

FLEXIBLE LAW:
THE IMPACT OF LEGISLATIVE RESOURCES ON POLICY ADOPTION

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DEDICATION

I dedicate my dissertation work to my mother, Bonita Dorssom. This dissertation, and many of my other accomplishments, would not have been possible without her endless support and countless sacrifices.

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ABSTRACT

Legislators require knowledge to pass legislation. However, it is not always easy for legislators to become fully informed about bills on the docket. The complexity of modern government, the size of the legislative agenda, and the demands of running for re-election make it impossible for legislators to become experts on each issue on which the government makes policy. As a result, they take cues and guidance from lobbyists (Hall and Deardorff 2006), committees (Krehbiel 1991), constituents (Jones and Baumgartner 2005), and each other (Kingdon 1989) to make decisions on bills as if they were fully informed. Despite these resources, legislators are not always well-informed about every bill under consideration in their legislature. Therefore, legislatures sometimes add sunset provisions to bills to allow for a test period. Prior research has not thoroughly examined how the lack of legislative resources impacts public policy adoption – specifically, under what circumstances do legislators decide to attach sunset provisions to legislation? Using original datasets, this study finds that sunset provisions are used during times of legislative uncertainty, such as when legislatures are not fully institutionalized.

CHAPTER 1: INTRODUCTION

In 2010, the California State Legislature passed the Alternative Energy and Advanced Transportation Financing Authority Act. This Act, otherwise known as the Property Assessed Clean Energy Act provides an alternative financing method to promote alternative methods and sources of clean energy. At the end of the act was the phrase:

This session shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

This culminating phrase is an example of a sunset provision, or a clause embedded in legislation that will result in the expiration of a law at a certain period unless it is explicitly renewed by the legislature. When a law or program is set to expire due to its sunset provision, if the law or program does not work, for example, then it can be allowed to expire. By doing so, sunset provisions provide flexibility through a test period for legislation and programs. If a subsequent legislature determines that the test works, the law can be extended for another set period or indefinitely.

Legislators often recommend the addition of sunset provisions to legislation as a means of controlling government overreach. This suggestion does not always work out as planned, however. Florida Senator Rick Scott recently released an 11-point plan of actions that Americans must take in order to save their country (Scott 2022). This 11-point plan focuses on ideas Senator Scott believes will improve America, such as not requiring disclosure of one's race or ethnicity on government forms and requiring students to recite the Pledge of Allegiance in school. Notably, Senator Scott also recommends that all federal legislation should contain a 5-year sunset provision.

Legislators are already burdened with their work responsibilities and requiring extra labor to prevent laws from expiring will overload the legislators' schedule. Furthermore, requiring all laws to contain a sunset provision could result in dire consequences, such as those that occurred in Idaho in 2019. Idaho's regulatory code is automatically embedded with one-year sunset provisions. During a particularly contentious legislative session, the legislators forgot to renew the regulatory code for an additional year. As a result, the legislators were required to go through 8,200 pages of regulations to decide whether it should remain as part of Idaho's regulatory code (Broughel 2019). This was a time-consuming task for the legislators in addition to their already busy schedules.

It is widely known that legislators need resources to pass policy. However, it is still not clear in the literature how the lack of resources can impact public policy adoption as scholars have yet to thoroughly examine this phenomenon. The role of the market is to provide the means through which gaps in knowledge can be filled (Hayek 1937). In a high-performance economy, firms can adapt efficiently to uncertainty (Hayek 1945). However, the policy process is an imperfect market as it is difficult for legislators to become fully informed about all proposed legislation. The complexity of modern government, the size of the legislative agenda, and the demands of running for re-election make it impossible for legislators to become experts on each issue on which the government makes policy. As a result, they take cues and guidance from lobbyists (Hall and Deardorff 2006), committees (Krehbiel 1991), constituents (Jones and Baumgartner 2005), and each other (Kingdon 1989) to make decisions on bills as if they were fully informed. Despite these resources, legislators are not always well-informed about every

bill under consideration in their legislature. Therefore, legislatures sometimes add sunset provisions to bills to allow for a test period.

PRIOR RESEARCH ON SUNSET PROVISIONS

Prior research on the use of sunset provisions argues they are used to tackle uncertainty, lack of information and prognosis regarding regulatory policy; to enhance the quality of legislation; instruments to rationalize the legislative process; to reduce regulatory pressure; to gather facts and consider evidence-based information; to respond to temporary problems; to act as consensus-finders; to facilitate the regulation of innovation; and build legislative coalitions (Ranchordàs 2015). The desirability of sunset provisions in legislatures is the result of the legislature's internal institutional conditions and relationship with the President as well as the current level of political stability (Gersen 2007).

Information is important for passing policy. However, legislators often do not have accurate information regarding the implications of laws if they were passed (Burstein 2014; Ranchordàs 2015). There are various sources of information that members of Congress consider when passing legislation such as interest groups, fellow members of Congress, caucuses, their constituency, and committee staff (Kingdon 1989; Zelizer 2021). To overcome a lack of information and uncertainty regarding policy, legislators attach a sunset provision to allow for a test period to determine if the law or program works as intended. If the law or program works, the law can be extended for a set period, or indefinitely. The quality of legislation is often evaluated based on legal certainty and the ability of the law to respond to real life problems (Ranchordàs 2015). However, as society changes, the problems that laws need to address also change.

Therefore, to allow for flexibility, legislators can attach a sunset provision. By doing so, lawmakers can allow laws to expire that no longer address current issues. This situation turns the legislative process into a learning path while also allowing legislators to gather facts and consider evidence-based information. Finally, legislation is the result of a compromise between political parties. Sunset provisions provide an option for opponents to support legislation if the status quo returns after the sunset provision expires (Ranchordàs 2015).

Sunset provisions are sometimes used to respond to temporary problems such as wars and economic crises (Ranchordàs 2015). Once the temporary problem ceases to exist, the law can be allowed to expire. Additionally, sunset provisions can act as consensus-finders. During divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008). Opponents to legislation may be willing to vote for these laws if they contain sunset provisions as it signifies that the status quo will return once the sunset provision expires (Ranchordàs 2015). This prior research, however, focuses on the use of sunset provisions since the 1970s even though sunset legislation has a lengthy pedigree in the United States (Ranchordàs 2015).

It is a common misconception that sunset provisions did not exist in the United States until the 1970s (Muskie 1977). Previous scholars argue that sunset provisions are a creation of the federal Republic to decrease the power of bureaucratic agencies and improve oversight and serve as consensus-finders in periods of divided government. (Aberbach 1991; Kysar 2006; Maltzman and Shipan 2008; Ranchordàs 2015). This misconception is since, in the 1970s, sunset clauses were used at the state level to

overcome the power of bureaucracies (Ranchordàs 2015). These sunset clauses were among numerous oversight reform proposals introduced due to the increased animosity between the Nixon Administration and Congress. (Aberbach 1991). According to a 1980 newsletter released by Oklahoma Congressman Glenn English, Jr. the purpose of such state sunset laws was to “require legislators to periodically review government programs and agencies and decide whether to continue them” (English 1980). These sunset clauses are related but distinct from sunset provisions. While sunset clauses require regular review of bureaucratic agencies sunset provisions, in contrast, require regular review of certain laws.

Even when scholars recognize that sunset provisions date back further than the 1970s, their discussion remains limited. For example, Ranchordás (2015) states that sunset provisions have a long tradition in the United States, but only cites examples of child labor laws from the early twentieth century. Gersen (2007) acknowledges that temporary legislation was frequently used throughout the colonial legislatures and early U.S. Congresses. While Gersen (2007) addresses the implications of temporary legislation, he does compile a thorough measure of sunset provisions.

During divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008; Oleszek 2007; Ranchordàs 2015). Opponents to legislation may be willing to vote for these laws if they contain sunset provisions as it signifies that the status quo will return once the sunset provision expires (Ranchordàs 2015). As a result, Congresses under divided control can be just as productive as Congresses under unified control (Mayhew 1991). However, unified control of Congress results in more significant

legislation being passed than during divided control (Ansolabehere, Palmer, and Schneer 2018). Congress' partisan balance often limits the majority party's ability to pass its desired legislation (Schickler 2000). When the median voter's ideology is closer to the minority party's ideology, the median voter will often work with the minority party to weaken the majority leaders' agenda control (Schickler 2000). This results in members of both parties forming coalitions to pass their desired laws. To achieve party goals, party leaders build majorities for or against legislation by setting the legislative agenda and influencing choices (Sinclair 1983). Such agenda control helps the majority party establish a record to help gain reelection (Smith 2007).

Founding Fathers such as James Madison thought the revisionary power allowed by temporary legislation served to "prevent popular or factious injustice" (Farrand 1911). By passing laws with sunset provisions, the legislatures ensured that the laws would be reviewed again in the future to determine their applicability in the present situation. This would prevent laws from continuing to impact society unless absolutely necessary. The decision to use sunset provisions in legislation is an estimate of future political dynamics as they can be useful in assessing the potential risk of a new policy while also allowing for policy experimentation and adjustment (Gersen 2007; Ranchordás 2015). Additionally, sunset provisions offer legislatures' flexibility to define their goals while subsequently allowing for the adjustment of laws due to changing circumstances (Gersen 2007).

DIFFERENCES BETWEEN SUNSET PROVISIONS AND SUNSET LEGISLATION

Sunset provisions are clauses embedded in legislation that will result in the expiration of a law at a certain period unless it is explicitly renewed by the legislature. Sunset legislation, in contrast, will result in a government agency automatically terminating or ceasing to exist unless the legislature acts to allow the agency to continue to exist.

There are numerous types of laws that require periodic review, but do not actually contain sunset provisions. For example, 30 state legislatures pass annual budgets. Even though these budgets are passed on an annual basis, they do not contain sunset provisions. Furthermore, some laws need to be reauthorized but do not contain sunset provisions. For example, the “Violence Against Women Act” (VAWA) must be reauthorized on a regular basis. Despite this, VAWA does not, in fact, contain a sunset provision. VAWA is reauthorized on a regular basis as it is an appropriations law that provides various grants programs aimed at preventing sexual assault.

Another example of a law with a sunset provision includes the Voting Rights Act of 1965. This law was reauthorized in 1970, 1975, 1982, and 2006. The 2006 reauthorization extends the time for reconsideration of federal oversight of jurisdictions which once used suspended voting tests for an additional 15 years and the bilingual election requirements through August 5, 2032.

In contrast to appropriations laws, sunset provisions, by contrast, are clauses embedded within legislation that will result in a law ceasing to exist unless it is explicitly renewed by the legislature. Laws that contain sunset provisions will need to be reviewed

again by the legislature to determine whether the law should continue. Legislators will need to debate the law, whether it worked as intended, and then vote whether to reauthorize the entire law. If legislators decide to reauthorize the law, they can decide to renew the law for a specific period, or indefinitely.

PROMINENT LAWS WITH SUNSET PROVISIONS

Legislatures regularly pass laws with sunset provisions. Many of these laws go unnoticed by the public, but there are numerous high-profile examples. In this section, two prominent examples of laws passed with sunset provisions will be detailed to provide an example of laws passed with sunset provisions and their impact on society.

USA PATRIOT Act

In 2001, the United States Congress passed the USA PATRIOT Act. The first two words of the act (USA and Patriot) are acronyms for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. The main purpose of this act, passed in response to the terrorist attacks on September 11, 2001, was to further deter acts of terrorism in the United States. This law passed with a 357 yes to 66 no vote margin. Of the votes in the affirmative, 144 were Democrats and 213 were Republicans. Among the dissenting votes, 62 were Democrats and 3 were Republicans. The 107th Congress that passed the original law had Republican majorities in both chambers.

Fifteen sections of the USA PATRIOT Act contained a sunset provision. Upon its original passage, all sections containing a sunset provision had the same expiration date: December 31, 2005. The sections of the USA PATRIOT Act containing a sunset provision include: sections 201 and 202 to expand Title III predicates, Section 203 (b) &

(d) to provide for information sharing regarding foreign intelligence obtained in a Title III and criminal investigations, Section 204 which clarifies the intelligence exceptions and limitations on interception and disclosure of wire, oral and electronic communications, Section 206 to create roving FISA (Foreign Intelligence Surveillance Act) surveillance, Section 207 extends the duration for certain FISAs, Section 209 allows for the seizure of voicemail records, Section 212 allows for emergency disclosures of email records by internet service providers, Section 214 allows the United States Government to acquire foreign intelligence information, Section 215 provides access to business records, Section 218 changes the "Primary Purpose" Standard of the Foreign Intelligence Surveillance Act (FISA), Section 220 allows for search warrants for electronic evidence, Section 223 creates civil liability for certain unauthorized disclosures, Section 225 provides immunity for compliance with FISA Wiretap and Section 213 authorizes delayed notice search warrants.

Later laws passed by Congress would reauthorize many of the PATRIOT Act's sunset provisions. Congress passed the USA PATRIOT and Terrorism Prevention Reauthorization Act in 2005 to reauthorize many of the original PATRIOT act's sunset provisions. This Act reauthorized all but two of the sunset provisions. Section 206 and Section 215 were changed to sunset on December 31, 2009. This first PATRIOT Act reauthorization passed by a 346 to 181 margin. Of the 346 affirmative votes, 269 were Republican and 77 were Democrat. Among the 181 dissenting votes were 14 Republicans, 165 Democrats, and 1 Independent. Congress passed the USA PATRIOT Act Additional Reauthorizing Amendments in 2006. This Congress held Republican majorities in both chambers. Congress would pass a third reauthorization act in 2011

when they passed the PATRIOT Sunsets Extension Act of 2011. In contrast to the previous acts, the Sunset Extensions Act of 2011 would only extend three sections containing sunset provisions from the original USA Patriot ACT: roving wire taps, business record searches, and surveillance of individuals linked to terrorist groups. In 2011, Congress held divided leadership with a Democratic Senate Majority and a Republican House majority.

