

# Direct Democracy, Constitutional Reform, and Political Inequality in Post-Colonial America

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## Abstract

The ratification of constitutional changes via referendum is an important mechanism for constraining the influence of elites, particularly when representative institutions are captured. While this electoral device is commonly employed cross-nationally, its use is far from universal. We investigate the uneven adoption of mandatory referendums by examining the divergence between Northern and Southern U.S. states in the post-independence period. We first explore why states in both regions adopted constitutional conventions as the primary mechanism for making revisions to fundamental law, but why only Northern states adopted the additional requirement of ratifying via referendum. We argue that due to distortions in state-level representation, Southern elites adopted the discretionary referendum as a mechanism to bypass the statewide electorate when issues divide voters along slave-dependency lines. We demonstrate the link between biases to apportionment and opposition to mandatory referendums using a novel dataset of roll calls from various Southern state conventions, including during the secession crisis of 1861.

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# 1 Introduction

Direct democracy has not only become a prominent instrument for making policy decisions, but is also increasingly used to ratify constitutions, constitutional amendments and other revisions to a polity’s fundamental law (Blount, Elkins and Ginsburg 2012). Some democratic theorists see this development as critical for both legitimizing the choices of a framework for governing, as well as a mechanism for constraining the ability of elites to design constitutions in their favor (e.g., Elster 1995). The prominence and importance of this practice is emphasized by Lenowitz (2015, p. 803), who calls the ratification referendum a “common, recommended and consequential constitution-making procedure.” Yet, many advanced democracies, including the US, France, and Germany, do not require the direct ratification by the electorate of constitutional amendments. In fact, less than half of existing constitutions that specify an amendment process mandate a popular ratification requirement as well (Blount, Elkins and Ginsburg 2012, p. 37). Despite this procedure’s prominence, surprisingly few studies have investigated the factors that account for this institutional variation across democracies.<sup>1</sup>

We contribute to our understanding of this constitutional development by studying the uneven adoption of mandatory ratification referenda across American states during the antebellum period (1789-1860). Independence from Great Britain in 1776 brought not only the need for constitutional frameworks for self government, but also for procedures by which these could be reformed. In particular, it was quickly recognized that constitutional law should not be made via ordinary statute in the state legislatures (Dodd 1910, p. 26; Green 1931, p. 58). As a result, constitutional conventions—temporary legislative bodies elected solely to draft a new or modify an existing constitution—were quickly adopted across all states. While this mechanism became the standard constitution-making process for more than a quarter century, a period of widespread constitutional reforms in the decades following the War of 1812 brought demands to institutionalize greater popular input in the

constitution-making process.<sup>2</sup> Reformers demanded the ratification by voters as necessary for legitimizing constitutional changes and as a check on the power of elites in state-level representative bodies (Lenowitz 2015; Tarr 2000, p. 70). Soon after, the ratification of conventions via referendum became mandatory across the North. Although referendums also came to be widely used in the South, their use was not institutionalized. Instead, a doctrine of “absolute sovereignty” of conventions emerged in which conventions had the discretion to submit or not constitutional changes to voters for ratification (Freehling 2007, p. 133, Dinan 2006).

What explains this uneven adoption of mandatory ratification across otherwise similar political systems? We begin by relying on insights from works analyzing the political consequences of direct democracy (e.g., Romer and Rosenthal 1979; Hug 2004). For one, direct democracy is seen as a mechanism that can offset the power of elites. It allows citizens to directly participate in the policymaking process and bypass representative institutions, which may be biased in favor of special interests (e.g., Gerber 1999; Lupia and Matsusaka 2004; Matsusaka 2008). Because the outcomes of representative and direct democracy may differ, ex post ratification via referendum serves as a veto player in the policymaking process (Tsebelis 2002, p. 116). In terms of the constitution-making process, mandatory ratification serves as a “downstream constraint” on the power of assemblies and therefore conditions the behavior of delegates when crafting the state’s fundamental laws (Elster 1995, p. 374). By removing the discretion of whether to submit constitutional changes for ratification, the electorates of Northern states could veto constitutional revisions that deviated significantly from the preferences of the state’s median voter (Hug and Tsebelis 2002). Hence, this institutional innovation provided the electorates of Northern states an important constraint on the ability of local elites to otherwise structure the state’s constitutions in their favor.

Using these insights, we provide a logic for why Southern states adopted the first constitution-making innovation, the constitutional convention, but not the second, the mandatory use of ratification referenda. Unlike the legislatures of most Northern states, in which apportion-

ment was based on population, Southern legislatures tended to systematically overrepresent high slave-population share regions (Green 1931, Watson 1985). The shift from representative to direct democracy would therefore have favored the poorer and less slave-dependent regions. We argue that Southern elites rejected the adoption of mandatory referenda because this practice would have threatened their ability to write and implement constitutional law that furthered pro-slavery interests. In particular, slaveholders sought to retain their ability to maintain the overrepresentation of higher slave-share districts (which was seen as crucial for protecting their interests, especially from redistributive taxation).<sup>3</sup> Hence, the discretionary—as opposed to mandatory—use of referendums allowed the slaveholding elite to bypass the electorate when constitutional law divided voters along slave-dependency lines.

We use various pieces of evidence to substantiate our argument. First, we use an original dataset of legislative representation during the antebellum period to show that Southern state legislatures, and therefore constitutional conventions, were significantly more malapportioned than those in Northern states. We then use this dataset of within-state inequality in legislative representation between 1790 and 1860 to demonstrate that the slave-intensive districts were systematically overrepresented in these states' legislatures. Next, we investigate several cases of political reform between 1829 and 1844. These cases show that opposition to mandatory referendums was associated with legislative over-representation and when biases to representation were reformed the opposition to requiring voter ratification declined. Our cases include the Virginia convention of 1829, where delegates from the lower slave-share “highland” regions of the state tried and failed to reform the representation in the General Assembly. Key to our argument, these delegates then tried to have the issue of future apportionment decided via statewide referendum. When the higher slaveholding districts voted down this proposal, the delegates from lower slave-share districts proposed that changes to apportionment made by the General Assembly should require voter ratification. We contrast this with the 1834 convention held in Tennessee, where reforms to apportionment occurred at the same time that the state adopted mandatory ratification of constitutional revisions. We

argue that the removal of the bias to representation favoring higher slave-share districts had the effect of reducing the benefits to discretionary referendums and therefore also reducing elites' opposition to making voter approval mandatory.

We also explore the generalizability of our argument by showing how reforms to apportionment in the relatively undemocratic non-slave states of New Jersey and Rhode Island were linked with reforms to the constitutional amendment process. In each state, reforms to the system of representation enacted by conventions held in the 1840s removed the control of rural elites over state politics. In each convention, the adoption of mandatory referendums was met by little opposition. Lastly, we use the contentious fights over apportionment in Georgia in the 1830s to show why Southern elites tried to block the mandatory referendums in favor of a norm where its use was discretionary. In this case, despite the rejection by voters of two proposals to change the state's system of apportionment to one that favored the higher slave-dependent districts, elites chose to change the constitution without seeking voter approval. When the shift from representative to direct democracy would favor low slave-share regions, Southern elites blocked mandatory referendums to retain the ability to forgo voter approval to further the constitutional protection of slave property.

We conclude by investigating how this divergence between regions in the adoption of the mandatory referendum influenced federal politics in the late antebellum period. In particular, we analyze the strategic use of discretionary referendums during the secession movement of 1860 and 1861, perhaps the most consequential political crisis in American history. In all the states leading this movement the decision to secede was made in conventions, each of which chose against submitting their ordinances for popular ratification. We argue that these referendums were strategically blocked in order to facilitate secession by bypassing a direct vote of the statewide electorate on this issue. Using an original dataset of roll-call votes in these conventions we show that the likelihood of delegates opposing motions conditioning the unilateral secession of their state from the Union to the ratification of voters was positively associated with the slave labor incidence of their constituencies.

Our argument and evidence are relevant to various literatures. First, while there is an extensive literature on how distortions to representation influence the allocation of public resources (e.g., [Ansolabehere, Gerber and Snyder 2002](#); [Dragu and Rodden 2011](#)), or the relationship between partisan votes and seats (e.g., [Chen and Rodden 2013](#)), to our knowledge no previous work has analyzed its relationship with instruments of direct democracy. We therefore expand the scope of these works, demonstrating that biases to representation, such as malapportionment, can play a role in constitutional outcomes. We also contribute to studies on how elites exploit institutional biases. Most of these focus on how multiple pivots can help preserve status quo policies (e.g., [Krehbiel 2010](#); [McCarty, Poole and Rosenthal 2016](#)) and do not consider how formal biases interact with the strategic use of constitutional procedures. Similarly, our arguments contribute to a literature exploring how elites design and employ constitutional procedures to preserve political inequality (e.g., [Harvey 2015](#)). Lastly, this also contributes to our understanding of how slaveholders dominated Southern politics. While the importance of malapportionment in amplifying slaveholders' power is well documented, we are among the first to show how this source of power influenced other institutional developments.

