.8	3.3	4	5.3	5.4	4.1	4.5
<i>R.I.</i>	6.2	4.2	7.3	7.1	4.7	4.2	6.9	6.7	4.7	4
<i>Vt.</i>	6.6	4.3	7.3	7.1	4.2	3.7	6.1	5.9	3.7	3.4
<i>Ky.</i>	3.4	4	6.9	6.9	4.4	4.2	6.6	6.5	3.8	3.7
<i>Tenn.</i>	2.8	4.3	.4	.7	4	4.1	3	2.9	3.4	4
<i>Ohio</i>	6.7	4.7	3.9	3.9	2.5	2	.5	.3	2.7	2
<i>La.</i>	6.2	5.6	6.5	6.5	5	5.2	6.4	6.1	4.4	4.8
<i>Ind.</i>	5.5	4.3	2.5	2.2	4.7	4.4	5.3	5.3	2.2	2.1
<i>Miss.</i>	3.2	5.1	5.5	5.8	5.6	5.7	2.3	2.7	3.1	3.9
<i>Ill.</i>	3.5	3.7	.5	.6	3.9	4	.4	.5	2.4	2.2
<i>Ala.</i>	2.9	4.9	2.4	2.6	5.2	5.8	.7	1	2.5	3.2
<i>Maine</i>	4.9	4.4	3	2.8	3.3	3	4.5	4.3	3.1	2.7
<i>Mo.</i>	5.1	5	.7	.9	4.2	4.2	.7	.8	2.8	3.1
<i>Ark.</i>					4.2	4.7	.8	.9	3.2	3.5
<i>Mich.</i>					4.3	4.5	7.1	7.1	3.4	3.1
<i>Fla.</i>									3.6	4.2
<i>Tex.</i>									3.9	4.3
<i>Iowa</i>									3.6	3.4
<i>Wis.</i>									4	2.9
<i>Calif.</i>									3.3	2.9

Note: Averages only include Congresses where a state was in the Union. The five highest entries are shaded.

Table 7. Prelude to War (1853-61) – Percent of all countermajoritarian votes cast by each state, averaged by Congress.

	Population	Voting eligible
<i>Del.</i>	3	3.2
<i>Penn.</i>	2.5	2.6
<i>N.J.</i>	3.4	3
<i>Ga.</i>	3.9	4.5
<i>Conn.</i>	2.5	1.9
<i>Mass.</i>	1.5	.9
<i>Md.</i>	3.1	3.3
<i>S.C.</i>	3.5	4.1
<i>N.H.</i>	2.1	1.5
<i>N.C.</i>	4.6	5.4
<i>R.I.</i>	1	.7
<i>Va.</i>	4	4.7
<i>N.Y.</i>	3.1	2.5
<i>Vt.</i>	1.7	1.1
<i>Ky.</i>	2.2	2.6
<i>Tenn.</i>	3.2	3.6
<i>Ohio</i>	2	1.8
<i>La.</i>	4	4.5
<i>Ind.</i>	3.7	3.8
<i>Miss.</i>	3.9	4.5
<i>Ill.</i>	2.3	2
<i>Ala.</i>	4.3	5
<i>Maine</i>	1.4	.9
<i>Mo.</i>	4	4.2
<i>Ark.</i>	4.9	5.2
<i>Mich.</i>	3.1	2.3
<i>Fla.</i>	4	4.3
<i>Tex.</i>	4.4	4.4
<i>Iowa</i>	3.4	2.9
<i>Wis.</i>	2.3	1.7
<i>Calif.</i>	4.4	4.2
<i>Minn.</i>	3.3	2.8
<i>Ore.</i>	2.2	2.4

Note: Averages only include Congresses where a state was in the Union. The five highest entries are shaded.

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