The USA PATRIOT Act was renewed one more time in 2015 when Congress passed the USA Freedom Act which renewed the USA PATRIOT Act through 2019. This reauthorization act passed by a vote of 358 to 152. Of the 358 votes supporting passage of the USA Freedom Act, 174 were Republican, 1 was Independent, and 183 were Democrat. Out of the 152 votes against the PATRIOT Act Reauthorization, 62 were Republican, 89 were Democrats, and 1 was Independent. The remaining sections of the USA Patriot Act expired in 2020 when the House of Representatives did not pass renewal legislation prior to leaving for recess on March 27, 2020. This occurred during a divided Congress with Democratic House majorities and Republican Senate majorities.

Public Safety and Recreational Firearms Use Protection Act

Congress passed the “Public Safety and Recreational Firearms Use Protection Act” in 1994. This law is also known as the Federal Assault Weapons Ban. The purpose of this law was to ban the manufacture, transfer, or possession of semi-assault weapons. Congress passed this law in response to numerous mass shootings, particularly a shooting at a Luby’s Restaurant in Killeen, Texas that resulted in the death of 23 individuals and injured 27 people. Additionally, this law also prohibited the use of a semi-assault weapon during a violent or drug trafficking crime. The ban on assault weapons only applied to

those weapons manufactured after the law's passage. This law contained a 10-year sunset provision.

The 103rd Congress passed the Federal Assault Weapons Ban with a 271 to 257 margin. Of the 271 votes in the affirmative, 48 were Republicans, and 223 were Democrat. Among the dissenting votes were 171 Republicans and 86 Democrats. The 103rd Congress that passed the Federal Assault Weapons Ban had unified leadership with Democrats controlling both the Senate and the House. Due to the Federal Assault Weapon Ban's 10-year sunset provision, the law came up for renewal during the 108th Congress. The 108th Congress held Republican majorities in both the Senate and the House. As a result, the Federal Assault Weapon Ban was not renewed and expired on September 13, 2004.

IMPACT OF LEGISLATIVE RESOURCES ON POLICY ADOPTION

In *The Wealth of Nations*, Adam Smith (1776) argued that people in the marketplace produce efficiently because it is the best way to achieve their individual economic goals, despite the constraints they face in the marketplace. Legislative politics are like capitalistic economics. Legislators gain policy expertise because, despite the various constraints they face in the legislature, gaining policy expertise is the best way for them to reach their policy goals and gain reelection in the future (Krehbiel 1992).

Sam Rayburn, D-TX, once stated that "A Congressman has two constituencies – he has constituents at home and his colleagues here in the House. To serve his constituents at home he must also serve his colleagues here in the House." There are various manners in which legislators serve both their colleagues and their constituents. Positive theories of legislative institutions explain why legislators conduct their business,

particularly about policy adoption, in particular ways and with certain effects (Shepsle and Weingast 1994). These positive theories of congressional institutions argue that legislator's heterogeneous preferences are the result of imperfect information and policy's external effects (Austen-Smith and Riker, 1987; Crawford and Sobel 1982; Gilligan and Krehbiel 1987; Krehbiel, 1992; Shepsle and Weingast 1994; Weingast and Marshall 1988). Additionally, formal models depict policies as points in a Euclidean space of numerous dimensions. Each of these dimensions represents a specific policy issue, and positions on these dimensions represent positions on policy issues (Cox, McCubbins, and Sullivan 1984; Krehbiel 1998). When taking policy positions, legislators must consider the costs or benefits that the policy will have on the legislator's constituency. However, the constituency's views may not be precisely defined so the legislator may not know which position to take (Clausen 1973). The legislator's decisions have implications for their reelection prospects. Even assuming that the legislator is familiar with the political demographics of his or her constituency, it can be difficult to choose a policy that will maximize his or her reelection chances in the next election (Cox, McCubbins, and Sullivan 1984). Making good public policy helps legislators earn influence and respect in Washington and, therefore, reelection (Jacobson 1983).

Legislative behavior, specifically about policy adoption, is the result of legislative preferences and party influence (Cox and McCubbins 2005). Informational theories posit that, without resources, specifically time, money, and staff support – it is close to impossible for a legislator to study and learn about the content and consequences of bills on the legislative agenda (Krehbiel 1992). Legislators often have extraordinarily little time to devote to one activity, specifically learning about each bill currently under

consideration by their legislature (Clausen 1973; Kingdon 1989). Therefore, legislators often do not know the impact of bills due to having incomplete policy information. With incomplete policy information, legislators are unaware of the relationship between passing bills and the resulting outcomes (Krehbiel 1992). Zelizer (2018, 2019) demonstrated that providing legislators with policy information from peers and staff can influence legislators' public support for bills. Furthermore, providing precise fiscal information about pending bills also increases legislators' bill support (Zelizer, Dorssom, and Kirkland n.d.). Policy information also influences legislators' support for bills by means of changing beliefs.

Policymaking is often a collective choice problem (Riker, 1962; Buchanan and Tullock 1962). Every legislator has a different variety of information quality and quantity, which results in legislators passing bills even when they are not aware of its consequences (Krehbiel 1992). The problem is that even though every legislator has policy preferences, these preferences are not necessarily the preferences of the entire legislature (Shepsle and Bonchek 1997). Additionally, the diversity of the majority party in the legislature determines the size of the bills on which the party takes a unified stand (Cox and McCubbins 1993; Sala 1999). Furthermore, district preferences determine legislator voting preferences (Kalt and Zupan 1990; Mayhew 1974; Schattschneider 1942). These loyal reelection-seeking members represent their constituents, so their ideological positions reflect their district's median voter (Elling 1982; Wright 1989).

Legislators specialize in certain policy areas, and then network with fellow legislators in policy areas outside their specialty to pass policies that benefit their constituencies (Kingdon 1989). Legislators will network with the most informative

legislators regarding the policy under consideration. In turn, constituencies reward legislators who bring aid to their respective districts to encourage more legislatures to deliver benefits to their constituencies (Niou and Ordeshook 1985). Members of Congress pursue committee assignments that benefit their constituents and these committees, in addition to party leadership, control the legislative agenda (Cox and McCubbins 1993; Fenno 1973; Masters 1961; Shepsle 1978; Smith and Deering 1984). Therefore, legislators change their policy preferences to reflect those of their constituencies (Arnold 1990; Smith 2007).

Other scholars argue that legislative voting is based on districting preferences and party influences through whipping and agenda control (Cox and McCubbins 2005; Ranney 1951). The greater the policy stance differences between the House and Senate, the higher the likelihood that that legislative stalemate will occur (Binder 2003). Furthermore, Congressional parties work to control the factors that may impact its success. They do so by gaining control over various features of the legislative process to control the image of their party within the electorate (Cox and McCubbins 1993, 2005; Smith 2007).

Legislature's partisan make-up has an impact on policy adoption. Mayhew (1988) found that unified party control of both Congress and the president did not produce significantly higher levels of policymaking. Additionally, party control of government does not positively control agenda size as Binder (2003) found that the agenda under unified government was smaller than the agenda under divided government. Changes in Congress' rules are more likely to occur when the partisan makeup changes even if the majority party caucus remains unchanged (Schickler and Rich 1997). Cox, Kousser, and

McCubbins (2010) found that the majority party in control of the legislature uses its power to select bills that will not divide its membership. Furthermore, electoral competition pressures legislators to choose more moderate policies (Wittman 1983; Calvert 1985).

Coalition structure impacts legislative outputs. For legislative initiatives to be successful, coalitions must reach out to colleagues in other parties. When a new coalition takes power, they enact numerous policy changes based on their platform (Gailmard and Jenkins 2012). Additionally, unified party control in Congress increases the likelihood that major legislation will be enacted (Brady 1988; Clubb, Flanigan, and Zingale 1990; Gailmard and Jenkins 2012; Hurley, Brady, and Cooper 1977). However, this finding is contingent on coalition duration as the longer a party remains in power during unified government, the likelihood that major legislation is enacted decreases (Gailmard and Jenkins 2012).

Divided government has been shown to worsen separation of powers and diminish legislative activity (Alt and Lowry 1994; Binder 2003; Bond and Fleisher 1990; Coleman 1999; Edwards, Barrett, and Peake 1997; Howell et al. 2000; Kelly 1993; Sundquist 1988). Laws enacted by partisan coalitions are less durable as they did not compromise to pass a law (Crain and Muris 1995; Whyman 2016). In contrast, laws passed by bipartisan enacting coalitions are more durable because diverse legislators compromised to pass a law (Whyman 2016). Other scholars have argued, however, that divided government does not influence policy enactment (C.O. Jones 2005; Krehbiel 1998; Mayhew 2005; Quirk and Nesmith 1995).

The size of the enacting coalition is also important for policy durability. If the enacting coalition has a large majority of supporters, then it is more likely that these supporters will defend this law against expiration (Whyman 2016). These large groups of supporters often represent a compromise between “ideologically heterogeneous individuals” which helps protect the law from expiration (Mayhew 1974; Patterson and Caldeira 1988; Ragusa 2010). If the enacting coalition is small, then there are fewer legislators, and therefore less heterogeneity to protect the law against expiration later (Whyman 2016).

Unified and diverse congressional coalitions have different impacts on the durability of laws passed with sunset provisions. Laws passed with sunset provisions during diverse congressional coalitions are more likely to expire (Maltzman and Shipan 2008; Ragusa 2010). Laws passed under unified government tend to be less vague and contain a narrow range of provisions, which increases the likelihood that these laws will be more durable (Maltzman and Shipan 2008). Laws enacted during divided government tend to be vaguer and contain a wide range of provisions to satisfy certain legislators to pass the bill. Enacting coalitions are often unable to maintain their coalition in the future, which increases the likelihood that policies will expire (Horn and Shepsle 1989). Laws passed under a divided government require more compromises which only satisfy a small number of legislators to pass a bill. This makes the legislation passed under divided government more of a target for expiration when the partisan composition of Congress changes. Such concessions can prevent a law from fulfilling the long-term goals of its original sponsors (Maltzman and Shipan 2008).

Other research has shown that legislation enacted during divided government² is less likely to expire. This phenomenon occurs because legislation introduced during divided government creates a need for longer policy deliberation (Austein-Smith and Riker 1987; Heller 1997; Weatherford 1993). Divided government also increases the need for experts to get involved in the legislative writing and debate process which results in legislation that does not require future amendments (Krehbiel 1991). The presence of divided government makes laws more durable due to the compromises made by legislators to pass laws (Austen-Smith and Riker 1987; Heller 1997; Weatherford 1993; Whyman 2016).

Despite all this previous research, legislators' voting decisions can be difficult, especially when legislators may be unfamiliar with the implications of potential new legislation. Various legislative signaling games demonstrate that rational legislators adapt their behavior to become informationally efficient regarding adopting certain legislation (Krehbiel 1992). By adding a sunset provision, legislators allow for a test period to determine how a law will impact society. If the law does not work as intended, it can be allowed to expire.

MULTIPLE PRINCIPALS

Another aspect of policymaking that can impact policy adoption is the presence of multiple principles. Bertelli and Grose (2009) argue that there are multiple actors, and that agency power can reward those who are ideologically aligned. They argue that ideological conflict determines the money being spent. Nature determines the preferences of the President and Congress, which either create conflict or congruence. Agencies then decide, Bertelli and Grose add that agencies care about presidential and congressional

elections because they want co partisans in office, for their benefit. Bureaucratic agencies are responsive to the President and Congress (Whitford 2005). Presidents do not rely on civil servants as the bureaucracy is not responsive to their political agendas (Moe 1985).

The economic principal-agent model was developed to explain why firms, corporations, and other hierarchical organizations behave the way they do (Moe 1985). In this model, the principal chooses actions with the expectation that the agent will also choose actions desired by the principal. Agents, however, tend to have more specialized knowledge which creates an information asymmetry between the principal and agent (Moe 1985).

Congress is designed to make the bureaucracy more responsive to the public through legislation, budgets, and the legislative veto (Meier 1987). There are five ways the legislature can serve as a check on the bureaucracy: passing legislation limiting governmental activities, setting limits on bureaucratic actions, describing procedures, establishing limits of authority, and limiting tasks and responsibility (Hyneman 1950; Key 1959; Meier 1987).

POLICY ADOPTION & DIFFUSION

Legislators pass policies for a variety of reasons. Positive theories of legislative institutions argue that legislator's heterogeneous preferences are the result of imperfect information and policy's external effects (Shepsle and Weingast 1994). Additionally, formal models depict policies as points in a Euclidean space of numerous dimensions. Each of these dimensions represents a specific policy issue, and positions on these dimensions represent positions on policy issues (Cox, McCubbins, and Sullivan 1984). When taking policy positions, legislators must consider the costs or benefits that the

policy will have on the legislator's constituency. The legislator's decisions have implications for their reelection prospects. Even assuming that the legislator is familiar with the political demographics of his or her constituency, it can be difficult to choose a policy that will maximize his or her reelection chances in the next election (Cox, McCubbins, and Sullivan 1984). Specifically, scholars assume that policymakers are rational, and each government tries to process all information to assess the effectiveness of a policy. However, the governmental officials' ability to obtain and analyze information is constrained by their capacity.

Due to their inability to analyze copious amounts of information, government officials would, therefore, limit their attention to neighboring jurisdictions with similar demographics or to leader governments (Berry and Berry 1990; Berry and Baybeck 2005; Meseguer 2004). Policy diffusion via the learning mechanism becomes increasingly more likely as a policy's relative advantage, compatibility, and observability increase, and as the policy's complexity and trialability decrease (Maksen and Volden 2011; Rogers 2004). Jurisdictions facing a problem will look to the policies of other states to find a solution to the problem or merely to keep up with these neighboring states (Boehmke and Witmer 2004; May 1992; Mooney 2001; Volden 2006; Walker 1969).