## 2 The North-South Divergence

Modern constitution-making in the West likely began with the resolutions in May of 1776 from the Continental Congress, the de facto governing council of the British North American colonies, to the various colonial legislatures to create sovereign frameworks of government ([Elster 1998](#), p. 97). The process by which each state pursued this varied by both region and circumstance. The Southern slave states largely created their first constitutions using extralegal meetings of the various colonial legislatures ([Green 1931](#)). In Northern states threatened militarily by the British, such as New Jersey and New York, colonial elites quickly wrote constitutions with little popular input ([Tarr 2000](#), p. 63). Connecticut and Rhode Is-

land simply continued with their relatively undemocratic colonial charters. In Pennsylvania, on the other hand, a group of pro-independence radicals seized power, abolished the existing colonial legislature and minimized the existing elites' control of politics by, among other means, removing the property requirement for suffrage (Shearer 2004, p. 1034).

The first state constitutions that emerged out of the exigencies of the American Revolution led to immediate demands for reform. The debates on how this should occur resulted in the widespread acceptance that there was a fundamental distinction between constitutional and statutory law and that the former should not occur in the regular legislature (e.g., Dodd 1910, p. 26; Green 1931, p. 58). As Tarr (2000, p. 69) argues, "The notion that a legislature, even if a 'full and free representation of the people', might lack sufficient authority to act for the people reflected a recognition, present from the outset, that constitutions differed from ordinary statutes and that greater popular input and control were required for their adoption." To wit, when Massachusetts' state legislature, the General Court, proposed to draft a constitution in 1778, one town's petition against this stated, "[b]ecause a Constitution alterable by the Supreme Legislative is no Security at all to the Subject against any Encroachment of the Governing part on any, or on all of their Rights and Privileges" (as quoted in Shearer (2004, p. 579)). The General Court responded to this outcry by calling for a constitutional convention in 1779 whose delegation was elected with the sole purpose of creating the state's basic law. By the 1780s, this institutional innovation was adopted across the states as the primary mechanism for creating and revising state constitutions (Dodd 1910, p. 39).<sup>4</sup>

In addition to the constitutional convention, Massachusetts' General Court employed two additional innovations to the process of creating and amending constitutional law. First, a referendum was held in 1779 on whether a constitutional convention should be called. Second, and arguably more importantly, the General Court required that the convention's constitution be referred back to the voters for popular ratification. While the use of conventions was institutionalized across all states, these mechanisms of receiving both ex ante and ex

post direct popular approval spread more slowly. A case in point can be seen by the reforms to Pennsylvania's 1776 constitution, which Pennsylvania elites saw as too democratic (Shearer 2004, p. 1034). When the state's eastern elite regained control of the legislature in the mid-1780s, they called for a convention to be held without seeking public approval. This convention, which implemented the separation-of-powers system that eventually became the standard American constitutional framework, chose against seeking voter approval for these revisions (Shearer 2004, p. 1048). This process for constitution-making was not unusual. Other than Massachusetts (1780) and New Hampshire (1784), no state convention, in either the North or South, sought the voters' approval until 1818.<sup>5</sup>

With the popular ratification of constitutions produced by conventions in Connecticut (1818), Maine (1819) and New York (1821), the procedure for framing state constitutions in the North never deviated from the two-step process of electing delegates to a special convention which required ex-post approval via a referendum of the state's electorate. Specifically, after 1818, no Northern state convention promulgated a new constitution, whether producing its initial framework or replacing a previous one, without being ratified by referendum. Furthermore, all new constitutions created after 1818 included a provision requiring any revisions to be submitted to the electorate for ratification.<sup>6</sup>

In the 1820s, the product of Southern state conventions also began to be submitted to the state's electorate for ratification. Yet, Southern states deviated in terms of *requiring* voter approval and instead developed a doctrine which Freehling (2007, p. 133) describes as the "Southern gospel of a state convention's absolute sovereignty." A fundamental pillar of this doctrine is that state sovereignty resides solely with a constitutional convention, and therefore the convention alone retained the discretion of whether their output should be submitted to the voters for ratification. To wit, while conventions in Virginia (1829), Georgia (1832, 1839), Tennessee (1834), and North Carolina (1835), submitted their output for popular ratification, conventions in Delaware (1831), Mississippi (1832) and Arkansas (1836) chose against doing so (Dodd 1910, p. 65). During the period between 1818 and 1860

when all Northern conventions sought voter ratification, fourteen of twenty-two conventions in the South did so.

This divergence between Northern and Southern states can be seen in Figure 1. The upper panel shows the share of constitutional conventions held in the South (left) and North (right) in which the body’s ex-post results were submitted for popular ratification by different time periods. The first column shows the total number of conventions held (light bar) in the slave states between 1776 and 1820, which is overlaid by the number of these which were submitted to the voters (dark bar). The 2<sup>nd</sup> bar in each panel reports this for 1821 until 1860. This figure shows how post-convention referendums went from rarely used in the North to being universal by the early 1820s. In the South, we see their use becomes similarly widespread, although without the same level of ubiquity.

[Figure 1 about here.]

### 3 The Importance of Discretionary Referenda

Why did the Southern states deviate from their Northern brethren in not *requiring* referendums to ratify the product of constitutional conventions? This is a puzzle in part because constitutional development across these regions generally occurred in lockstep.<sup>7</sup> The rapid adoption and spread of the mandatory referenda across the Northern states following the War of 1812 occurred in a period of important and widespread democratic reforms. In particular, most of the remaining economic restrictions to suffrage on adult white males were removed across both regions (Keyssar 2001).<sup>8</sup> Hence, in terms of patterns of state-level constitutional development, the South’s failure to adopt the mandatory post-convention referendum was the exception rather than the rule.

We contend that the Southern doctrine of a convention’s absolute sovereignty (i.e., the use of referendums are discretionary rather than mandatory) emerged solely in the South to allow conventions the discretion to bypass the state electorate when writing constitutional law

that would divide voters along local slave-dependency lines. Representation in most Southern state legislatures was systematically biased in favor of the higher slave-dependency regions of their states. Because convention delegates were elected from the existing legislative electoral districts, the preferences of the median delegate could therefore deviate substantially from the preferences of the statewide electorate (especially on issues regarding slavery). This meant that the shift from representative to direct democracy would favor the lower slave-population share regions. Hence, we argue that it was the existing distortions to representation—and not the direct effect of slavery—that incentivized Southern elites to block the adoption of this constitutional procedure. The importance of apportionment also explains why most Southern states adopted many of the key democratizing reforms of the period (e.g., adult white male suffrage, elected judges), but blocked this pillar of constitutional reform in the North.

In turn, we argue that the slaveholders resisted reform to apportionment versus other democratic reforms, as this was seen as a key mechanism for protecting their investments in slavery. While this typically involved preserving the status quo, large population shifts and other events meant that revising the constitutional rules of apportionment was occasionally necessary. Blocking the adoption of mandatory referendums allowed Southern elites the discretion to manipulate state constitutions (e.g., revise electoral rules) without seeking approval from the statewide electorate.

If, however, the bias to apportionment in favor of higher slaveholding districts was reformed, this should lower the bias in favor of slave interests in state representative institutions vis-a-vis the statewide electorate. Hence, we argue that reforms to apportionment should cause opposition to mandatory referendums to decline. Furthermore, the removal of slaveholders' *de jure* control of the legislature substantially alters the incentives of slaveholders with respects to constitutional design. Instead of a relatively easy amendment process, slaveholders should instead seek constitutional protections to slavery combined with an arduous constitutional revision process.

## 4 Political Inequality in Southern Legislatures

We begin substantiating our argument that Southern legislatures, and therefore Southern constitutional conventions, were significantly more malapportioned than those in the Northern states. This demonstrates that the shift from representative to direct democracy was likely more consequential in the South, and therefore more likely to be opposed by those residents who were favored by this bias. We then show that this legislative malapportionment heavily favored higher slave-dependent constituencies. This evidence is critical to our claim that the shift from representative to direct democracy would favor the systematically underrepresented low slave-dependent districts within Southern states.

To support these claims, we construct a measure of county-level representation based on the number of members to a state’s upper and lower houses each county elected between 1790 and 1860. This information was coded from the relevant statutes or constitutional provisions specifying the apportionment for each chamber of each legislature for each decade from 1790 to 1860. Following [Ansolabehere, Gerber and Snyder \(2002\)](#), we use a measure of representation which is relative to the “fair” level of each particular state (which they call the Relative Representation Index-*RRI*).<sup>9</sup> This index creates a common metric across legislatures by normalizing the representation of each county by the “fair” weight specific to each state. Voters in electoral districts with an index of less (more) than 1 were under-represented (over-represented) in their legislature. A value close to one corresponds to a level of representation consistent with the “one person, one vote” principle. From each Census between 1790 and 1860 we calculate each county’s adult white male population, which we use as a proxy for the eligible-voter population. As each state legislature was bicameral, we follow [Ansolabehere, Gerber and Snyder \(2002\)](#) and take the average across chambers.

The difference between regions in inequality of legislative representation is depicted in Figure 2. Each panel plots the empirical distribution of the *RRI* score for Northern and Southern counties separately for three periods between 1800 and 1860. In each period,

it is evident that Northern counties are more concentrated around an *RRI* of 1 (i.e., the “fair” level of representation) with a smaller right skew. By 1830, both the mean and the variance of *RRI* in the Northern counties are significantly smaller than the ones of Southern counties.<sup>10</sup> As shown in panel 3, the *RRI* scores in the Northern states remain on average significantly smaller and with less variance in 1860. The three panels demonstrate the persistence of relatively high *RRI* scores in the South indicating greater within-state inequality in legislative representation.