However, partisanship can impact the learning diffusion mechanism. (Butler et al. 2017). Recent experiments have uncovered the role of political ideology in the learning mechanism of policy diffusion. Their experimental findings indicate that policymakers are unwilling to learn if their ideology does not support the policy, but this can be overcome if the policy is successful or has been adopted by co-partisans in neighboring communities (Butler et al. 2017; Butler and Pereira 2018). Furthermore, states tend to

rely on information from other states that are ideologically similar instead of geographically proximate when deciding to adopt policies (Desmarais, Harden, and Boehmke 2015). Finally, policymakers are more likely to copy the policy adoptions of other jurisdictions that have similar partisan and ideological orientations (Grossback, Nicholson-Crotty, and Peterson 2004; Volden 2006).

Policies can diffuse via other mechanisms as well. A policy diffuses via competition when the decision to adopt a policy is motivated by the desire to achieve either an economic advantage or to prevent other governments from getting an advantage (Berry and Berry 2017; Berry and Baybeck 2005; Boehmke and Witmer 2004). The officials make policy choices to gain an economic advantage over proximate states. Policy adoption via normative pressure occurs when a jurisdiction adopts a policy because they observe that the policy is being widely adopted by other governments and due to shared norms (DiMaggio and Powell 1983). Coercion refers to a circumstance in which a powerful government adopts a policy that increases, or forces, another government to adopt the same policy (Berry and Berry 2017).

Legislative behavior, specifically regarding policy adoption, is the result of legislative preferences and party influence (Cox and McCubbins (2005). Furthermore, Mayhew (1974) argued that district preferences determine legislator voting preferences. These loyal reelection-seeking members represent their constituents, so their ideological positions reflect their district's median voter (Elling 1982; Wright 1989). Other scholars argue that legislative voting is based on districting preferences and party influences through whipping and agenda control (Cox and McCubbins 2005; Ranney 1951). The

greater the policy stance differences between the House and Senate, the higher the likelihood that that legislative stalemate will occur (Binder 2003).

Legislature's partisan make-up has an impact on policy adoption. Mayhew (1988) found that unified party control of both Congress and the president did not produce significantly higher levels of policymaking. Additionally, party control of government does not positively control agenda size as Binder (2003) found that the agenda under unified government was smaller than the agenda under divided government. Changes in Congress' rules are more likely to occur when the partisan makeup changes even if the majority party caucus remains unchanged (Schickler and Rich 1997). Cox, Kousser, and McCubbins (2010) found that the majority party in control of the legislature uses its power to select bills that will not divide its membership. Despite all this previous research, legislators' voting decisions can be difficult, especially when legislators may be unfamiliar with the implications of potential new legislation. By adding a sunset provision, legislators allow for a test period to determine how a law will impact society. If the law does not work as intended, it can be allowed to expire.

There are two types of explanations when a government decided to create and implement policies. There are internal determinants models and regional diffusion models (Berry and Berry 1990). The policy diffusion literature explains how process of adoptions works when policies are established from one state, providence, county, or city to another. The policy diffusion literature is entangled with the concept of innovation. Innovation is defined as a "program or policy which is new to [the state] adopting it" (Walker 1969, p. 881), thus, every time that a state adopts a policy that they did not have

before will be an innovation, even if the same policy is possible to find it in another state, region, or city. The policy diffusion explains how innovation is produced in a new state

Regarding the influence of policies from one state to another, states that have more resources have more peer states because they have the resources that allow them to be more creative, resulting in other states observing their policy output (Desmarais, Harden, and Boehmke 2015). Policy diffusion is also more successful if the model and learning states have similar characteristics (Shipan and Volden 2008).

Policy diffusion can also depend on the characteristics of the policies under consideration (Shipan and Volden 2012). According to Makse and Volden (2011), five factors matter for spreading policies: complexity and compatibility; observability, which means that the effect can be seen by others; relative advantage, meaning that the new policies is more beneficial than the last one; and how the policy can be experiments with in a limited manner, this is called, trialability. Moreover, compatible policies spread more quickly between states (Makse and Volden, 2011). The simpler the policy, the most state, cities or other localities will adopt it. The fewer attributes of the policy make it easier to adapt it to another context. Policies also become more comprehensive as legislators create their own additions to the policies of early adopters (Glick and Hayes 1991; Mooney and Lee 1995).

As policies diffuse across jurisdictions, lawmakers will change the policy to match the circumstances of their specific jurisdiction (Boehmke 2009; Carley, Nicholson-Crotty, and Miller 2017; Clark 1985; Glick and Hays 1991; Hays 1996; Karch 2007; Mooney and Lee 1995; Taylor, Lewis, Jacobsmeier, and DiSarro 2012). However, when some lawmakers adopt policies from other jurisdictions, they simply copy and paste the

laws from the policy leaders (Hertel-Fernandez 2014; Hertel-Fernandez and Kashin, 2015; Kroeger, 2015). The evidence regarding the role of professionalism and ideological differences between states is inconclusive.

Additionally, a large amount of attention has been focused on why legislatures decide to adopt new policies based on geography (Berry and Berry 1990; Mallinson 2019), interest groups (Garrett and Jansa 2015), and policies adopted by other governments (Karch 2006; Shipan and Volden 2006). Other work looks at why certain policies diffuse more than others (Boushey 2016; Makse and Volden 2011; Mallinson 2015). This research does not explore, however, how much information legislators have about the policies that are diffusing, and whether they are still uncertain about the potential success or failure of the policy within the jurisdiction.

IMPACT OF LEGISLATIVE PROFESSIONALISM ON POLICY ADOPTION

Professional legislatures have long legislative sessions, better staff resources, and salaries that allow members to work as legislators full-time (Berry, Berkman, and Schneiderman 2000; Carmines 1974; Karnig and Sigelman 1975; LeLoup 1978; Ritt 1973; Squire 2017). Professionalism also impacts other aspects of legislatures and lawmaker behavior. As legislatures professionalize, membership turnover decreases (Berry, Berkman, and Schneiderman 2000; Moncrief, Niemi, and Powell 2004). Professionalism also impacts policy outputs (Carmines 1974; LeLoup 1978; Thompson 1986). Professional legislatures are more likely to adopt regulatory policies (Cogburn 2003; Ka and Teske 2002; Kellough and Selden 2003; Schmeida and McNeal 2013; Slemrod 2005). Furthermore, more professional legislatures allow for more constituent contact which allows legislators to be more attentive to constituent concerns and better

represent their views (Lax and Phillips 2009, 2012; Maestas 2003; Squire 1992; Wright 2007).

Statutory control of the bureaucracy is a principal-agent problem. Legislators traditionally exercise control of the bureaucracy to ensure that the bureaucratic agencies are functioning as intended (Clingermayer 1991). Means of legislative control include investigatory hearings, post-auditing, budgetary control, and influence over bureaucratic organizational structure (Hamm and Robertson 1981; Keefe and Ogul 1977; Jackson and Howard 1976). However, these means of control are based on the available legislative capacity (Huber, Shipan, and Pfahler 2001). Scholars disagree on the impact of legislative capacity on adoption of bureaucratic oversight mechanisms.

Huber, Shipan, and Pfahler (2001) argue that highly professionalized legislatures are more likely to adopt statutory control mechanisms. To exercise statutory control, legislators need the ability and knowledge to write the necessary legislation (Huber, Shipan, and Pfahler 2001). Levels of professionalism vary across the states, therefore not all legislators can devote surplus time to their legislative careers (Huber, Shipan, and Pfahler 2001; Squire 1992, 2017). In part-time state legislatures, the opportunity costs of devoting attention to legislative activities are high (Huber, Shipan, and Pfahler 2001; Squire, 1992, 2017). In these situations, legislators would be less willing to exercise oversight over bureaucratic agencies. Additionally, with less time to focus on their legislative careers, legislators would be less likely to know the specific outcomes that will occur based on certain oversight mechanisms. In highly professionalized legislatures, it is easier to retain highly qualified legislators who have gained knowledge about policy impacts. When the legislators are highly knowledgeable, they have a profound impact on

placing constraints to limit agency discretion. Prior research has not reached a consensus on the impact of professionalism on adoption of oversight mechanisms. Legislative professionalism has been found to both increase and decrease the adoption of statutory control mechanisms over the bureaucracy (Baugus, Bose, and Jacob 2021; Hamm and Robertson 1981; Huber, Shipan, and Pfahler 2001).

Other scholars disagree, arguing that low professionalized legislatures are more likely to exercise control over the bureaucracy, specifically in the use of sunset legislation (Baugus, Bose, and Jacob 2021; Clingermayer 1991; Hamm and Robertson 1981). Low professionalized legislatures have high turnover and are unlikely to adopt sunset legislation or participate in a comprehensive evaluation of all state bureaucratic agencies (Baugus, Bose, and Jacob 2021; Hamm and Robertson 1981). When legislators are unsure about the impact of new regulations, they will attach a sunset provision to help overcome the information problem (Clingermayer 1991; Gersen 2007; Ranchordás 2015). By using sunset provisions in this manner, legislatures help improve the effectiveness of public administration (Ranchordás 2015).

IMPACT OF LEGISLATIVE INSTITUTIONALIZATION ON POLICY ADOPTION

During its early history, the U.S. Congress was still in the institutionalization process. Membership turnover in the House of Representatives varied between 33.2 and 56.6 percent (Polsby 1968). By the end of the 19th Century, the turnover rate would decrease drastically to between 1 and 2 percent. Membership turnover, however, is just one of three aspects of legislative institutionalization. Originally, the House rarely relied on committees, which stands in stark contrast to the modern House in which committees

play a larger role in lawmaking. Access to the floor by the Rules Committee and delegation of privilege to select committees began in 1880 (Cox and McCubbins 2005). Finally, the House now follows precedents and rules, and merit systems have replaced nepotism (Polsby 1968). The U.S. Senate also underwent the institutionalization process during this period and became fully institutionalized in the 19th Century as evidenced by its average service terms and decline in member turnover (Bell 2011).

The institutionalization of Congress also had an impact on its workload. Congress' workload has increased since its first session in 1789 (Davidson et al. 2016). The committees were established to help Congress manage its workload of constituent requests. This increased workload resulted in Congress being unable to manage its responsibilities, and therefore necessitated legislators to experiment with institutional reforms (Brownstein 2011; Cooper and Young 1989; Davidson et al. 2016). One institutional reform Congress experimented with was a joint select committee. This joint select committee was unsuccessful, but Congress keeps using various institutional reforms to help manage its workload.

During its early institutionalization period, members of Congress spent very few months in Washington, D.C. and there was high membership turnover. From 1789-1801, thirty-three of the ninety-four senators who served between 1789 and 1801 resigned (Davidson et al. 2016; Livingston 2013). Six percent of early nineteenth century House members resigned from each Congress.

The institutionalization of Congress can also be seen through the evolution of the Speaker of the House's responsibilities and types of committees used to complete House business. House speakers at this time did not consider their partisan identification when

they oversaw the House of Representatives (Jenkins and Stewart 2013). Additionally, the Speaker's authority to control the floor debate and appoint committees was not utilized to further partisan agendas (Jenkins and Stewart 2013). Four of the first eleven elections for Speaker of the House took multiple ballots as the party organizations were not strong enough to narrow down the candidates quickly (Jenkins and Stewart 2013). During this time in congressional history, the House of Representatives rarely used standing committees and relied exclusively on ad hoc committees to complete legislative business (Jenkins and Stewart 2013). As Congress institutionalized, standing committees became more prevalent than ad hoc committees

The underdevelopment of Congress began to change in 1811, when Henry Clay was elected Speaker of the House. After Clay's election, the structure of the House became increasingly complex, partisan ties within political parties were strengthened, and the value of House offices such as the Speaker intensified (Jenkins and Stewart 2013). Parties were created to help solve the problems of providing and maintaining public goods (Cox and McCubbins 2005).

DATA CODING

Prior to delving into data collection, it is important to note that the data on sunset provisions in this dissertation is for laws passed with sunset provisions. There are circumstances in which bills are introduced with sunset provisions, but those bills are not passed, or the bills are passed but the proposed sunset provision is not added to the legislation. While these are important aspects of the policymaking process to consider, it is outside of the purview of this dissertation. It should also be noted that simply adding a sunset provision to a bill does not guarantee passage.

Colonial and Early State Legislatures

I collected and coded legislative data for the 13 colonies and states between 1757 and 1795 from the Session Laws Library available through the HeinOnline database as well as from the legislative archives at the Massachusetts Historical Society. Data collected included the total number of laws and total number of laws with sunset provisions passed for each year. Data was also coded with various binary variables indicating whether the law contained a sunset provision, in addition to whether the sunset provision had an exact period, expired at the end of a war, referenced the national Congress, referenced the next meeting of the legislative assembly, or had a non-specific period.

The key variable is the percentage of laws that contain sunset provisions by year and by colony/state. The percentage of laws with sunset provision use applies to new laws with sunset provisions only, not renewals from previous legislative sessions. This decision was made to maintain uniform sunset provision rate calculations across the colonies and states.

State Legislatures

I collected and coded legislative data for 12 states from 1980 to 2016 from the Session Laws Library available through the HeinOnline database. Three states were chosen at random for each level of professionalism (NCSL 2017; Squire 1992; 2007; 2017). I also include variables for sunset provision rate, legislative professionalism, Ranney Control, Ranney Index, Population Density, DW-Nominate and Citizen Ideology. I include Ranney Index data, Legislator Ideology scores, and Citizen Ideology variables to account for the role of partisan ideology in oversight mechanism adoption. I also

control for state population density. Data was also coded with various binary variables indicating whether the law contained a sunset provision, in addition to whether the sunset provision referenced a budget. The key variable of interest is the sunset provision rate. The other variables are included to determine which has an impact on the adoption of sunset provisions in the states

Congress

I collected and coded legislative data for the first 116 Congresses (1789 to 2020) available through the Law Library of Congress. Data collected included the total number of laws and total number of laws with sunset provisions passed for each year. The key variable is the percentage of sunset provisions by year and by Congress. Data was also coded with various binary variables indicating whether the law contained a sunset provision, and whether there was a divided government for each Congress.

The U.S. Congress began as an un-institutionalized institution. This can be seen by the fact that the legislature was unspecialized, and every legislator participated in each step of the legislative process (Shepsle and Bonchek 1997). By the War of 1812, Congress had implemented a standing committee system which allowed legislators with different strengths to join committees that reflected these strengths (Gamm and Shepsle 1989).

CODING SUNSET PROVISIONS

Appropriation legislation

To reiterate, sunset provisions are clauses within statutes that will result in statutes ceasing to exist unless they are explicitly renewed by the legislature. There are a variety of laws that have similarities to sunset provisions but are not actually sunset

provisions, such as appropriation bills. For example, when legislatures pass appropriations laws, these laws only last for one year. They do not contain sunset provisions, though. When laws are passed with sunset provisions, they change the legal code. Appropriations bills, however, simply provide the finances necessary to implement government programs for the fiscal year from October 1st to September 30th, although the dates for fiscal appropriations can vary.

Legislatures in the United States utilized a variety of appropriation bills. An Act from the 74th Congress provides an example of an appropriations bill for a specific project. On June 4, 1935, the U.S. Congress passed *An Act to revive and reenact the Act entitled* “An Act authorizing Vernon W. O’Connor, of Saint Paul Minnesota, his heirs, legal representatives, and assigns, to construct, maintain, and operate a bridge across the Rainy River at or near Baudette, Minnesota. According to this Act’s final paragraph “this act shall be null and void unless the actual construction of the bridge herein referred to be commenced within one year and completed within three years from the date thereof.” An act regarding completing a bridge does not change the legal code. This act does, however, pass a law to complete a bridge that requires finances. Therefore, even though there is a time limit in this law, since it is only for appropriations to build a bridge, it does not contain a sunset provision.

Another example of an appropriations bill is “An Act making appropriations to supply deficiencies in certain appropriations for fiscal the year ending June 30, 1946, and for prior fiscal years, to provide supple-mental appropriations for the fiscal year ending June 30, 1946, and for other purposes.” This law is different from the aforementioned bill in that it is an omnibus appropriations law.⁸ The appropriations in this law include, but

are not limited to, doorkeeper salaries, salaries for librarians in Washington, D.C., and operating expenses for the Office of Superintendent of District Buildings in Washington, D.C. In this omnibus appropriations bill, the time limit for the appropriations contained within it end on June 30, 1946.

State legislatures also pass appropriations bills. In 1980, the Wyoming State Legislature passed “An Act to appropriate \$1,225,000 to the attorney general for maintaining the rights of the state of Wyoming, in the use, ownership, and control of the waters of Wyoming.” The intent of this law was to provide the amount of money needed for the state to maintain the various rivers, lakes, and other bodies of water within the state of Wyoming for a set time. In 2010, as it normally does every year, the Missouri General Assembly passed multiple appropriations laws to fund: the Department of Public Safety, Department of Corrections, and the Department of Mental Health, just to name a few of the recipients the appropriation funds. Just like the appropriation laws passed by Congress, these laws have a time limit.

None of these laws change the legal code, however. Instead, they simply provide the money, or appropriations needed for various expenses ranging from constructing a bridge to providing salaries and building expenses. These acts, and all acts like them are coded as 0, signifying that they do not contain a sunset provision.

Laws with sunset provisions

An example of a law passed with a sunset provision is “An Act to authorize the Veterans' Administration to appoint and employ retired officers without affecting their retired status, and for other purposes,” passed by the 79th Congress. This law contains an expiration date of five years from the date the law was passed. This is an example of a law that changes the legal code as the purpose of this law was to ensure that any retired

individuals appointed to a new position within the Veterans' Administration would not lose their retirement status because of accepting the new position. This law changes the legal code regarding veterans and their retirement status. Therefore, the time limit contained in this law is considered a sunset provision.

The colonial legislatures also passed laws with sunset provisions. In 1763, the Georgia colony passed "An Act to prevent the bringing into, and spreading of, contagious distempers in this province." The purpose of this law was to prevent sick sailors from entering the mainland if they were already sick with a contagious disease. This act would expire in two years. In 1764, the Massachusetts Bay Colony passed "An Act in addition to an Act, entitled, An Act for preventing fraud in debtors and for securing the effects of insolvent debtors for the benefit of their creditors." The goal of this Act, which would expire on March 12th, 1768, was to prevent debtors from failing to repay their debts. These laws contain sunset provisions because these laws changed the legal code in their respective colonies. Therefore, these acts, and all acts that likewise change the legal code, are coded as 1, signifying that they contain a sunset provision.

Multiple sunset provisions

Additionally, sometimes laws contained numerous sunset provisions that would result in several sections of laws expiring within a certain period. These laws are not coded any differently than laws that only contain a single sunset provision, they are only coded as 1 containing a sunset provision. Finally, no distinction is made in sunset provisions that will cause only a section of laws to expire. Both are coded as 1, containing a sunset provision. Congress, not the state or colonial legislatures, passes numerous laws with sunset provisions that often just result in sections of laws to expire.

An example of a law containing multiple sunset provisions occurred during the 110th Congress in an “Act to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.” Even though the title of this law mentions appropriations, not every section pertains to appropriations. For example, the title of section 597 of this law is: *Demonstration Project on Service of Retired Nurse Corps Officers as Faculty at Civilian Nursing Schools*. The sunset provision specifically applies to a subsection of this section. Specifically, this section allows the Director of Defense Research and Engineering, in coordination with the Secretary of Energy to develop a multi-year roadmap to develop advanced energy storage technologies and sustain domestic advanced energy storage in order. The authority these individuals received would expire on October 1, 2013. The law containing this sunset provision is coded as 1, even though there are numerous sunset provisions within this law.

Initial and renewal legislation

Each law passed with a sunset provision is also coded as to whether it is an initial law or a renewal law. Both the states and the U.S. Congress passed initial and renewal laws. A law is coded as an initial law if it is the first time the law is passed. A law is coded as a renewal law if it is reauthorizing or renewing a previous law. An example of a renewal law is the PATRIOT Sunsets Extension Act of 2011 passed by the 112th Congress. The purpose of this act was to extend the USA PATRIOT provisions regarding electronic surveillance orders and requests for records to June 1, 2015. The original

PATRIOT Act, an example of an initial law, passed in October 2001 in response to the September 11, 2001, terrorist attacks.

The distinction between initial and renewal is important due to variations in Congress' partisan make-up across time. When a law is passed Congress has a certain partisan makeup. By partisan makeup, I refer to the number of members of legislatures who belong to certain parties. Legislatures pass laws due to negotiation involving each of the members who have their own ideological views. Therefore, when these legislatures renew laws passed with sunset provisions, they are considering a law that they may not have considered passing originally. As a result, with a different partisan makeup, laws that are being renewed may not have passed originally. When the original PATRIOT Act passed, 455 members of Congress voted yes while 61 voted no. When the PATRIOT Act was up for reauthorization PATRIOT Act, 322 members of Congress voted yes, while 176 voted no. Congress had a different partisan makeup in 2011 than when it passed the original PATRIOT Act, resulting in a difference in voting results for the PATRIOT Sunsets Extension Act of 2011. These examples demonstrate that legislatures vote differently for legislation when they are the initial, or enacting coalition, instead of the renewal coalition. Therefore, a distinction is made between initial and renewal laws when coding laws with sunset provisions.

CHAPTER 2: DOES LEGISLATIVE INSTITUTIONALIZATION IMPACT POLICY ADOPTION? New Evidence from the Colonial and Early State

Legislatures 1757-1795

Work on legislative institutionalization, or the presence of well-defined boundaries, internal complexity, and automated methods for internal decision-making within legislatures, tends to focus on how legislative bodies change over time or on early legislatures and leadership structures (Canon 1989; Cooper and Brady 1981; Polsby 1968; Squire 1992; Van der Slik 1989). However, few attempts have been made to analyze the impact of institutionalization on policy adoption. To understand the influence of legislative institutionalization on policy adoption, this chapter examines the use of sunset provisions in the colonial and early state legislatures from 1757 to 1795.

It is commonly thought that sunset provisions were not used by legislatures until the 1970s (Muskie 1977). However, sunset provisions were used in the colonial legislatures, and their use is tied to legislative institutionalization. It is important to understand the effect of institutionalization on policy adoption to determine whether the three concepts of institutionalization (well-bounded, internally complex, and universalistic) influence these legislatures' policy adoption mechanisms. Therefore, by exploring the influence of institutionalization on policy adoption, we can further comprehend the policy process in various legislatures.

The colonial and early state legislatures provide a good test case for the impact of institutionalization on policy adoption since they began as noninstitutionalized bodies and became institutionalized over time. To elaborate, the colonial legislatures initially did not have independent control over passing policy due to the British control of the executive

(Squire 2012). Originally, the colonial legislatures consisted of all a colony's freemen but would later become smaller representative entities. Then the legislatures evolved into bicameral legislatures distinct from the governor. This institutionalization process of the colonial legislatures will be covered in-depth later in this chapter.

Sunset provisions are a good legislative tool to analyze this phenomenon as well, because modern legislatures use sunset provisions as part of their standing committee systems to act as policy caretakers. There are many demands on legislators' time, and sunset provisions act as an alarm for the legislators to regularly revisit policy. These policy reviews are scheduled in advance to allow proper time for legislators to conduct investigations and prepare necessary policy revisions before the laws expires. It is assumed that such policy reviews would require formal structure, one that would not yet exist in the early colonial and state legislatures. However, contrary to this expectation, the early colonial and state legislatures utilized sunset provisions quite frequently. As this chapter will demonstrate, as legislatures institutionalize, legislative uncertainty regarding policies decreases, and legislators pass fewer laws with sunset provisions. Sunset provisions are used by legislatures to mitigate legislative uncertainty. Therefore, less-institutionalized legislatures need to use sunsets more than more-institutionalized legislatures.

Based on this theoretical framework:

LEGISLATIVE INSTITUTIONALIZATION HYPOTHESIS: Total laws passed and the presence of a paid legislature will have a negative impact on the rate of sunset provision use in the colonies

Sunset provisions were a frequent legislative tool utilized by the colonial legislatures (Ranchordás 2015). By 1770, every colonial legislature had regularly

recurring select committees to report on temporary laws that required renewal (Lutz 1999). Temporary legislation was so prevalent in the colonial legislatures that the Framers debated its use during the 1787 Constitutional Convention. James Madison postulated “it was probable that, in doubtful cases, the policy would soon take place of limiting the duration of laws as to require renewal instead of repeal” (Farrand 1911, 587). Therefore, Madison thought temporary legislation would become the norm to help bypass the issue of the presidential veto of laws passed by Congress. By passing laws with sunset provisions, the legislatures ensured that the laws would be reviewed again to determine their contemporary applicability and to prevent laws from existing past their utility. Prior research by Lutz (1999) and Ranchordás (2015) demonstrates that sunset provisions were used in the colonial legislatures, but they did not delve into the question of why the colonial legislatures decided to use this specific legislative tool.

These observations lead to the question, what factors made sunset provisions a popular legislative measure in the colonial and early state legislatures? To answer this question, this chapter tests Gersen’s (2007) argument that uncertainty and lack of information resulted in a high passage rate of sunset provisions in the colonial legislatures. The analysis demonstrates that as the legislatures institutionalized and the balance of power became clearer, the colonial legislatures passed fewer laws with sunset provisions, thus making laws more permanent. These findings have broader consequences for understanding lawmaking in the colonial legislatures. The lack of institutionalization and unclear balance of power created uncertainty, resulting in a higher passage rate of sunset provisions.

This chapter proceeds as follows. The upcoming section discusses the previous research on sunset provisions including the extant literature connecting uncertainty and institutionalization to sunset provision use. Next, the colonial legislative conditions and their contribution to uncertainty are discussed and introduced and described. The data on the use of sunset provisions in the colonial legislatures from 1757 to 1795, considering the sunset provision variation as indicators of legislative uncertainty. Additional details are provided on the sunset provision use trend by the 13 colonies during this time frame. The final section culminates the chapter with a discussion of research implications and avenues for future research.

SUNSET PROVISIONS

Ranchordàs (2015) argues that sunset provisions are used to tackle uncertainty, lack of information and prognosis regarding regulatory policy; to enhance the quality of legislation; instruments to rationalize the legislative process; to reduce regulatory pressure; to gather facts and consider evidence-based information; to respond to temporary problems; to act as consensus-finders; to facilitate the regulation of innovation; and build legislative coalitions. The desirability of sunset provisions in legislatures is the result of the legislature's internal institutional conditions and relationship with the president as well as the current level of political stability (Gersen 2007).

There are four types of sunset reviews: comprehensive, regulatory, selective, and discretionary (Baugus and Bose 2015). Comprehensive reviews require all agencies and laws to undergo a sunset review on a set schedule, while selective review only requires selected agencies and laws to undergo sunset review. Regulatory reviews occur when

licensing and regulatory boards undergo review while discretionary review occurs when legislatures choose which agencies and statutes undergo sunset review. Even though the sunset provisions in this chapter fall into the selective review category due to containing different expiration terms, it should be noted that institutionalization should have an equal impact on the adoption of each of these types of sunset reviews. As this chapter will demonstrate, sunset provisions, whether included to require laws or agencies to undergo regular review, are a means to mitigate uncertainty. This uncertainty can be about the long-term existence of legislation or bureaucratic agencies.