[Figure 2 about here.]

We next demonstrate that this Southern bias in legislative representation favored high slave-share districts within each state. In Table 1, we present a series of models predicting this representation index using the slave-population share of counties for each Southern state and for each census-decade from 1790 to 1860.<sup>11</sup> Each column reports this estimate for the corresponding census decade. In each model, we control for total county population (logged), which is the primary factor associated with legislative malapportionment ([Ansolabehere, Gerber and Snyder 2002](#)). All demographic data was taken from the relevant decennial Census.

In total, there are 82 individual state-decade models and the relationship between county slave share and *RRI* is statistically positive ( $p < 0.05$ ) in 64 of them. In addition to a few that barely miss being significant at conventional levels, most insignificant models occur either early in statehood (e.g., AL, KY, MO, MS) or, most importantly to our arguments, following reforms to apportionment (e.g., TN after 1834). In sum, with the exception of a few states (e.g. TN, TX), in most Southern states there is strong evidence that the shift from representative to direct democracy would strongly benefit the lower slave-population share districts.

[Table 1 about here.]

## 5 The Incomplete Diffusion of the Mandatory Ratification

We argue that biases to apportionment and opposition to the adoption of the mandatory referendum are linked. When the system of representation deviated significantly from a “one (adult white) man, one vote” basis, the beneficiaries sought to preserve the ability to revise a state’s fundamental law without seeking statewide voter approval. If apportionment was reformed to be based on the voting population (e.g., not include slaves), the opposition to mandatory ratification would fall.

In this section, we explore four cases of constitutional reform to support each part of our argument. First, we use the constitutional conventions in Virginia (1829-1830) and Tennessee (1834) to show that opposition to adopting mandatory referendums worked through apportionment and not directly through slavery. In both states, the calling of conventions was the result of persistent demands to reform the undemocratic elements of their initial constitutions. Virginia’s convention resulted in the maintenance of a biased system of representation that preserved the long-existing structural majorities for the highly enslaved coastal areas. Tennessee’s convention, on the other hand, made numerous democratizing reforms, including the adoption of a system of representation based on the “one (adult white) man, one vote” principle. Unlike Virginia, we show there was little opposition to reforming the amendment process to include a mandatory referendum. Third, we provide external validity for our claim that opposition to mandatory referendums was influenced by the extent of malapportionment by exploring constitutional reform in the relatively less democratic Northern states of New Jersey and Rhode Island. As with Tennessee, we show that reforms to representation, which diminished rural elites’ control of the legislature were accompanied by near unanimous support for mandatory referendums to approve constitutional revisions. Our last case demonstrates why Southern elites opposed the adoption of mandatory referendums. Specifically, we use the various attempts to reform the system of apportionment in Georgia in the 1830s, each of which were rejected in statewide referendums. Georgia elites

then chose to reform the state's system of representation, which was reformed to further protect slave interests, without seeking voter approval.

## **5.1 Apportionment and Opposition to Referendums: Virginia's Convention of 1829-1830**

Virginia's fixed "county" system of representation had long been a source of deep resentment in the rapidly growing (and largely non-slaveholding) western portions of the state.<sup>12</sup> In particular, unmet demands for greater state involvement in internal improvements, banking and education were widely attributed to the systemic inequalities entrenched by the state's 1776 constitution (Wilentz 2006, p. 199-201). Years of pressure from not only the Appalachian counties but also the rising and underrepresented urban centers, such as Richmond, led to the legislature consenting to a referendum on whether to hold a convention (Wilentz 2006, p. 341-344). The voter's approval led to the holding of a convention in the fall of 1829 whose debates about the propriety of majority rule were made by some of the country's most distinguished political figures. The 96-member delegation (4 delegates elected from each of the state's 24 senatorial districts) included 2 former Presidents (James Madison and James Monroe), one future President (John Tyler), the future Speaker of the US House of Representatives (John Jones), approximately 25 past or future members of Congress, and the sitting Chief Justice of the US Supreme Court (John Marshall, as well as future justice, Philip Barbour).

Along with other democratizing reforms (e.g., lowering economic restrictions to suffrage, reform of the judicial system), the primary debates in the convention revolved around whether to apportion representation in the state legislature according to white population. Slaveholders saw preserving the system that guaranteed majorities for the eastern part of the state, regardless of white population movements, as critical for limiting the ability of low slave-share regions within their states to increase taxation on slave property. This logic was expressed in a speech to the convention by Abel Upshur, a coastal slaveholder and future US Secretary of State:

It is contended by our opponents, that the proper basis of representation in the General Assembly, is white population alone, because this principle results necessarily from the right which the majority possess, to rule the minority. . . There are two kinds of majority. There is a majority in interest, as well as a majority in number...that those who have the greatest stake in the Government shall have the greatest share of power in the administration of it. . . Gentlemen tell us that our alarms are unfounded; that even if we should give them power to tax us at their will and pleasure, there is no danger that they will ever abuse it. . . [t]hey tell us that there is no disposition among them, to practice injustice towards their eastern brethren. Sir, I do firmly believe it. . . But who can answer for the generations that are to come? . . . I think, Sir, it must be manifest by this time. . . that property is entitled to protection, and that our property imperiously demands that kind of protection which flows from the possession of power. Gentlemen admit that our property (slaves) is peculiar, and that it requires protection, but they deny to it the power to protect itself.<sup>13</sup>

We now use roll calls from the convention to show that the proportion of a district's population who were slaves in 1830 is strongly inversely related to a delegate's support for reforming to a white-population basis of representation and requiring statewide ratification of changes to the constitutional basis of apportionment. Specifically, for each roll call we estimate a logit model where the dependent variable is an indicator for either a “*yea (1)*” or a “*nay (0)*” on each motion. The result for each model are presented in Figure 2. A description of each roll call and vote tally is presented in Appendix Table A2.

The first roll call analyzed is an amendment to the Committee of the Whole's report to apportion representation by fixed and unchanging districts that gave majorities to the Eastern section of the state. This amendment, which called for apportionment to be “based on white population exclusively,” failed by only four votes (46 yeas to 50 nays).<sup>14</sup> As seen in model 1 of Figure 2, district slave share is strongly negatively correlated with support for this amendment.

Upon losing this fight, western delegates sought to resolve the issue of future apportionment. While eastern delegates claimed the issue had been settled “*ad indefinitum*” (PDV, p. 831), western delegates proposed numerous motions seeking to put the issue of the constitutional basis of apportionment directly to the voters via referendum.<sup>15</sup> Yet, each of

these efforts were narrowly defeated by delegates from the eastern counties. Instead, Madison proposed that a separate provision be included in the constitution that specified that reapportionment could occur in 1841 (and once every 10 years thereafter) if agreed to by both chambers of the legislature. A delegate offered an amendment that stated that any changes to apportionment made by the legislature had to be submitted to the state's voters for approval. This amendment was again narrowly defeated. As shown in model 2 of Figure 2, opposition to this amendment is highly correlated to the importance of slavery to each delegate's district. This is unsurprising, as every delegate who opposed (supported) a white basis of apportionment also voted against (for) the amendment requiring voter ratification of changes to the system of representation. This demonstrates that delegates on both sides saw the shift from representative to direct democracy benefiting the lower slave-dependent regions.

Despite the adoption of some democratizing reforms (e.g., reduction in suffrage restrictions), one western delegate (PDV, p. 835) claimed that the "obnoxious arrangements as to the representation" would cause him to oppose passage of the overall constitution. Indeed, the final vote on the overall constitution was 55 in favor to 40 opposed, with only one delegate from the western part of the state voting in favor. In model 3 of Figure 2, we show that overall support for the final constitution was highly correlated to district slave share.

[Figure 3 about here.]

## **5.2 Why Adopt Mandatory Referendums? Tennessee's Convention of 1834**

While the roll calls in the Virginia convention demonstrate the tight link between preserving the pro-slavery bias to legislative representation and blocking mandatory referendums, a convention held soon after in Tennessee shows how opposition to mandatory referendums can decline once the bias to apportionment is removed. In 1834, a convention in Tennessee

met to write a new constitution to replace their initial framework of 1796. As with most other Southern states, apportionment in the initial constitution overrepresented higher slave districts; in Tennessee's case, this was accomplished by including adult black men (i.e., taxable inhabitants) in the population counts for reapportionment. Yet, one unique provision of the original constitution led to strong pressures for reform. The 1796 compact mandated that taxation of land must be equal by acre (and not by value). While adopted to induce migration into the sparsely populated frontier state, it resulted in great inequities in the incidence of taxation.<sup>16</sup>

The need to reform this regressive constraint on taxation led to a convention that adopted one of the more democratic constitutions in the South (Wooster 1975, p. 127).<sup>17</sup> Yet, as we show using roll-call votes from this convention, opposition to reforming the basis of apportionment and requiring ratification of constitutional changes was similarly conditioned by district-level dependency on slave labor. As with Virginia, we located the relevant roll calls in the convention's journal.<sup>18</sup> As with Virginia, we use logit analysis to predict support for each resolution using the district slave-population share of each delegate.