Prior research shows that sunset provisions are sometimes used to respond to temporary problems such as wars and economic crises (Ranchordàs 2015). Once the temporary problem ceases to exist, the law can be allowed to expire. Additionally, sunset provisions can act as consensus-finders. During divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008). Opponents to legislation may be willing to vote for certain bills if they contain sunset provisions as using sunset provisions signifies that the status quo will return once the sunset provision expires (Ranchordàs 2015). As a result, passing legislation with sunset provisions allows for a test period to determine if the law will be successful or if it has unintended consequences. If the law is determined to not work as intended, legislators can simply allow the law to expire. Prior research on sunset provisions, however, tends to focus on the use of sunset provisions at the federal level even though sunset legislation is also used at the subnational level. Furthermore, prior research does not fully examine the impact of legislative resources on the adoption of laws with sunset provisions. Also, earlier research is primarily anecdotal and does not

thoroughly examine sunset provisions before and after institutionalization to determine the impact of institutionalization on the rate of sunset provision use. This chapter seeks to fill this void in the prior research.

Information is important for passing policy. However, legislators often do not have accurate information regarding the implications of laws if they were passed (Ranchordàs 2015). This lack of accurate and complete information is the result of the bills consideration as a new idea to combat a new issue which legislators never had the opportunity to address. Therefore, legislators are uncertain as to whether the proposed bill will work to fix the issue at hand. To overcome a lack of information and uncertainty regarding policy, legislators attach a sunset provision to allow for a test period to determine if the law or program works as intended. If the law or program works, the law can be extended for a set period, or indefinitely. The quality of legislation is often evaluated based on legal certainty and the ability of the law to respond to real life problems (Ranchordàs 2015). However, as society changes, the problems that laws need to address also change. Therefore, to allow for flexibility, legislators can attach a sunset provision. By doing so, lawmakers can allow laws to expire that no longer address current issues. This situation turns the legislative process into a learning path also while also allowing legislators to gather facts and consider evidence-based information. Finally, legislation is the result of compromise between political parties. Sunset provisions provide an option for opponents to support legislation if the status quo returns after the sunset provision expires (Ranchordàs 2015).

Scholars have previously argued that sunset provisions are one creation of Congress to decrease the power of bureaucratic agencies, to improve oversight and to

serve as consensus-finders in periods of divided government. (Aberbach 1991; Kysar 2006; Maltzman and Shipan 2008; Ranchordàs 2015). While it is true that sunsets are used to oversee bureaucracy, they also help with oversight. The view that sunset provisions are primarily used to decrease the power of bureaucracy stems from the fact that, in the 1970s, sunset clauses were used to overcome the power of bureaucracies (Ranchordàs 2015). These sunset clauses were among numerous oversight reform proposals introduced due to the increased animosity between the Nixon Administration and Congress. (Aberbach 1991). According to a 1980 newsletter released by Oklahoma Congressman Glenn English, Jr. the purpose of such state sunset laws was to “require legislators to periodically review government programs and agencies and decide whether to continue them” (English 1980). These sunset clauses are related but distinct from sunset provisions. While sunset clauses require regular review of bureaucratic agencies by the legislature sunset provisions, in contrast, require regular review of certain laws.

When lawmakers do not have sufficient information about new legislation, they may not understand the potential risks of a new law. Sunset provisions can help legislators assess potential risks of new legislation. As a result, sunset provisions improve the quality of legislation. When the law reaches the end of the sunset period, legislators can review the success of the policy to determine whether it should be renewed. If the policy is determined to not be as successful as originally expected, legislators can decide to not extend it.

When legislators decide whether to renew a law, they have more information about a law’s impacts in comparison to when they pass other laws. This superior

information is the result of having precise information of the law's impact. Furthermore, sunset provisions offer the opportunity for frequent legislative oversight. Such oversight rationalizes the legislative process through the incorporation of information regarding law effectiveness, and subsequent removal of ineffective legislation. Due to the termination of unnecessary policies, sunset provisions also reduce regulatory pressure on the bureaucracy.

UNCERTAINTY, INSTITUTIONALIZATION, AND SUNSET PROVISIONS

Legislative conditions impact policy enactment decisions. In an ideal world, legislators would have detailed and thorough information about policy proposals prior to voting on legislation. However, this is not always the case. Aspects of legislative institutions such as standing committees and staff exist to help overcome such information problems (Austen-Smith and Riker 1987; Gilligan and Krehbiel 1987; Kingdon 1973). Prior to institutionalization, committees and staff are not present to assist legislators in gaining information about policy proposals. Even without the necessary information, legislators still are expected to pass legislation. To overcome the informational problems, legislators often employ sunset provisions (Gersen 2007). In such circumstances, employing temporary legislation is an ideal option because if the law does not work as intended, the law can easily be abolished (Ranchordás 2015). This is an ideal option as it allows legislators to observe the law's effects. If it is ineffective, it can be allowed to sunset; if it is beneficial, then the law can be renewed (Ginsburg, Masur, and McAdams 2014). Without the necessary information, lawmakers are uncertain of the potential effects of a law which makes sunset provisions appealing (Finn 2009). Uncertainty refers not only to policy information but to legislative contexts as well.

Legislatures must adapt to changes in the social context to continue passing laws. This adaptation involves the “partial renegotiation of some elements...while leaving others in place” (Thelen 2003).

As legislatures institutionalize, new laws are more able to withstand change despite the changing social context (Baugus, Bose, and Jacob 2021; Pierson 2004; Thelen 2003). Once the legislature institutionalizes, the legislature becomes more resilient to change over time (Pierson 2004). When legislatures pass laws with sunset provisions, the legislature will review the law at the end of the expiration term to determine whether to renew the law or simply let it expire. Maltzman and Shipan (2008) state that this regular review makes sunset provisions more frequently amended than laws passed with standing provisions and therefore less able to withstand change. When legislatures anticipate political dynamics changing drastically in the future, they decide to pass more laws with sunset provisions to allow for a re-evaluation of the law due to changing circumstances.

Historical evidence of the impact of legislative institutionalization on policy adoption can be found by examining the British Parliament. Sunset provisions were used less frequently as Parliament institutionalized in the 19th Century (Kouroutakis 2017). Uncertainty existed in the United Kingdom from 1689 to 1714 due to the creation of a new parliamentary government, and transfer of power from George I to Queen Anne. Additionally, from 1689 to 1716, parliamentary sovereignty was established, and party government developed. Due to these circumstances, the U.K. Parliament frequently passed laws with sunset provisions to help counteract the uncertainty. Once the party government fully developed, and the legislative process regulated, Parliament rarely used sunset provisions.

POLICY ADOPTION

Legislators pass policies for a variety of reasons. Positive theories of legislative institutions argue that legislator's heterogeneous preferences are the result of imperfect information and policy's external effects (Shepsle and Weingast 1994). Additionally, formal models depict policies as points in a Euclidean space of multiple dimensions. Each of these dimensions represents a specific policy issue, and positions on these dimensions represent positions on policy issues (Cox, McCubbins and Sullivan 1984). When taking policy positions, legislators must consider the costs or benefits that the policy will have on the legislator's constituency. The legislator's decisions have implications for their reelection prospects. Even assuming that the legislator is familiar with the political demographics of his or her constituency, it can be difficult to choose a policy that will maximize his or her reelection chances in the next election (Cox, McCubbins and Sullivan 1984). Specifically, scholars assume that policymakers are rational, and each government decision-maker tries to process all information to assess the effectiveness of a policy. However, the governmental officials' ability to obtain and analyze information is constrained by their capacity.

As a result, legislators' voting decisions can be difficult, especially when legislators may be unfamiliar with the implications of potential new legislation. To continue performing their jobs effectively, legislators must vote on legislation despite all the uncertainty surrounding the policy process. One of the methods legislators can use to counteract this uncertainty is by appending a sunset provision to bills under consideration. By adding a sunset provision, legislators allow for a test period to

determine how a law will impact society. If the law does not work as intended, it can be allowed to expire.

COLONIAL LEGISLATIVE HISTORY

Before proceeding to analysis of the sunset provision use across the colonies, background information provides context regarding the colonial legislatures and subsequent institutionalization to give insight into the uncertainty of the period. Additionally, the history of the colonial legislatures and transfer of authority after Independence is also described. All the circumstances presented in this section caused significant legislative uncertainty in the colonies, resulting in a higher incidence of sunset provisions by the colonial and early state legislatures as means to counteract this uncertainty.

A lack of information existed in the colonial legislatures from 1757 to 1795 as they were undergoing the institutionalization process (Polsby 1968). By the end of the 18th century, the colonial legislatures had established clear institutional boundaries while also becoming more complex organizations, as shown by Squire (2012). Specifically, the colonial legislatures institutionalized by increasing legislative staff, establishing standing committees, adopting rules and procedures, and increasing legislative salaries. Another aspect of legislative evolution is increased internal complexity. According to the standards associated with increased internal complexity, the colonial legislatures become more complex organizations except for the lack of party leadership due to the lack of organized parties in this era. Despite the lack of parties, the colonial legislatures still became more complex organizations by adopting sophisticated rules and procedures for their legislative activities. The colonial legislatures also became more complex

organizations through increased reliance on ad hoc (temporary) and standing committees. As the colonial legislatures continued to evolve, they established their authorities as lawmaking bodies separate from the English Parliament. First, through precedent and custom, the colonial legislatures became the primary trustee of colonial rights, namely those surrounding colonial internal affairs and new taxes (Greene 1994).

The lack of institutionalization of the colonial legislatures caused lawmaking to be in a state of uncertainty. The lower houses of the colonial legislatures began to pass laws which would simultaneously restrict the executive's authority previously set by the colonial administration and increase their importance in the colonies (Greene 1961). This action created significant uncertainty within the colonial legislatures because, at this point in colonial legislative history, there were very few precedents to guide legislators in addition to the lack of trained lawyers to assist in lawmaking (Olson 1992). The legislators were unsure on how to approach their legislative responsibilities without the executive controlling the legislative sessions. Furthermore, the sessions were often short with unpredictable delays and distractions, resulting in less time to debate major legislation (Olson 1992). Without time to debate the proposed bills, legislators were unsure of the long-term implications of the bills on the legislative docket. As a result, the lawmaking process included trial and error, resulting in more uncertainty in the legislative process.

As the dispute between Great Britain and the colonies increased in intensity, a problem arose regarding how to successfully govern the colonies. As a result, a governance gap was created due to the absence of the colonial legislatures and the upcoming state legislatures (Squire 2012). This gap resulted in the creation of the

provincial congresses which slightly overlapped with the end of the colonial legislatures (Squire 2012). Both the colonial legislatures and the provincial congresses had the same lawmaking powers even though most provincial congresses were unicameral while the colonial legislatures were bicameral. These provincial congresses were not controlled by the Royal Governors and would exist from 1774 to 1780 (Squire 2012). This situation caused policymakers to be in a state of uncertainty because of the numerous legislatures that met during this time frame. They also had to create rules and procedures each time a new legislature was established. The time needed to establish rules and procedures would take time away from necessary legislative debate. Additionally, some of the provincial congresses rarely met. All these circumstances, along with the outcome of the Revolution, resulted in uncertainty about the long-term impacts of legislation.

DATA COLLECTION AND ANALYSIS

Annual legislative data are collected and coded for the 13 colonies and states between 1757 and 1795.¹ The coding and sourcing for the variables are given in the appendix. Data collected included the total number of laws and the total number of laws with sunset provisions passed for each year, to calculate the percentage of sunset provisions by colony/state-year. The resulting sunset provision rate variable is the key variable. The percentage of sunset provision use applies to new laws with sunset provisions only, not renewals from previous legislative sessions. This decision maintains uniform sunset provision rate calculations across the colonies and states. Figure 2.1 displays the total sunset provision rate across the colonies from 1757 to 1795.

¹ I am thankful to the staff of the Massachusetts Historical Society for providing the sources to create this dataset.

² An example of institutionalization existing on a scale is the California Assembly in the

FIGURE 2.1: SUNSET PROVISION RATE 1757- 1769 AND 1776 - 1795



To further assess the impact of legislative institutionalization and, therefore uncertainty on policy adoption through the lens of sunset provisions, the impact of various indicators for legislative institutionalization on sunset provision adoption is evaluated. To measure the impact of institutionalization, data collection corresponded with Polsby's (1968) measure of legislative institutionalization.

There are three components to Polsby's (1968) measure of institutionalization: well-bounded, internally complex, and universalistic. Well-bounded means that legislative membership is less open as incumbent legislators tend to serve longer, resulting in a smaller proportion of first-term members serving in Congress. Furthermore, well-bounded also means that leadership positions in the legislature are reserved for longer serving members. Internally complex refers to the functions of the legislature have become regularized and specialized. Committees become more specialized and autonomous and party leadership is established. Finally, legislators have more benefits such as more staff and larger office space. The final component of Polsby's (1968) institutionalization measure is referred to as universalistic and refers to when the legislature replaces nepotism with merit rules.

Collection of various data coincide with each aspect of Polsby's (1968) institutionalization measure. To measure boundaries and universalistic criteria, a variable from Squire (2012) indicates whether the legislators were paid. When legislators are paid, they tend to serve longer and the proportion of first-term members decreases, making the legislature well-bounded (Polsby 1968; Squire 1992). Paying legislators causes legislators to serve longer, thus resulting in leadership positions reserved for senior legislators (universalistic criteria). To measure increased complexity, a variable measures for number of total laws passed for each year in the time frame. As legislatures' functions become regularized and specialized, they pass a larger number of laws in a shorter amount of time. Additionally, Squire (1992) used similar variables when measuring institutionalization of the California Assembly. Control variables account for the presence of a bicameral legislatures, the presence of an elected upper house, and the colony's population. Table 2.1 presents the data summary statistics.

TABLE 2.1: SUMMARY STATISTICS

	Mean	Std. Dev.	Min	Max
Bicameral Legislature	183.30	37.31	100	200
Paid Legislature	0.87	0.47	0	1
Population	213.18	135685	8265	645801
Elected Upper House	0.32	0.47	0	1
Total Laws	39.75	27.94	0	115
Sunset Provision Rate	0.166	0.0922	0	1

Despite enactments in different colonies, the statutes follow a basic format. Laws passed with expiration terms were printed in two different manners. Some colonies did not print the law text but would only list the title. If the term "expired" appeared next to the title of the law, this indicates that the law contained a sunset provision even if the

expiration term could not be read explicitly. Each act's title indicated whether the law was new or a renewal. For example, if the act were continued then the title of the act would contain the phrase "An act to continue an act." If the act did not contain the phrase, then the only reasonable interpretation is that the statute is a new act. This assertion is based on researching 30 years of colonial and state acts across 13 legislatures. Also, if an act contained the phrase "An act to continue an act," these laws were not included in the calculations. In some colonies, the legislature would pass one act to renew numerous acts. If these renewal acts been included in calculations, they would have heavily skewed the sunset provision rate.

Some colonies, such as Massachusetts, would pass single laws that renewed laws en masse from previous sessions. For example, in 1766, Massachusetts only passed 27 laws. The Massachusetts General Court passed eight laws with a sunset provision, which accounts for 30 percent of the total laws passed that year. One of the 27 laws passed renewed 33 previous temporary acts. If the 33 renewed laws had been included with the 8 laws, this would have made sunset provisions account for 152 percent of the laws passed that year, distorting the sunset provision rate.

DATA ANALYSIS

The colonial legislatures utilized four distinct types of expiration terms when they passed sunset provisions. These expiration terms included: an exact time frame, expired at the end of a war, referenced the national Congress, referenced the next meeting of the legislative assembly, or gave a non-specific time frame. The most common type of expiration term used by modern legislatures is the exact time frame subtype of sunset provision. The variation in the types of sunset provisions used in the colonial and early

state legislatures is also indicative of the uncertainty during this time-period. The uncertainty surrounding how long laws were needed resulted in the legislatures needing to provide more than an exact time frame when appending sunset provisions in legislation. As a result, the legislatures would give an expiration term that would result in the law terminating at the end of the war, referenced when the national Congress would meet, or just provided a non-specific time frame. As the colonial and early state legislatures institutionalized and legislative uncertainty decreased, every type of expiration term decreased in popularity, except for the exact time frame and non-specific time frame subtypes which saw an increase in usage after the end of the Revolutionary War. This section describes each variation of expiration term and discuss the trend it its usage across the colonies from 1757 to 1795. Table 2.2 displays the construction of the variables utilized in the following graphs.

TABLE 2.2: VARIABLE CONSTRUCTION

Variable	Variable Construction
Exact Time Frame	$(\# \text{ of Exact Time Frame} / \# \text{ of Sunset Provisions}) * 100$
War	$(\# \text{ of War} / \# \text{ of Sunset Provisions}) * 100$
National Congress	$(\# \text{ of National Congress} / \# \text{ of Sunset Provisions}) * 100$
Non-Specific	$(\# \text{ of Non-Specific} / \# \text{ of Sunset Provisions}) * 100$
Sunset Provisions Rate	$(\# \text{ of Sunset Provisions} / \text{Total Laws}) * 100$

EXACT TIME FRAME

The most popular type of expiration term used in sunset provisions across the colonies and states was one with an exact time frame. In this type of sunset provision, an exact time frame was given in which the law would expire. Expiration clauses for these laws would read as follows, “And be it further enacted that this act shall continue and be

in force for [specified time frame] and no longer.” The expiration terms in these laws ranged from 6 months to 10 years.

An act passed in Pennsylvania in 1766 directing the choice of inspectors for general elections provides an example of an Exact Time Frame expiration clause. The expiration clause read, “And be it further enacted by the authority aforesaid, that this Act shall continue and be in Force for the term of seven years, and from thence to the end of the next sitting of assembly and no longer.”

WAR

Other variations of expiration terms included terms mentioning war. An Act passed by the Massachusetts General Court in 1761 provides an example of this type of expiration term. This Act would “continue and be in Force during the Continuance of the present War with the French.”

NATIONAL CONGRESS REFERENCE

Sometimes an act contained an expiration clause that explicitly referenced Congress passing a similar act. An act passed in 1785 in Massachusetts titled an “Act for the Regulation of Navigation and Commerce” provides an example of an expiration term referencing the national Congress:

That this act shall continue in force until the United States, in Congress assembled, shall be vested with competent power for the purpose and shall have passed an ordinance for the regulation of commerce of these states, and the period may arrive when the said ordinance is to take effect, and no longer.

NON-SPECIFIC TIME FRAME

Sometimes, acts had vague expiration clauses, such as the one contained in an Act passed by the Massachusetts legislature in 1783 to prevent the return to this state of

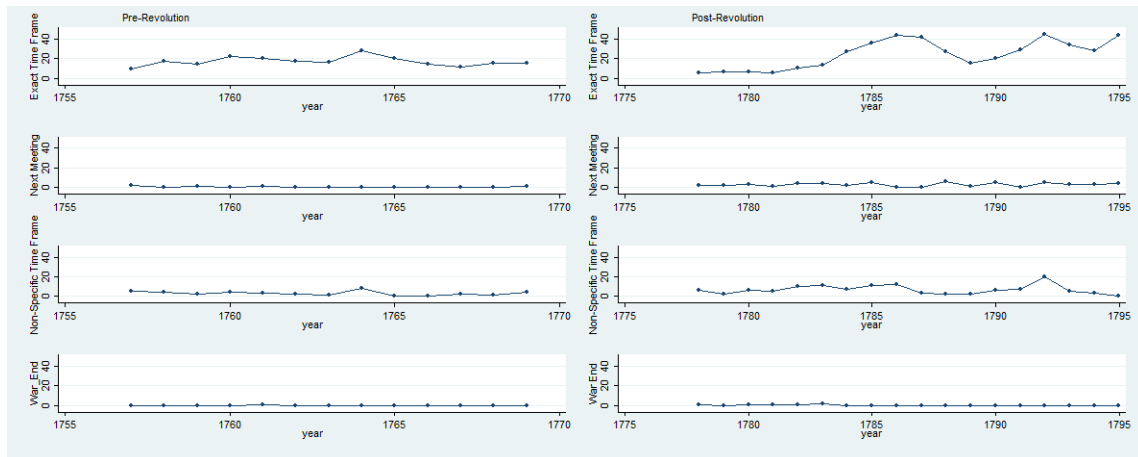
certain persons therein named, and other who have left this state or either of the United States and joined enemies thereof. The expiration clause read,

And be it further enacted by the authority aforesaid, that this act shall continue and be in force until the recommendation of Congress mentioned in the preliminary articles agreed upon between the United States of America and Great Britain, shall be laid before the General Court and a final determination be had thereon, and no longer.

To analyze the relationship between uncertainty and sunset provision use rate, an original dataset was created containing sunset provision data for the 13 colonies and states between 1757 and 1795.

Even though the colonies declared Independence in 1776, British troops were still present and would not leave until they lost the Battle of Yorktown. The British presence still affected legislative work, causing uncertainty in the legislative process. In fact, during the 1776-1777 legislative session, the city of Philadelphia did not send any individuals to the General Assembly due to British occupation. Maryland's legislative work also affected. Maryland's 1773 Act for the support of the clergy of the Church of England in this province was originally supposed to have a 12-year expiration term. However, the text of the law stated that the "revolution has prevented its operation."

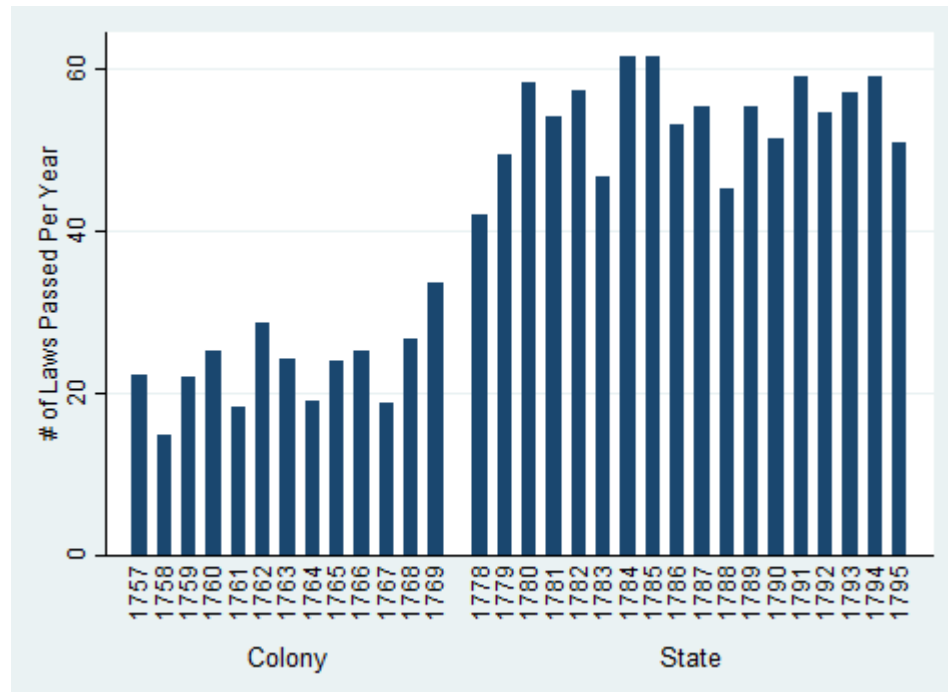
FIGURE 2.2: SUNSET RATE ACROSS EXPIRATION TERMS 1757-1795



In order to further examine the impact of legislative institutionalization, I examine colony-level variation in sunset provision use as the colonies did not institutionalize at precisely the same time. The examination supports my argument that institutionalization is inversely related to the sunset provision passage rate.

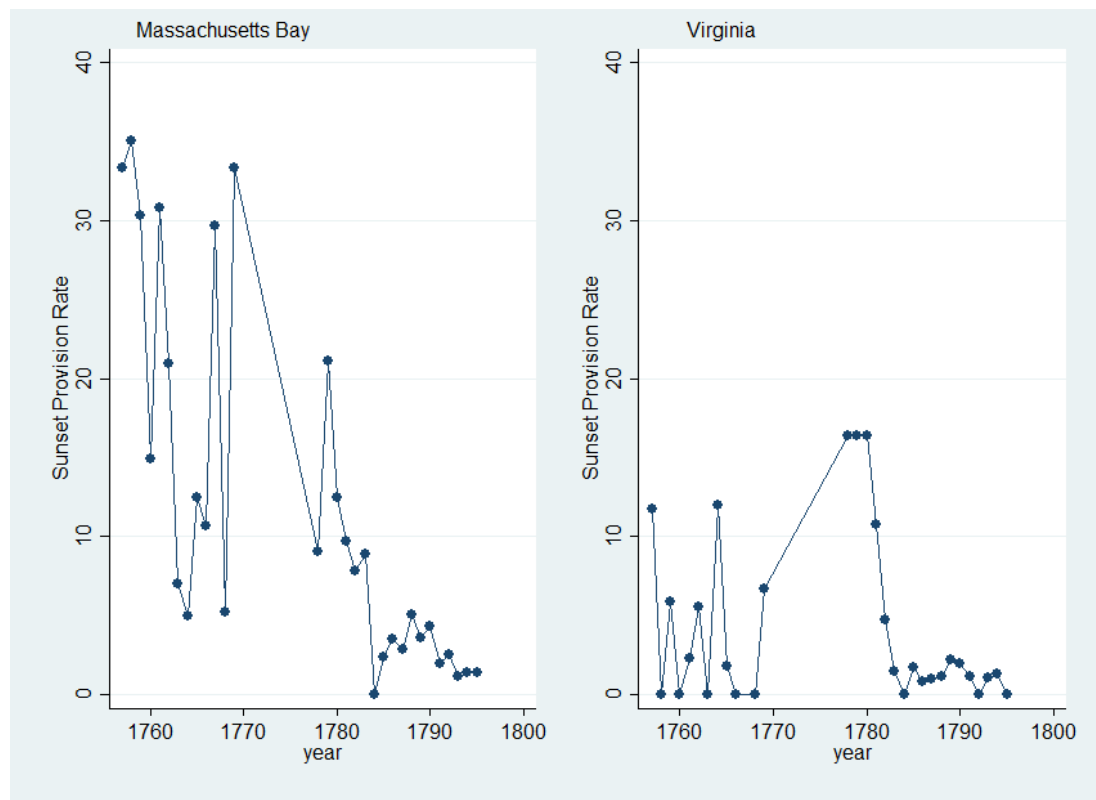
The original government in the colonies had a governor, council, and general assembly (Morey 1893). In the original colonies, the governor, council, and general assemblies made decisions collectively (Squire 2012). But, over time, the colonies became bicameral. The first colony to get separate legislative chambers was Massachusetts (Kammen 1969). Additionally, the colonies began to rely more on committees to facilitate the lawmaking process in addition to adopting increasingly sophisticated rules and procedures (Squire 2012). The Massachusetts Assembly established temporary committees very quickly. According to Zemsky (1969), “It was not at all unusual for a major bill to be proposed by one committee, drafted by another, revised by a third, revised again by a fourth, and cast into its final form by a fifth.” During Massachusetts’s 1756-1757 session, more than 400 committees were appointed, and 1600 individual committee assignments made (Zemsky 1971).

FIGURE 2.3: TOTAL LAWS PASSED 1757-1770 & 1775-1795



It should be noted that the decrease in the rate of sunset provision use is not due to the decrease in the total laws passed each year, as can be seen in Figure 2.3. As legislative uncertainty decreased across the colonies, they passed more laws, but fewer laws contained sunset provisions. The colonies needed to pass more laws to handle the changing environment but were uncertain about the impacts of many of these laws, which is why fewer of them contained sunset provisions.