First, model 1 shows that support for the provision that taxes on property should now be based solely on value is negatively correlated with district slave share of the delegate (JCT, p. 325). This is unsurprising, as this reform would increase taxation on the more valuable land that was conducive to the large-scale use of slave labor. The inability to defeat this provision (39 Y, 19 N) signaled the weakness of the higher slaveholding districts in the convention. We next analyze this relationship for the vote on adopting a qualified voters basis of apportionment (JCT, p. 322). Given that Tennessee had no economic restrictions to voting, the passage of this reform (33 Y, 24 N) would increase the legislative representation of the lower slave-share counties.<sup>19</sup> Model 2 of Figure 3 shows that opposition to this resolution was negatively correlated with the delegates' district slave share. We argue that once the bias to representation is reformed the value of retaining legislative discretion of whether to submit constitutional changes for ratification declines. Indeed, this is precisely what occurred. The

vote on whether to require voter ratification of any constitutional revisions was not close (46 Y, 9 N, JCT, p. 254).

[Figure 4 about here.]

Why did reform prevail in Tennessee where it failed in Virginia (not to mention most other slave states)? One idiosyncratic reason for this success can be explained by the fact that the unique tax provision in the original constitution led to intense demands for reform. This can be seen in the composition of the elected delegation. In contrast to the storied convention in Virginia, voters in Tennessee selected a delegation that featured relatively few prominent federal or even statewide political figures.<sup>20</sup> Perhaps more importantly, Tennessee was simply less dependent on slave labor. When sorting districts by the proportion of the population who were slaves, the district slave share of the median delegate was 19%. By comparison, the district slave share of the median delegate in the Virginia convention was 41%. Thus, the economic geography of slavery in Tennessee, combined with demands from the electorate for reform to the restriction on taxation, resulted in a delegation that could overcome slaveholder opposition to these democratizing reforms.

Finally, the success of reform in Tennessee could plausibly be explained by two key protections won by slaveholders. There was significant pressure in the convention to consider abolishing slavery in the state, and a committee was created to consider the matter (Bergeron 2015, p. 39). Critically for slaveholders, the Committee on Emancipation chose to not take up the matter in this convention.<sup>21</sup> Model 3 shows shows the relationship between district slave share and the delegates' support for a resolution to concur with the committee's decision (JCT, p. 141). The second (and enduring) critical protection was a provision to the constitution that stipulated that the legislature could not emancipate slaves without receiving the consent of the owners. In a tight vote (30 Y, 27 N (JCT, p. 201)), slaveholders won this key protection.<sup>22</sup> The strongly positive relationship between support for this provision and district slave share is shown in model 4 of Figure 3. As a result, and despite the many democratizing reforms enacted by the convention, the final vote in favor the new constitution

showed none of the divisions along slave-dependency lines observed in Virginia. In fact, it was passed nearly unanimously (55 Y, 3 N (JCT, p. 389)).

This narrowly-won constitutional protection for slavery combined with the loss of political control over the state legislature meant that slaveholders in Tennessee wanted to ensure that the constitution was difficult to amend (Dinan 2006, p. 39). For instance, unlike the 1796 constitution, the new constitution specified no procedure for calling a new convention. Moreover, the process for amending the constitution was arduous. Not only did the voters now have to ratify any revisions, but it had to first be approved by two-thirds of each chamber across two successive legislative sessions (the 2<sup>nd</sup> session occurring after the election of new members).<sup>23</sup>

We can see the divergence in strategy among slaveholding elites when looking at the initial constitutions of Florida and Texas, the final two slaves states admitted to the Union (each in 1845). In Florida's convention, slaveholders managed to have slaves included in the population counts for apportionment for both legislative chambers.<sup>24</sup> Consistent with our arguments, the constitution included a procedure for calling a convention and did not include mandatory ratification of any constitutional revisions.<sup>25</sup> In Texas, delegates from higher slave share counties also tried to implement a biased system.<sup>26</sup> After failing to implement a system of legislative representation biased in favor of higher slaveholding districts, delegates from higher slaveholding districts sought and received constitutional protections for slavery. For one, a provision that was nearly identical to that in Tennessee's constitution - in which the legislature could not emancipate slaves without the owner's consent - was included in the constitution.<sup>27</sup> The convention also chose to not include a procedure for calling a new convention and instead implemented an arduous amendment process that included voter ratification. As in Tennessee, if slaveholders could not control the legislative process, they sought constitutional protections of slavery combined with high institutional impediments to changing the state's fundamental law. A consequence of this divergent strategy can be seen in the number of amendments to the constitution of each state. While the Florida

constitution was amended 13 times between 1845 and 1860, the constitutions of Tennessee (1834) and Texas (1845) were amended a combined one time (Thorpe 1909).

### 5.3 Mandatory Referendums and Representation in the North

We demonstrated in Figure 2 that within-state inequality in representation was on average lower in the Northern states.<sup>28</sup> An implication of our argument is that the few Northern states with systematic biases to representation should have been similarly less likely to adopt mandatory referendums. Consistent with this claim, in the few early Northern states that were slow to adopt mandatory ratification, such as New Jersey, Rhode Island and Vermont, each maintained a highly contentious system of representation that was malapportioned in favor of rural elites (Zagarri 1987, p. 54; Conley and Flanders 2011, p. 18-27). Furthermore, we argue that reforms to this bias should see a decline in the opposition to mandatory referendums. We explore this claim looking at the state conventions in New Jersey and Rhode Island, respectively, which reformed their basis of legislative representation in the 1840s.

The initial post-colonial constitution of both New Jersey and Rhode Island contained a number of undemocratic elements that would lead to intense pressure for reform. For instance, the original constitution of New Jersey, which was framed over five days in 1776 while the state faced imminent invasion by British forces, was widely seen as less democratic than the initial constitutions of its neighbors, New York and especially Pennsylvania. The result was a governing framework that was similar to those created in the Southern states (e.g., the governor was elected by the legislature combined with a basis of apportionment that gave equal representation to each county regardless of population).<sup>29</sup> Similarly, Rhode Island maintained its colonial charter following independence, which entrenched a system of extreme malapportionment and high economic restrictions to suffrage. This *de jure* inequality effectively allowed rural elites to control state politics in both rapidly urbanizing states.

Over time, resentment towards each state’s undemocratic institutions increased and in the case of Rhode Island even culminated in the so-called “Dorr Rebellion,” where dissidents tried to reform the state’s constitution by calling and holding an extra-legal convention and legislature (Keyssar 2001, p. 71-76; Wilentz 2006, p. 539-545).

These pressures, which caused neighboring states to reform decades earlier, eventually led to conventions being held in New Jersey (1844) and Rhode Island (1842), respectively. Each resulted in the adoption of many of the democratizing reforms passed previously in other Northern states, including a provision mandating that all constitutional revisions be ratified by the state’s voters. Of particular relevance to our argument, the lower house in each state would now be apportioned based on population. Yet, in each convention, rural elites were able to preserve the pre-existing one-senator-per-unit (county in NJ and the town in RI) basis in the upper house. Debates from the Rhode Island convention indicate that this was a key compromise that allowed the other reforms to be passed.<sup>30</sup> Furthermore, in each of these states, the process for constitutional reform was specified to occur solely in the state legislature, where the maintenance of the biased system in one chamber allowed rural elites to block threatening reforms.

As with Tennessee, reforms to apportionment occurred jointly with the adoption of mandatory ratification of constitutional revisions. Furthermore, these procedures were also adopted with little opposition in the conventions. This is consistent with our claim that opposition to mandatory referendums declined with the ability of elites to manipulate the constitution in their favor. Furthermore, in each case, the elites favored by the pre-reform basis of representation (rural elites in NJ and RI, and slaveholders in TN) won key constitutional protections that allowed them to block policies antagonistic to their interests. Yet, in each case, the reforms also diminished their ability to control the legislature and with it the constitutional revision process (either in the legislature or via a convention). Thus, and unlike the case we present next (Georgia), preserving the ability to choose to circumvent the statewide electorate was no longer as salient in these states.

## 5.4 The Value of Discretionary Referendums: Georgia’s Failure to Reform in the 1830s

We argue that when legislative representation was biased in favor of higher slave-share districts, the possibility to choose whether to seek statewide voter approval allowed Southern elites to write favorable constitutional law that might be opposed by a majority of the electorate. The value of this lack of mandatory approval when the preferences of convention majorities conflict with those of the statewide electorate can be seen with the series of conventions held in Georgia over reforming the state’s legislative apportionment.

As with each original Southern state, Georgia’s constitution of 1798 enshrined a basis of representation that was constructed to preserve legislative majorities for high slave-population share districts, a source of political inequality which provoked repeated calls for reform (Saye 2010, p. 169-172). While the lower house was based on population, which specifically included slaves in the counts, it was the choice of a one-senator-per-county basis that caused the system to eventually require constitutional revision. Due to the forced removal of Native Americans, especially in the 1820s, large swaths of the northern and western portion of the state opened for settlement (Weiman 1991). This necessitated the creation of administrative districts (counties), which threatened the senate majorities of the eastern slave-dependent districts. Increasing calls for reforms led to the holding of conventions in 1832 and 1839. When, according to Saye (2010, p. 172), the system of representation proposed by the 1832 convention “did little towards equalizing representation....Citizens of middle Georgia who had worked hardest for reapportionment of representatives now worked hardest to defeat the proposed amendments (in a post-convention referendum), and in this they were successful.” A second convention in 1839 similarly failed to equalize representation. As explained by one delegate, the convention tried to revise the constitution to ensure that “the minority of the people govern the many—the very distinguishing characteristic and essence of aristocracy” (as cited in Green 1931, p. 238). After opposition to the amendments in the low slave-share portions of the state led to its defeat in a referendum, Georgia’s gov-

ernor said, “this is the second time that the people have refused to sanction the proceedings of conventions, held to reform the constitution. In both instances...by the belief that the amendments offered for their approval were intended for sectional purposes” (as quoted in [Green 1931](#), p. 239).