FIGURE 2.4: SUNSET PROVISION RATE IN MASSACHUSETTS BAY AND VIRGINIA 1757 -1795



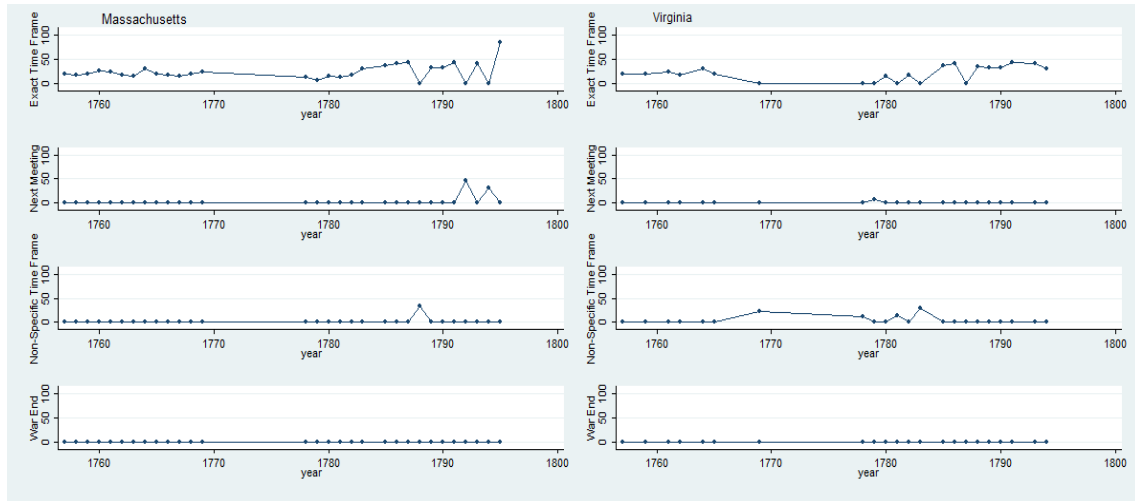
Based on this information, Massachusetts was one of the first colonies to begin the institutionalization process. As shown in Figure 2.4, the Massachusetts General Court most frequently passed laws with sunset provisions in 1758, in which 35 percent of the total laws passed contained a sunset provision. The average among the 13 colonies never reached above 25 percent, therefore, the Massachusetts General Court relied on sunset provisions more than the average among the colonial legislatures. Even though the Massachusetts General Court created committees, these committees were ad hoc and not standing committees. The predominant use of ad hoc committees signifies there was still some uncertainty surrounding the legislative process in the Massachusetts General Court as standing committees were not created over specific issues. The lack of standing committees signifies that the Massachusetts legislators were uncertain about which issues

would be proposed by the legislature. Another indicator of uncertainty within the Massachusetts Bay Colony was the lack of adoption of increasingly sophisticated rules and procedures. In Massachusetts, legislative procedures were “fluid and rules interpreted with great flexibility” (Squire 2012). This uncertainty resulted in a higher rate of laws passed with sunset provisions.

Virginia, in contrast, developed a standing committee system and sophisticated rules and procedures by 1750 (Harlow 1917). This standing committee system Burgesses "were vigorous, hard-working groups, actively engaged in legislative work" and empowered to frame and amend legislation before it was sent to the chamber's floor (Harlow 1917). Virginia's standing committee system operated similarly to modern American legislatures (Squire 2012). The adoption of sophisticated rules and a standing committee system demonstrates that Virginia institutionalized early within the colonial era, and this resulted in less legislative uncertainty. This lack of uncertainty is demonstrated by the low sunset provision rate. As shown in Figure 2.4, laws passed with sunset provisions were a rare occurrence in the Virginia Colony as the highest rate was only 12 percent. This rate is slightly less than half of the 13 colonies average.

As previously stated, the colonial legislatures utilized four distinct types of expiration terms when they passed sunset provisions, and the variation in these expiration terms is indicative of the legislative uncertainty during this period. The colony-level variation in sunset provision sub-type use displayed in Figure 2.5 also demonstrates how institutionalization decreased legislative uncertainty. Overall, Massachusetts shows more variation in the distinct types of sunset provisions than Virginia because the Virginia legislature institutionalized earlier.

FIGURE 2.5: SUNSET PROVISION RATE IN MASSACHUSETTS BAY AND VIRGINIA ACROSS EXPIRATION TERMS 1757-1795



I conducted a fractional logit regression with robust standard errors to determine the impact of legislative institutionalization on policy adoption. The variable of interest is sunset provision. To measure the impact of institutionalization, I collected data that corresponded with Polsby's (1968) indicators legislative institutionalization. The paid legislature variable indicates whether a legislature has formed boundaries and universalistic criteria. The total laws variable is indicative of whether a legislature has increased complexity. Control variables include the presence of a bicameral legislature, the presence of an elected upper house, and population. The results of the regression are shown in Table 2.3.

TABLE 2.3: IMPACT OF INSTITUTIONALIZATION MEASURES ON SUNSET RATE

	Coefficient	95% CI	Z-Value
Bicameral Legislature	0-0.04 *	-0.007 to -0.003	-2.14
	(0.002)		(0.032)
Paid Legislature	0.37	-0.089 to 0.83	1.58
	(0.23)		(0.115)
Population	-0.0006	-0.002 to 0.0006	-0.96
	(0.0006)		(0.339)
Elected Upper House	0.15	-0.21 to 0.51	0.83
	(0.18)		(0.405)
Total Laws	-0.021 ***	-0.29 to -0.12	-4.63
	(0.0045)		(0.00)
Intercept	-1.16	-1.86 to -0.45	-3.20
	(0.36)		(0.01)
Pseudo R-squared	0.043		
Prob >chi2	0.0000		
N	389		

Robust standard errors in parentheses

*** p< 0.001; **p < 0.01 * p < 0.05

Two of the variables included in the regression are statistically significant. First, regarding the variables that constitute legislative institutionalization, the total number of laws passed had a negative impact while a paid legislature is nearing statistical significance. A one standard deviation increase in total laws passed, results in a 2 percent decrease in the use of sunset provisions. A one standard deviation increase in paid legislature, results in a 37 percent decrease in the use of sunset provisions. These results provide mixed evidence regarding the impact of legislative institutionalization on the rate of sunset provision use. However, when these quantitative results are coupled with the

qualitative results, there is more evidence in favor of legislative institutionalization negatively impacting the sunset provision use rate. Finally, the presence of bicameral legislature had a negative impact on the rate of sunset provision use.

CONCLUSION

Previous research on legislative institutionalization has focused on change over time and leadership structures without focusing on how this change impacts policy adoption (Canon 1989; Cooper and Brady 1989; Polsby 1968; Squire 1992; Van der Slik 1989). This paper fills this void using a case study of the colonial and early state legislatures from 1757 to 1795. Overall, the weight of the evidence suggests that institutionalization has a negative impact on the rate of sunset provision use. These results suggest a critical point regarding institutionalization.

Since institutionalization has a negative impact on the rate of sunset provision use, this suggests that non-institutionalized legislatures have uncertainty surrounding the legislative process. As legislatures institutionalize, legislative uncertainty regarding policies decreases, and they pass fewer laws with sunset provisions. Therefore, sunset provisions are used by legislatures to mitigate legislative uncertainty.

CHAPTER 3: THE IMPACT OF LEGISLATIVE CAPACITY ON POLICY ADOPTION

“No man can be a competent legislator who does not add to an upright attention and a sound judgment a certain degree of knowledge of the subject on which he is to legislate.”

-James Madison, Federalist 53

INTRODUCTION

In Federalist 53, James Madison argued for the adoption of two-year terms in the House of Representatives to allow for legislators to gain the necessary knowledge to complete their jobs effectively. Unfortunately, when Congress was first established, Congress lacked the legislative capacity to have the requisite knowledge to be an effective legislative body. For example, in Congress’ early history, Congress had yet to develop standing committees to assist in information gathering for lawmaking. As this chapter will demonstrate, changes in legislative capacity have an impact on policy adoption.

There have been four major eras in U.S. congressional history: the formative era (1790s-1820s); the partisan era (1830s-1900s); the committee era 1910s-1960s); and the contemporary era (1970s to present) (Zelizer 2004). Throughout each of these eras, the U.S. Congress underwent numerous changes that impacted its policy adoption, such as institutionalization, and the adoption of the standing committee system. While a lengthy literature exists describing the changes that occurred throughout Congress’ history, previous literature has not examined how these changes impacted Congress’ policy adoption (Canon 1989; Cooper and Brady 1981; Polsby 1968; Squire 1992; Van der Slik 1989). This chapter investigates this early legislative experience by examining the rate of sunset provision use across Congressional history from 1789 to 2020. The history of Congress provides a good test case for the impact of these legislative resources on policy

adoption as different reforms were adopted in each congressional era. Therefore, this chapter examines the rate of sunset provision use across each era to determine how the uncertainty prior to the adoption of these reforms resulted in different rates of sunset provision use adoption.

Legislatures sometimes behave like markets as legislatures must consider several things when considering bills: constituent preferences, reelection, and transaction costs caused by imperfect information about legislation (Weingast and Marshall 1988). This behavior is similar to the behavior of customers when in a market – they must consider the costs of goods before making a decision on what to purchase (similar to how legislators must consider the costs and impact of legislation prior to voting). How are legislators uncertain about bills? In order to describe this uncertainty, it is first paramount to describe the importance of information in the legislative process. Once legislators are elected and draft a bill, they are sometimes uncertain about the bill's impact. Members of Congress often lack the knowledge requisite to perform their legislative duties well as they do not have time or the expertise to understand the problems the proposed policies are attempting to address (Adler and Wilkerson 2012; Baumgartner and Jones 2015). This uncertainty is the result of the magnitude of bills that legislators consider on a regular basis.

It is impossible to become informed about all bills on the docket. In order to vote responsibly on a bill, legislators need to have a thorough understanding of the bills under consideration (Curry 2015; Lewallen 2020). In addition to understanding the bills on the docket, legislators also should be aware of policy information and political information (Kingdon 1984). Policy information refers to details on whether a problem needs to be

addressed in addition to the outcome of a policy proposal to fix said issue (Kingdon 1984; Lewallen 2020). Political information, in contrast, refers to the policy preferences of other legislators with regards to potential legislation (Austen-Smith and Riker 1987; Kingdon 1973; Krehbiel 1991; Rich 2004; Lewallen 2020). Most members of Congress have limited access to the time, resources, and information necessary to be fully informed about all bills on the legislative docket in addition to policy and political information about these bills (Curry 2015; Lewallen 2020; Kingdon 1989). Therefore, legislators refer the bill to committee as well as debate it in their legislative chambers. Committees help legislators overcome information challenges as committee members specialize on specific topics and better understand the potential impacts of bills within their jurisdiction (Box-Steffensmeier, Christenson, and Craig 2019; Curry 2015; Fenno 1978; Kingdon 1981; Krehbiel 1991).

Furthermore, informational problems also present a collective action issue. Given that it would take an inordinate amount of time to become informed about every bill on the docket, there may be little incentive for the legislators to become fully informed about the bills, even if they support the legislation, especially given their other legislative responsibilities (Sinclair 1995). Legislators simply expect their fellow lawmakers to become informed on pending bills, and vote based on party divisions. However, uncertainty is present in the legislative process when numerous legislators forgo the process of understanding each bill on the docket. Legislators overcome collective action problems through institutionalization which includes the creation of committees (Cooper 1977; Krehbiel 1991; Sinclair 1995). When a bill is considered in committee, legislators hear from interest groups and other knowledgeable individuals about the bill's impact on

society if it is passed. Even if legislators decide to pass a bill after a committee hearing, legislators could still be uncertain about the bill's long-term impacts and may not want the bill to continue indefinitely. This uncertainty is the result of legislators having to decide which legislative issues to prioritize since their workload often exceeds available resources such as policy staff (Box-Steffensmeier, Christenson, and Craig 2019; Curry 2015; Hall 1998; Kingdon 1981; Matthews 1960). As a result, they attach a sunset provision to the bill prior to passing it into law.

The chapter proceeds as follows. In the upcoming section, the concept of institutionalization and an overview of the reforms adopted by Congress during each of its four eras is discussed. Next, the concept of divided government and the data on sunset provisions in Congress from 1789 to 2020 is introduced and described. Additionally, the sunset provision trend by Congress across its four eras is detailed. The chapter culminates with a regression analysis to determine the impact of institutionalization on the rate of sunset provision use.

INSTITUTIONALIZATION

Institutionalization is the process in which an organization acquires stability (Selznick 1957; Huntington 1968). When an organization is institutionalized, they create committees and norms, assign roles, and operate within boundaries (March and Olsen 1989). When an organization becomes institutionalized, it can defend itself against its environment and aims to expand, accumulate, and exert greater influence over this environment (Hill 1974). To be institutionalized an organization must: (1) be well-bounded or differentiated from its environment; (2) have functions that are complex and

separated internally on some regular and explicit bases; and (3) use universal rather than particular criteria in conducting its internal business (Polsby 1968).

In the context of this chapter, as a legislature institutionalizes, it creates boundaries to separate itself from the political, economic, and social environment. A legislature that has created boundaries is more stable from political and economic shocks (Hibbing 1999). Furthermore, an institutionalized legislature also has internal complexity and relies on universalistic criteria for legislative rules (Polsby 1968; Berry, Berkman, and Schneiderman 2000). Legislative institutionalization is not a binary event, it exists on a scale. A legislature could be well institutionalized in some respects but not on others.²

EVOLUTION OF CONGRESS

In this section, the evolution of Congress is discussed. As Congress developed, uncertainty surrounding the legislative process decreased, which has an impact on its rate of sunset provision use. Furthermore, the increasing workloads and subsequent demands on legislators' time as Congress progressed created the conditions necessary for the creation of standing committees to assist with information acquisition (Cooper 1970; Curry 2015). Each era has its own issue concerns that dominated the era as well as the types of policies the government would enact (Hershey 2011). Additionally, during each era of Congressional history, ideology and party competition matured which impacted legislators' behavior and policy preferences (Lee 2016). Congress additionally had to respond and develop due to the new political issues that arose during each era (Jones, Theriault, and Whyman 2019). As this upcoming section will explain, the evolution of

² An example of institutionalization existing on a scale is the California Assembly in the 1990s which had increased internal complexity in some areas but not others (Squire 1992).