Following this defeat, Georgia elites chose to amend the basis of apportionment in the constitution without submitting it for popular ratification ([Saye 2010](#)).<sup>31</sup> Specifically, the one-senator-per-county basis was revised to a system of districting that would better protect higher slave-share counties. Georgia’s constitution would subsequently be amended ten more times before 1860 without receiving voter ratification, including further constitutional revisions in the 1850s to the system of representation ([Thorpe 1909](#)). This ability to persistently manipulate the state’s constitution without voter consent, as similarly exemplified in Florida, would no longer have been possible in the North due to the institutionalization of the mandatory referendum.

## 6 Conventions, Referendums and Federal Politics

We conclude by exploring how discretionary referendums were used strategically during the regional crisis of the 1850s and ultimately the Southern secession movement of 1860-61. We first show how Southern elites employed the language of a “convention’s absolute sovereignty” (i.e., discretionary referendums) to justify the choice to not submit Kansas’ pro-slavery “Lecompton” constitution for voter approval. We then also show how this was similarly utilized during the subsequent secession crisis. Following a brief overview of the process by which each state chose to secede, we provide evidence that as in the Virginia convention of 1829 support for using referendums largely split along slave-dependency lines. Using the same approach, we demonstrate that delegates from high slave-population share districts successfully rejected the proposal to submit the ordinances of secession to the electorates for ratification. This supports our claim that on questions pertaining to slavery,

Southern elites saw the use of statewide referendums as harming their interests.

## 6.1 Bringing Kansas into the Union

The political importance of the divergence between regions is revealed in the debates regarding the admission of Kansas to the Union in 1857-58. This episode is particularly relevant because it shows how the Southern doctrine of a “convention’s absolute sovereignty” was used by slaveholders in Kansas to bypass the opposition to bringing the territory into the Union as a slave state. A sectional conflict occurred when a convention requested admission to the Union without submitting the proposed constitution to the territory’s voters for ratification.<sup>32</sup> When the appointed territorial governor, Robert Walker, opposed the admission without voter ratification, Mississippi congressman and future delegate to his state’s secession convention, Lucius Lamar, invoked the Southern doctrine in a letter to the US Secretary of the Treasury Howell Cobb: “our objection goes no farther than to Walker’s threat (to refuse admission without a referendum) to make such course a *sine qua non* of admission as a state to the Union.” In the same letter, Lamar went on to claim that it was a “shameless abandonment of our right...[to] oppose the admission of a slave state, merely because her constitution was not submitted to the people.”<sup>33</sup>

On the question of the “propriety of submitting the constitution for ratification,” Alexander Stephens, a Congressman from Georgia and future vice president of the Confederacy, also invoked the doctrine in a letter to his constituents, “I have nothing to say, because...it is the right of the convention to do it or not, as they please.” Yet, he also revealed the strategic importance of not submitting the constitution for ratification by saying “If they do thus conform (to Walker’s demand of submitting), the question (of Kansas’ status as a slave state) will most probably be ended.”<sup>34</sup> Cobb, a future secessionist and the first President of the Provisional Confederate Congress, wrote privately to Stephens that “refusing to submit the constitution to the people for ratification...will produce the most dangerous crisis we have yet had on the Kansas question. The reply can be made with overwhelming power that the refusal to submit was the result alone of a fear that a majority would condemn it.”<sup>35</sup>

The ensuing debates in Congress on the Kansas issue revealed the clear divide between free and slave states over the necessity to ratify the eventual constitution. In his famous “Cotton is King” speech to the Senate on March 4, 1858, South Carolina Senator James Hammond began by stating that the free states would admit Kansas if “this constitution embodied the will of the people of Kansas...the only question is, how that will is to be ascertained, and upon that point, we differ. In my opinion the will of the people of Kansas is to be sought in the act of her lawful convention elected to form a constitution, and no where else.”<sup>36</sup> New York Senator, Preston King, responded that if Kansas were admitted, “the sovereign right of the people is denied, and the sovereign right of a convention is affirmed...[The question] is no less vital to the people of every State now in the Union, because it is the question where sovereignty resides, whether in representative bodies, or in the people.”<sup>37</sup> Stephen Mallory, senator from FL, challenged King’s premise by arguing that the free states’ objections “could be summed up in this: the constitution framed at Lecompton was not submitted to the vote of the people, and it does not reflect the will of the people of Kansas. Let me ask, sir, who are the people of Kansas? The senator from NY says that the people means the majority. I deny any such doctrine.”<sup>38</sup>

## **6.2 The Secession Crisis of 1860-61**

The failure to bring Kansas into the Union as a slave state contributed to rapidly deteriorating sectional tensions over slavery. When Abraham Lincoln was elected President solely with electoral votes from Northern states, most slave states quickly convened special sessions of their legislatures to debate their response to Lincoln’s election and the possibility of leaving the Union. Pro-secession legislators considered two mechanisms by which a state could declare its independence. The first was simply to secede via statute in the state legislature, an expedient and more certain path preferred by many secessionists.<sup>39</sup> This option was defeated in part because it would have violated the long-held precedent of using an elected convention to modify a state’s fundamental law. Alexander Stephens explained this in a speech to the

legislature of Georgia in November of 1860, by saying “the Legislature is not the proper body to sever our Federal Relations...Sovereignty is not in the Legislature...I am for...calling together an untrammelled convention, and presenting all the questions to them whether they will go out of the Union...[I] know of no way to decide great questions affecting fundamental laws except by representatives of the people.”<sup>40</sup>

The second primary debate was whether the electorates in each state would be called upon to sanction the holding of a “secession convention” or ratify a convention’s decision to secede. Harboring doubts about the popularity of their cause, secessionists in each state opposed any form of direct vote on secession. This was candidly expressed by Alfred Aldrich, a South Carolina legislator, in a letter to US Senator James Hammond: “If the question of secession must be referred back to the people then it will be an utter failure...[I] do not believe the common people understand it, in fact, I know they will not understand it (as cited in [Freehling \(2007, p. 382\)](#)).” Another state legislator from South Carolina wrote to Congressman Milledge Bonham about avoiding a referendum: “(secessionists) know that if the people decide against them, it will be decisive against separate state action for all time to come.”<sup>41</sup> By contrast, those opposed to secession demanded to hold a statewide vote on whether to have a convention or to place limits on the powers of such body by requiring posterior ratification of the voters (see e.g., [Wooster 1976](#); [Freehling 2007](#)).

In each of the first six states to secede (South Carolina, Mississippi, Florida, Alabama, Georgia, and Louisiana), secessionists were successful in passing bills calling for a convention without seeking voter approval. More importantly, these legislatures abided by the doctrine of a convention’s absolute sovereignty and placed no ‘upstream constraints’ on its scope or power or “downstream” constraints by requiring post-convention ratification.

Between the passage of this legislation and the elections for delegates, two factions emerged. *Immediate secessionists* advocated for their state to choose to unilaterally and immediately secede in the state’s convention. An opposing faction, which became known as *Cooperationists*, was a coalition of unionists, moderates, and pro-slavery supporters who, at

a bare minimum, opposed unilateral secession. While Cooperationists advocated for holding a Southern-wide convention, among other stances, a unifying position among this heterogeneous group was that any decision by a convention would only take effect if voters ratified it via referendum (Freehling 2007, p. 464; Barney 1974, p. 198). In each Lower South convention, secessionists comprised a majority of delegates and successfully blocked each motion, including the proposal to submit the decision for voter ratification, passing ordinances which immediately and unilaterally removed their state from the Union.

In the remaining slave states, anti-secessionist state legislators were successful in requiring direct voter input on secession. Voters in these states decided directly via referendum on whether to hold a convention and even to subject any secession resolution to a posterior ratification. For example, in North Carolina and Tennessee, voters initially rejected the holding of a convention. This defeat was anticipated by a secessionist leader in North Carolina in a letter to one of the state's Congressmen by saying, "You cannot unite the masses of any Southern state much less those of N.C. against the Union & in favor [of] slavery alone" (as cited in Crofts 2014, p. 132). In Virginia, the legislature called for a convention but also held a referendum on whether secession would require a posterior popular ratification. The inclusion of this provision caused a "heated debate" and was strongly opposed by secessionists in the legislature (Wooster 1976, p. 141). Voters later approved by a wide margin the need for post-convention ratification. The view among secessionists that referendums would harm the prospects of the movement (and the similar view among cooperationists) is consistent with our argument that slaveholders opposed mandatory referendums because the shift to direct democracy was politically harmful for their interests. These Upper South states only seceded after conflict began with the firing on Fort Sumter in Charleston, and Lincoln's subsequent call on April 15, 1861, for troops to suppress the movement.

### 6.2.1 Opposition to Popular Ratification of Secession Ordinance and Slavery

We now use roll-call votes from the Lower-South conventions to analyze the relationship between the choice to oppose requiring popular ratification of secession and the slave labor incidence of local constituencies. We show that the delegates from higher slave-share districts were crucial to defeating the drive to condition secession to ratification by voters.

Our measure of support for the use of direct democracy comes from key roll-call votes recorded in the various “secession” conventions. Namely, we coded all available votes on resolutions to submit any secession proposal to the voters for ratification. From the six states seceding prior to the formation of the Confederacy in February, 1861, four states recorded the roll calls on whether to require voter ratification (Alabama, Florida, Louisiana, and Mississippi).<sup>42</sup> The precise resolutions, their description, and the final vote tally in each is presented in Appendix Table A2.

As we did previously, our main explanatory variable is the slave-population share of each delegate’s district as a proportion of total district population in 1860. Unlike earlier Censuses, the 1860 Census allows us to control for a rich set of demographic and economic factors that could influence the choice of whether to submit the secession ordinance for ratification. Specifically, we control for total population, the level of urbanization, population density, the Gini coefficient of land inequality, the density of railway coverage (miles of railroad per square mile), and the share of the labor force employed in manufacturing. All variables are from 1860 and their definitions and sources are described in Appendix Table A3. Most importantly, the 1860 slave schedules allows us to control for the number of slaves each delegate owned in 1860. This should help capture a delegate’s personal economic stake in slavery. Each record was located using *Ancestry.com*, which allowed us to identify the information using the name of each delegate.

We again use logit analysis to investigate the relationship between the delegate-level support for requiring voter ratification of secession and the slave dependence of their constituents. For each state, the the dependent variable is a binary indicator of whether the

delegate voted to submit the ordinance for ratification. Figure 4 summarizes our estimates. In the left panel, where we estimate the relationship without controls, we plot the corresponding marginal effect (and its 95% confidence interval) of district slave-population share on the likelihood of opposing popular ratification in each of the four conventions. The right panel shows this same model with the controls described above included.

[Figure 5 about here.]

The estimate on slave share for all conventions is positive and highly statistically significant with (right) and without (left) controls. The magnitude of these effects is also large. For instance, the estimated effect for Alabama (marginal effect equal to 0.80, S.E. of 0.2), is highly significant and implies that a delegate from a county one standard deviation above the mean slave share is expected to have around 0.17 more chance of voting against ratification than a delegate from the average county in this state (which has a slave share of 38%). The point estimates for the other states are remarkably similar and precisely estimated.

This is consistent with our findings from earlier conventions and our overall argument that slaveholders saw the shift from representative to direct democracy as harming their interests. In Appendix Figure A1, we compare this opposition to popular ratification with the support for other pro-secession motions in these conventions and find that support for secession is similarly conditioned by the dependency on slavery of each delegate's constituents.<sup>43</sup> This is consistent with our claim that both supporters and opponents of secession, who largely split along slave-dependency lines, saw statewide referenda as harmful to the movement's electoral prospects.

## 7 Conclusion

In this paper, we examine the conditions under which democracies adopt the use of direct democracy mechanisms to ratify constitutional laws. We explore this issue by studying the puzzle of why regions in the US adopted constitutional conventions during the antebellum

period, but only the Northern states subsequently adopted mandatory post-convention referendums. We argue that long-running distortions to representation in favor of slave-dependent regions in the South meant that the shift from representative to direct democracy would favor lower slave-share districts. Instead, the discretionary referendum, as embodied by the Southern doctrine of a “state convention’s absolute sovereignty,” were adopted allowing the slaveholding elite to modify state constitutions without seeking voter ratification.

We provide evidence for our argument using an original dataset measuring county-level inequality in legislative representation. We show that not only were Southern legislative bodies on average more malapportioned than those in Northern states, but that the bias in representation was highly correlated with local slave-population incidence. We supplement this evidence with four cases of state-level constitutional reform between 1829 and 1844. Each shows that opposition to mandatory ratification of constitutional revisions was related to the extent of malapportionment present. If biases to representation were reformed, then opposition to requiring voter ratification declined. Yet, if Southern elites could retain *de jure* control of state legislatures, they preferred to retain the option to bypass state electorates when constitutional revisions divided voters along interests over slavery.

We explore the implications of this institutional divergence in the events leading to the Civil War. In particular, we emphasize the sectional conflict over the admission of Kansas in the late 1850s and the lack of popular ratification of all the Lower South secession conventions during the 1860-61 crisis. While it is difficult to evaluate whether slaveholders correctly feared majority opposition to unilateral and immediate state secession, the existing electoral returns for the convention delegates suggest that in the larger Lower South States support for immediate secession was far from overwhelming.<sup>44</sup> In fact, the closeness of the overall votes combined with the desire to convince the public that secession was overwhelmingly popular led the governors of each state to refuse—despite many demands to do so—to publish the election results (Johnson 1972; Dew 1970).

The patterns established during the antebellum period persisted into the 20<sup>th</sup> Century.

While no Northern state in the post-war period failed to submit a convention's product for voter ratification, Southern states continued to use referendums inconsistently. Most notoriously, the conventions in Mississippi (1890), South Carolina (1895), Louisiana (1898), and Virginia (1901), that enacted suffrage restrictions, such as literacy tests, that largely disenfranchised African Americans until the Voting Rights Act of 1965 were not submitted for voter ratification (Dodd 1910, Keyssar 2001). Consistent with our argument, malapportionment remained one of the key institutions amplifying the political power of rural elites in postbellum period (Mickey 2008).

Our argument has a number of important generalizable implications. For one, distortions to representation, including malapportionment, are a prevalent feature of the world's legislatures (Dragu and Rodden 2011). Our argument suggests that the winners of these biases, typically rural interests, will oppose the adoption of mandatory referendums. Yet, it is these polities where the adoption of this institutional veto point might be most consequential for constitutional design. A related implication is regarding the mechanisms by which *de jure* political inequality is preserved over time. The mandatory referendum provides a constraint on the ability of elites to write a state's fundamental law in its favor. To wit, all US states now require statewide ratification of any constitutional revisions. Yet, the federal constitution was not submitted for voter ratification, and contained many institutions that were biased in favor of particular interests (e.g., equal apportionment in the Senate, the electoral college, the three-fifths clause). Furthermore, instead of facilitating the revision process, the constitution was made incredibly difficult to amend and included no mechanism for receiving direct nation-wide popular input.

# Notes

<sup>1</sup>There is a related literature studying when discretionary referendums are used during important constitutional changes, such as the adoption of the EU Constitution (e.g., [Dür and Mateo 2011](#)).

<sup>2</sup>Perhaps most famously, this period saw the removal of most of the economic restrictions to white suffrage across all of the states (e.g., [Keyssar 2001](#) and [Wilentz 2006](#)).

<sup>3</sup>[Niemi \(1977\)](#) showed using the slave schedules of the 1860 Census that nearly 90% of the South’s slaves were owned by 10% of the region’s adult white males (our proxy for eligible voters). See, for instance, [Einhorn \(2008\)](#) for slaveholders’ concerns about the non-slaveholding majority raising taxes on slave property.

<sup>4</sup>Its rapid diffusion can be seen in the use of a constitutional convention (instead of the existing Congress of the Confederation) in 1787 to revise the federal-level Articles of Confederation. The call in February of 1787 from the Congress said, “That it be recommended to the States composing the Union that a convention of representatives from the said States respectively be held for the purpose of revising the Articles of Confederation.”

<sup>5</sup>During this period, 17 state constitutional conventions were held (7 in the North and 10 in the South). See Appendix Table A1 for conventions by each state.

<sup>6</sup>The texts of these constitutions were located in [Thorpe \(1909\)](#).

<sup>7</sup>[Fehrenbacher \(1995, p. 109\)](#) stated that “[P]erhaps the outstanding feature of state constitutional development in the slave-holding South was its similarity to such developments elsewhere.”

<sup>8</sup>While these democratizing reforms were due to many causes, one important factor driving their diffusion was the admission of six (3 slave and 3 non-slave) frontier states between 1816 and 1821. None of these states enacted economic restrictions to white male suffrage. See, for instance, [Keyssar \(2001, p. 26-52\)](#) and [Wilentz \(2006, p. 197\)](#) for factors contributing to the success of these reforms.

<sup>9</sup>Formally, this measure is:

$$RRI_i = \frac{R_{j(i)}/N_{j(i)}}{R_j/N_j}, \tag{1}$$

where  $j(i)$  indicates that county  $i$  is located in state  $j$ .  $R$  is the number of state representatives and  $N$  denotes the corresponding voting population.

<sup>10</sup>Specifically, the p-value of the difference in means and variance, respectively, of  $RRI$  between regions is less than 0.01.

<sup>11</sup>Delaware is excluded because it had only 3 counties in each decade.

<sup>12</sup>According to [Wilentz \(2006, p. 341\)](#) “Between 1820 and 1829 (alone), the population of the western

part of the state rose by nearly 40%, compared to a rise of only about 2 percent in the Tidewater counties.”

<sup>13</sup>Excerpted from Upshur’s speech (as cited in *The Proceedings and Debates of the Virginia State Convention of 1829-1830*, p. 65-79 (hereafter, denoted as *PDV*)). In another speech at the convention, Madison (*PDV*, p. 538) expressed a similar argument for maintaining the unequal system of representation: “It is apprehended, if the power of the Commonwealth shall be in the hands of the Majority who have no interest in this species of property (slaves), that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners.”

<sup>14</sup>This roll call was located in *PDV* (p. 654).

<sup>15</sup>For instance, a delegate from present day West Virginia proposed an amendment that: “Resolved, that when the amended Constitution shall be submitted to the people, the following question, by way of amendment, shall be propounded to the people, for a final settlement of the principle of the apportionment of representation, viz: Shall the basis of Representation in both branches of the Legislature be white population exclusively?” (*PDV*, p. 575). While this motion was rejected, the roll call was not recorded.

<sup>16</sup>One prominent contemporary politician said “the increased value of the lands in certain sections has rendered this restriction on the taxing power so grossly absurd ... that a hundred acres of land, worth fifty cents an acre, should pay one dollar taxes, and that another hundred acres, worth fifty dollars the acre, should pay the same amount of tax (as cited in [Hamer \(1933, p. 318\)](#)).”

<sup>17</sup>According to [Bergeron \(2015, p. 39\)](#), “Clearly the major reason for a convention in the mid-1830s was the increasing uproar over the taxation of property.” Furthermore, the 1796 constitution stipulated that amendments could only occur in a convention.

<sup>18</sup>The precise resolutions, their description and vote tallies as taken from the *The Journal of the Convention of the State of Tennessee, 1834* (hereafter, *JCT*) are presented in Appendix Table A2.

<sup>19</sup>The significance of the estimates for TN prior to the convention (as shown in Table 1), and complete insignificance thereafter, suggests that the reforms to apportionment were meaningful.

<sup>20</sup>[Hamer \(1933, p. 319\)](#) claims that the electorate’s strong demand for democratizing reforms meant that many prominent state politicians were either defeated in the elections for delegates or refused to run (e.g., future US President, James K. Polk). The sitting governor even asked the sitting US president, Andrew Jackson, to serve as a delegate, hoping he could stem the demands for reform. In his letter to Jackson, he began, “From the returns...we shall have a convention. This I regret, for I incline to the belief that the opinions of the people at this time are not favorable to the formation of a sound constitution.”

<sup>21</sup>The committee’s report stated the demands for emancipation represented a “premature attempt on the part of the benevolent to get rid of the evils of slavery (as cited in *JCT*, p. 125).”

<sup>22</sup>Tennessee Constitution, Article II, Sec. XXXI.

<sup>23</sup>Tennessee Constitution, Article VI, Sec. III.

<sup>24</sup>Florida Constitution, Article IV, Sec. 1.

<sup>25</sup>Florida Constitution, Article XIV, Sec. 1 and 2.

<sup>26</sup>When one delegate said that all states had apportionment based on white population, another delegate responded, “[a]s a political axiom, it (is) true that representation should be based upon free white population. It may be stated as truth, in that part of the Union north of Mason’s and Dixon’s line ... Having slaves among us, all these political truths must be accommodated to the interests of the country ... The maxim that representation should be based upon population is not so entirely untrue, but it is altogether unsuitable to our circumstances.” *Debates of the Texas Convention*, p. 205.

<sup>27</sup>Texas Constitution, Article VIII, Sec. 1.

<sup>28</sup>Indeed, from the outset, most Northern states largely implemented systems of representation that were based on total population or qualified voters and periodic reapportionment ([Ansolabehere and Snyder 2008](#), p. 42-45; [Beramendi and Jensen 2019](#)). Unlike Southern elites who could largely meet their labor needs with slaves, [Beramendi and Jensen \(2019\)](#) argue that the need to induce migration into the scarcely populated larger Northern states led them to commit in their initial constitutions to a population basis of apportionment.

<sup>29</sup>New Jersey Constitution, Sec. III and VII.

<sup>30</sup>When one delegate to the Rhode Island convention proposed that the upper house also be apportioned by population, another delegate responded that the one-senator-per-town basis was important to “secure the rights of every citizen in this state. This security was of far greater importance than any apportionment of representation. The man of property should feel secure in his pursuits...” (as cited in the *Journal of the Convention Assembled to Frame a Constitution for the State of Rhode Island, at Newport, 1842*, p. 33). Delegates in New Jersey voted to not record debates from the convention.

<sup>31</sup>Georgia Constitution, Amendment VII.

<sup>32</sup>Specifically, the convention determined that slaves already brought into the territory were permitted to remain as slaves, and this decision was not submitted for voter ratification ([Freehling 2007](#), p. 134).

<sup>33</sup>Lucius Lamar to Howell Cobb, July 15, 1857, in *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (1913, p. 405-06). We hereafter denote this source as *TSC*.

<sup>34</sup>Stephens Letters, August 14, 1857. *TSC*, p. 417.

<sup>35</sup>Cobb Letters, September 19, 1857, *TSC*, p. 423-424.

<sup>36</sup>Congressional Globe, 35<sup>th</sup> Congress, 1st session, p. 961–92. March 4, 1858.

<sup>37</sup>Congressional Globe, 35<sup>th</sup> Congress, 1st session, p. 1134-1136. March 16, 1858.

<sup>38</sup>Congressional Globe, 35<sup>th</sup> Congress, 1st session, p. 1136–1140. March 16, 1858.

<sup>39</sup>In the debates in the Georgia legislature over whether to secede by statute, one secessionist said, “Come, then, legislators ... Represent the wisdom and intelligence of Georgia; wait not till the grog-shops and cross-roads shall send up a discordant voice from a divided people” (as cited in [McCurry 2010](#), p. 56).

<sup>40</sup>“Speech of Hon. A.H. Stephens,” *New York Times*, November 22, 1860.

<sup>41</sup>R.C. Griffin to M.L. Bonham, Nov. 6, 1860, M.L. Bonham Papers, University of South Carolina Library.

<sup>42</sup>For Georgia, whose secession was likely pivotal to the ability to form the early Confederacy ([Freehling 2007](#)), a vote on whether to require voter ratification was held and rejected but not recorded.

<sup>43</sup>Specifically, we also coded motions where we could infer the revealed position on secession and match each delegate to their constituency. There were no non-unanimous recorded roll calls in the South Carolina convention.

<sup>44</sup>In the states for which there are existing returns in the elections for convention delegates, secessionist candidates received approximately 50% of the total votes cast in Georgia ([Johnson 1972](#)), 52% in Louisiana ([Dew 1970](#)), and 56% in Alabama ([Denman 1933](#)).

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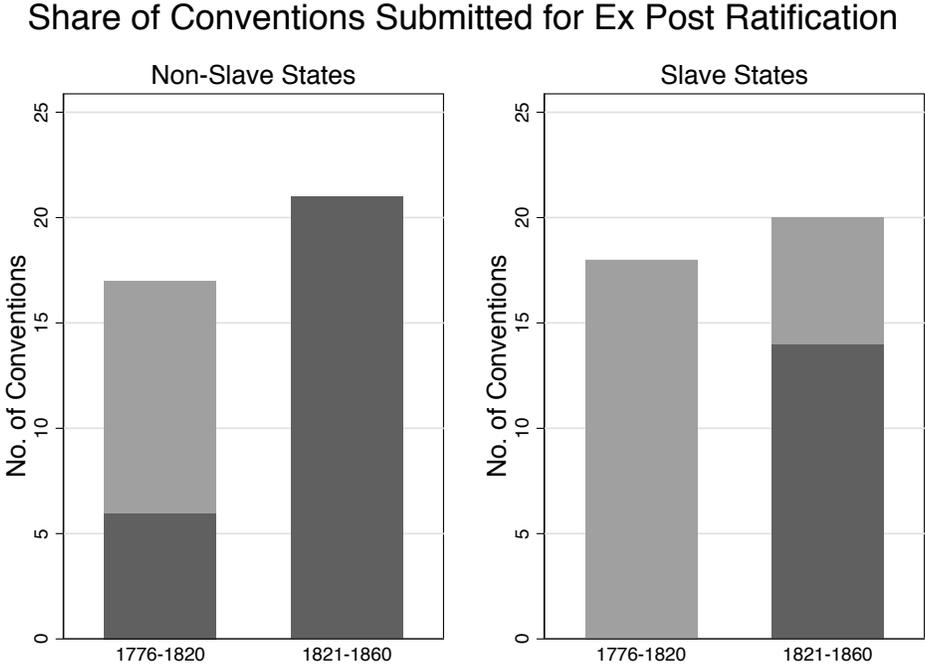
**Table 1**  
County *RRI* and Slave-Population Share by State Decade

	1790	1800	1810	1820	1830	1840	1850	1860
AL				0.21 (0.28)	0.58** (0.25)	0.35** (0.17)	0.32 (0.17)	0.56*** (0.21)
AR						0.72*** (0.25)	0.11 (0.17)	0.14 (0.15)
FL							2.27*** (0.45)	1.75*** (0.58)
GA	1.93** (0.18)	1.44*** (0.35)	1.61*** (0.16)	1.37*** (0.13)	1.48*** (0.12)	1.32*** (0.12)	1.56*** (0.11)	1.53*** (0.08)
KY		0.41 (0.66)	0.29 (0.34)	0.34 (0.23)	0.19 (0.26)	0.52** (0.23)	0.47*** (0.18)	0.51*** (0.12)
LA				2.39*** (0.38)	1.78*** (0.24)	1.81*** (0.33)	1.52*** (0.18)	1.86*** (0.18)
MD	1.12*** (0.26)	0.92*** (0.18)	1.04*** (0.22)	0.84** (0.29)	1.42* (0.71)	1.54*** (0.25)	1.44*** (0.25)	1.34*** (0.16)
MS				0.37 (0.42)	0.586*** (0.21)	0.34 (0.18)	0.99*** (0.16)	0.61*** (0.16)
MO					-0.64 (0.81)	0.79*** (0.29)	0.67*** (0.22)	0.44 (0.28)
NC	1.41*** (0.17)	1.43*** (0.12)	1.5*** (0.11)	1.55*** (0.14)	1.61*** (0.11)	1.55*** (0.13)	1.89*** (0.14)	1.99*** (0.16)
SC	1.98** (0.88)	2.25*** (0.43)	3.05*** (0.33)	3.29*** (0.37)	3.06*** (0.31)	2.89*** (0.41)	2.74*** (0.48)	2.05*** (0.48)
TN		1.34* (0.69)	0.34 (0.41)	0.49** (0.23)	0.73*** (0.19)	0.11 (0.09)	-0.23 (0.23)	-0.09 (0.24)
TX							0.37 (0.21)	0.07 (0.12)
VA	1.71*** (0.11)	2.01*** (0.11)	2.21*** (0.13)	1.1*** (0.07)	0.47*** (0.08)	1.01*** (0.08)	0.81*** (0.06)	1.02*** (0.08)

**Note:** Each column reports a county-level OLS estimate for slave-population share in which the dependent variable is a county's mean relative representation (*RRI*) in the state legislature. Robust standard errors are shown in parenthesis. Each column reports the Census year of the model and includes total county population for the corresponding census decade. For each state-decade estimate, the number of counties is reported in Appendix Table A4.

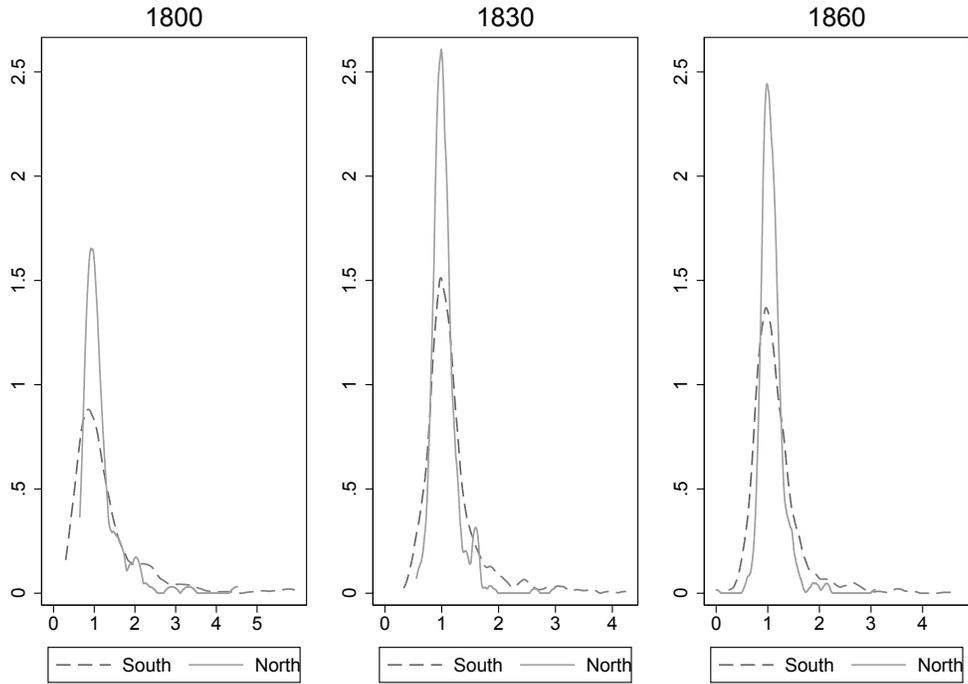
\*\*/\*\*/\* indicates the level of significance at the 0.01/0.05/0.1 level, respectively.

**Figure 1:** Conventions and Referendums by Region, 1776-1860



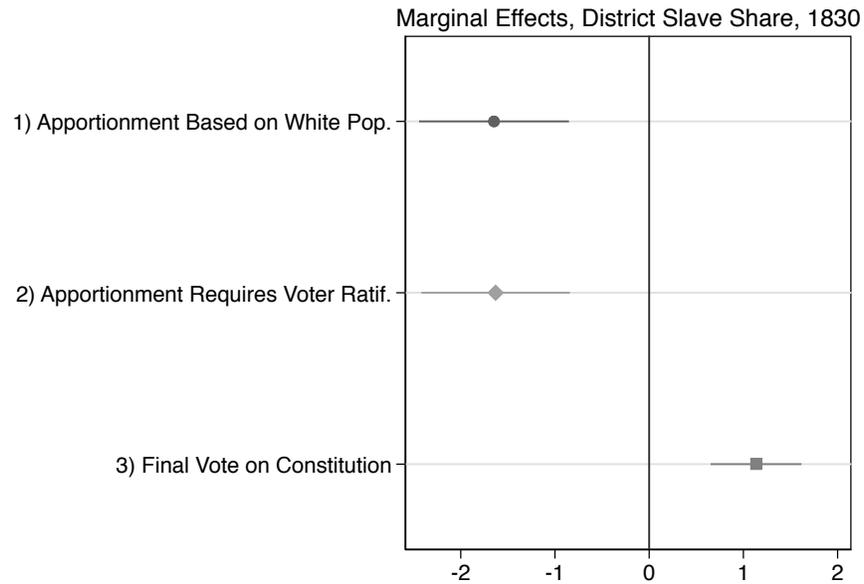
*Note:* Grey bars indicate the number of conventions held during each time period. The dark overlay indicates the number of conventions for which post-convention referendums were held. See Appendix Table A1 for a list of conventions by state.

**Figure 2:** Distribution of RRI by Region, 1800-1860



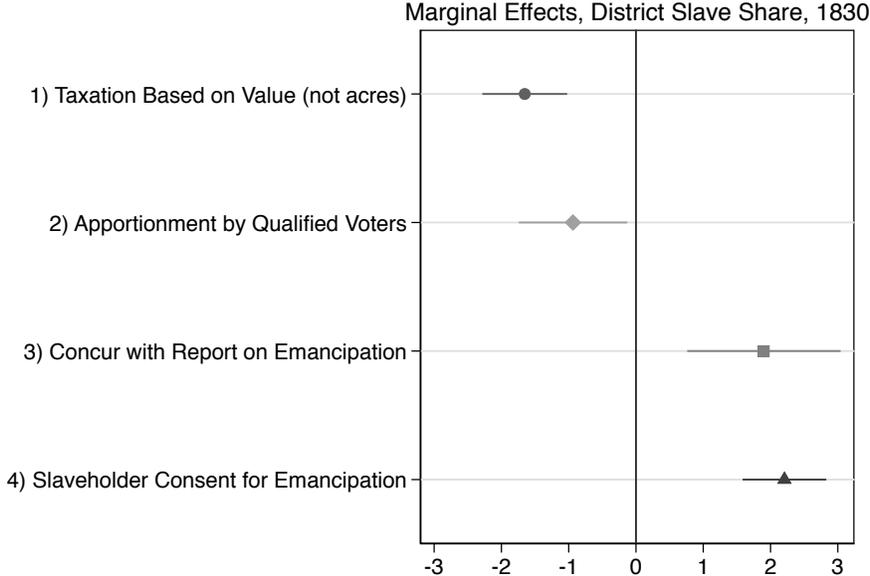
**Note:** Notes: Each panel plots the empirical distribution (kernel function) of RRI scores across counties in Southern (dashed) and Northern (solid) states, respectively. See Appendix Table A1 for a list of states by the date of admission and slave status. A value of 1 for RRI (x-axis) represents the fair level of representation of counties in each state according to a “one adult white male, one vote” basis in their respective state legislative bodies.

**Figure 3:** Roll Calls, Virginia Convention, 1829-1830



**Note:** Each dot corresponds to the marginal effect of 1830 slave-population share in a logit model predicting: 1) opposition to a white basis of apportionment; 2) opposition to requiring popular ratification of reforms to apportionment and 3) the final vote on passage of the convention. Horizontal lines are 95% confidence intervals. Information for each roll call can be found in Appendix Table A2.

**Figure 4:** Roll Calls, Tennessee Convention, 1834



**Note:** Each dot corresponds to the marginal effect of 1830 slave-population share in a logit model predicting roll-call votes for: 1) Taxation based on value; 2) Apportionment based on Qualified Voters; 3) Concur with Committee Report on Emancipation; and 4) Provision Requiring Slaveholder Consent for Emancipation. Horizontal lines are 95% confidence intervals. Information for each roll call can be found in Appendix Table A2.

**Figure 5:** Slavery and Roll Call Opposition to Popular Ratification



**Note:** Each dot corresponds to the marginal effect of 1860 slave share in a logit model predicting the delegate-level likelihood of opposition to requiring popular ratification of secession without controls (left) and with controls (right). Horizontal lines are 95% confidence intervals. See Appendix Tables A2 and A3 for information on each roll call and the controls included, respectively.