Congress decreased legislative uncertainty resulting in a decrease in the rate of sunset provision use.

THE FORMATIVE ERA 1780s-1820s

During the formative era, legislators had to determine how their legislative institution would function and began adopting procedures for developing oversight mechanisms (Bickford 1999). At this point in history, Congress was not fully institutionalized (Cooper 1960; Binder 1997; Jenkins and Stewart 2013; Polsby 1968). Despite the Founders' distaste for political parties, a party system began forming in the 1790s with the political bifurcation into Federalists and Democratic-Republicans (Zelizer 2004). Scholars have debated the presence of organized parties in the early Congresses. Hoadley (1980) argued that, although voting was factional, partisanship³ developed later, and parties did not exist by modern definition. Aldrich and Grant (1993) argued that although the first two parties were "much less developed than they would be in later party systems, those foreshadowed further developments and can be considered genuinely modern political parties." Tinkcom (1950) argued that the party names applied to opinion groups and not to parties. Similarly, Martis (1989) described the first three Congresses as a "no party" period and that the parties are more aptly labeled factions. Beginning in the Fourth Congress (1795-1797) parties began to emerge although they did not have the same structure as modern parties (Chambers 1963; Eguia 2014; Harlow 1917; Martis 1989; Poole and Rosenthal 2007). Parties did not yet control Congressional organization (Jenkins and Stewart 2013). Party caucuses and partisan leader selection would not begin until the 1840s (Jenkins and Stewart 2013). The strength of party coalitions would vary

³ voting coalitions in Congress that coordinate with Presidents of their own party.

based on issues on the congressional agenda (Binder 1995). As this chapter will demonstrate, all the aforementioned circumstances created uncertainty, resulting in a higher use of sunset provisions in the early Congresses.

Formisano (1975) argues that, while partisan behavior may have been present during the First Party System, true partisanship was not seen and that this time period is best viewed as a deferential-participant phase prior to actual partisanship developing in Congress. Furthermore, when applying the principles of institutionalization to the political parties at the same time, it becomes evident that fully developed political parties would not exist in the United States until the 1840s (Formisano 1975).

For parties to meet the first institutionalization criteria, it should be relatively difficult for individuals to become a member of the party, and its leaders should be recruited from within the organization. For the second criteria, the party organization should be complex, with internally separate functions on a regular and explicit basis, with parts that are interdependent but not interchangeable (Formisano 1975). Finally, to meet the third criteria, the party organization should use universalistic criteria should as precedents and rules, in addition to merit systems replacing nepotism. When applying these three criteria to party system institutionalization, it is apparent that fully developed parties did not appear until the late 1830s or early 1840s (Binder 1997; Formisano 1975; Silbey 1989). Numerous scholars agree, arguing that true partisanship (or fully developed party system) would not exist until the late nineteenth century (Bogue and Marlaire 1975; Brady and Althoff 1974; Mayhew 1974; Rohde 1991; Schickler 2001). Parties during the First Party Era did not have the same structure as modern political parties. The U.S. Senate also underwent the institutionalization process during this time frame and became

fully institutionalized in the 19th Century as evidenced by its average service terms and decline in member turnover (Bell 2011; Wirls and Wirls 2004). Also, the Senate would not have any standing committees until the second session of the 14th Congress (Risjord 1994). Congress' early legislative environment was unstable, creating uncertainty (Jenkins 1998). Membership turnover was high until the 34th Congress when it would level off (Fiorina Rohde, and Wissel. 1975). House membership turnover ranged between 30 to 60 percent during this time period (Price 1971; Price 1975). The average length of service during this period ranged from 5.2 to 5.6 years (Wirls and Wirls 2004). Furthermore, when uncertainty exists in legislatures, this encourages legislatures to form committees that allow for not only the collection of policy information, but the sharing of this information as well. Even though the Senate utilized standing committees since its first session, these committees were primitive and not widely used (Binder 1997; Gamm and Shepsle 1989). As Congress institutionalized, standing committees became more prevalent than ad hoc committees (Canon and Stewart 1995; Gamm and Shepsle 1989; Jenkins and Stewart 2002; Jenkins 1998). During this phase of Congressional history, the process of introducing a bill was also in flux.

The institutionalization of Congress can also be seen through the evolution of the Speaker of the House, in terms of the responsibilities and types of committees used to complete House business. House Speakers at this time did not emphasize their own partisan identification when they oversaw the House of Representatives (Jenkins and Stewart 2013). Additionally, the Speaker's authority to control the floor debate and appoint committees was not utilized to further partisan agendas (Jenkins and Stewart 2013). Four of the first eleven elections for Speaker of the House took multiple ballots as

the party organizations were not strong enough to narrow down the candidates quickly (Jenkins and Stewart 2013).

The underdevelopment of Congress began to change in 1811, when Henry Clay was elected Speaker of the House. After Clay's election, the structure of the House became increasingly complex, partisan ties within political parties were strengthened, and the value of House offices such as the Speaker intensified (Jenkins and Stewart 2013). While the Federalist and Republican coalitions of the early Congresses could not be considered fully developed political parties, the Federalist and Republicans did engage in various party activities, such as electoral campaigning (Binder 1995). However, even though national party organizations would not exist prior to the 1830s, legislatures did engage in party-like behavior (Formisano 1974).

It should be noted that the major legislative procedures that modern legislators use such as standing committees, political parties and the rules governing the relationship between the majority and minority parties, began during the formative era (Zelizer 2004). However, none of these major legislative procedures were formalized until the 1830s. Furthermore, at the time, there was significant uncertainty surrounding whether these legislative procedures would survive long into the future. The behavior of members of Congress was also different during this time period as well. First, there was less party fluctuation among members of Congress (Henderson 1973). Partisanship increased during the second era of Congress as more political issues became partisan issues.

THE PARTISAN ERA 1830s-1900s

Unlike the previous congressional era, the partisan era was highly defined by parties. Parties would become more cohesive during this Era, initially, however party

membership was unstable with high turnover and rare for legislators to have to long incumbency (Drutman and LaPira 2020; Jenkins and Stewart 2013; Lewallen 2020; Zelizer 2004). Furthermore, bill introduction methods became a more well-known feature of the House (Cooper and Young 1989). By 1861, bill introduction in the House became more effective by allowing for bill introduction every Monday and, as a result, the House's workload increased dramatically (Jenkins and Stewart 2013). By the late 1880s, individual House members' powers declined as committee power to introduce bills increased dramatically (Cooper and Young 1989). Furthermore, members of Congress did not have professional staff throughout this period (Wallach 2020).

During the third-party system, the Democratic-Republicans were unable to handle all the new conflicts among their members (Hershey 2011). As a result, the Democratic-Republicans split into two parties: the Democrats and the Republicans. This split occurred due to the Democrats and Republicans stances on the issues of the national government's economic powers as well as on how the national should handle slavery (Hershey 2011). The Civil War conflict began the third-party system. The Civil War and subsequent Reconstruction caused the party system to be clearly delineated. The Democrats controlled the North while the Republicans controlled the South (Hershey 2011).

After the Civil War, Congress began dealing with an increasingly larger and more complicated workload. The House would not reach its current membership size until 1917 (Fiorina Rohde, and Wissel. 1975). Until then, the House would only add seats and, therefore members, after each decennial census. Several changes were made to Congressional procedure to help handle this workload (Bogue 1994). One of these

changes involved a bill discharge procedure (Cooper and Young 1989). Finally, a change in committee membership rules dictated that committee memberships would last for the duration of a two-year Congress instead of the legislative session (Bogue 1994).

Mechanisms of party leadership remained weak until after the Civil War (Jenkins and Stewart 2013; Zelizer 2004). House speakers made committee assignments to legislators' party loyalty while political parties penalized those who deviated from party stance on issues. The strength of political parties during this time can be seen by the high rates of partisan voting on most issues (Zelizer 2004). Speakers used partisan ties when they decided who they allowed to speak on the floor (Zelizer 2004). It became more difficult for members of the House of Representatives to speak on the floor when the 21st House passed a rule not allowing members to give a speech more than once on an issue (Bogue 1994). Years later, the 26th House decided that members could not speak for more than an hour on the same issue. Legislators' high turnover rates decreased, and incumbency increased as legislators began thinking of the House and Senate as places to pursue long term careers (Zelizer 2004). As legislation became easier to pass and members of Congress began pursuing careers, members of Congress became more knowledgeable about various types of legislation as well as their effects. This resulted in a decreased need to append sunset provisions to legislation.

The adoption of Reed's Rules replaced the ability of minority party members to delay bill debate by refusing to participate in quorum counting procedures (Argersinger 1992; Cooper and Young 1989). Reed's Rules, adopted in tandem with rules regarding the previous question, motions to reconsider, and the five-minute rule gave the majority party more power to control the House floor procedure. Additionally, civil service

reforms like the 1883 Pendleton Act⁴ lessened parties' ability to ensure loyalty through patronage. Due to these changes, Congress became less vulnerable to minority party influence, new members, and new parties and could become more informed about pending legislation, resulting in a decreased need of sunset provisions (Argersinger 1992).

THE COMMITTEE ERA 1910s-1960s

The committee era was defined by a complicated committee procedural framework (Zelizer 2004). Additionally, senators were directly elected and, therefore, did not need to rely on state party machines to get elected (Zelizer 2004). By 1940, an anti-New Deal alliance of Southern Democrats and Republicans comprised the majority of the House of Representatives (Polsby 2004). This conservative coalition resulted in the entrenchment within the House Rules Committee, creating a bottleneck, as well as a cloak of seniority to protect conservative committee chairs (Polsby 2004). This would change in the 59th Congress when the liberal Democratic sentiment became crystallized and organized around legislative priorities (Polsby 2004).

The length of incumbency in both the House and Senate continued to increase (Zelizer 2004). The Constitution was amended to require the direct election of Senators (Crook and Hibbing 1997). Furthermore, leadership positions began to be given to legislators based on seniority within the chamber (Zelizer 2004). Legislative negotiations tended to be highly secretive as policy information was reserved for committee chairs and senior legislators (Zelizer 2004). During this time period, the political system was highly fragmented (Silbey 1996). Legislators were more polarized than the mass public while

⁴ Even though the Pendleton Act only applied to a small number of government positions, it helped get civil service reforms in motion.

the presidents and congressional leaders still had to build support to pass policy. Legislative negotiations in Congress were heavily influenced by committee chairs, executive branch representatives, interest groups and lobbyists, and policy experts (Zelizer 2004).

The Congresses during this time period began standardizing congressional procedure and decision-making was committee centered (Sinclair 1989). All bills began to go through the Clerk of the House prior to being introduced on the floor (Zelizer 2004). Congress continued institutionalizing as the number of committee staff increased from 193 in 1947 to 912 in 1973 (Cavanagh 1983; Polsby 1968).

The biggest transition for Congress during this period involved the Legislative Reorganization Act of 1946. This Act streamlined the Congressional committee system by decreasing the number of House standing committees from 48 to 19 and Senate standing committees from 33 to 15 (Galloway 1959; Jones, Theriault, and Whyman 2019; Lewallen 2020; Polsby 2004; Reynolds 2020). Additionally, the Act also required lobbyists to register with Congress and strengthened Congressional oversight of bureaucratic agencies. Finally, the Act also included a congressional pay raise and expansion of the Congressional Research Service (Galloway 1959; Polsby 2004; Reynolds 2020). Lawmaking topics increased after the passage of the Legislative Reorganization Act. From 1947 to 1956, Congress passed bills on approximately 170 policy topics (Jones, Theriault, and Whyman 2019). Over the next decade, members of Congress would introduce bills on almost 200 policy topics (Jones, Theriault, and Whyman 2019). Policy mood, or public support for government programs, evolved during the Committee Era (Enns and Koch 2015). Policy mood would increase

throughout the 1950s and reach its apex in the 87th Congress (Jones, Theriault, and Whyman 2019). Policy mood would continue to decrease until reaching its low point in the 96th Congress.⁵

THE CONTEMPORARY ERA 1970s-PRESENT

The Contemporary Era did not see as many changes as the previous Congressional eras. Prior to this era and specifically in the 1950s, there were several powerful committees with powerful chairs, and these committees produced most legislation. However, this era progressed with the passage of the Legislative Reorganization Act of 1970. Members of Congress began to participate on their own terms and internal party battles among liberal and conservatives regarding congressional reforms increased (Lee 2016; Reynolds 2020; Zelizer 2004). Congress was “fractured and chaotic” as legislators pursued their own ideological interests (Zelizer 2004). This was further complicated by the media’s increasing role in lawmaking. Before the decade of the 1960’s, lawmaking in Congress was a private affair. The Legislative Reorganization Act of 1970 made the committee process more transparent due to open meetings as well as recorded roll call votes in the Committee of the Whole House and other floor procedures (Lee 2016; Lewallen 2020; Reynolds 2020; Zelizer 2004). By the end of the twentieth century, journalists and opinion leaders were able to observe nearly all aspects of the policymaking process.

Furthermore, the workload for legislators increased dramatically during the latter half of the Committee Era into the Contemporary Era due to the increased policymaking agenda (Jones, Theriault, and Whyman 2019). The increased lawmaking began in the 88th

⁵ Increased policy mood refers to an increase in public support for government programs. A decrease in policy mood refers to a decrease in public support for government programs.

Congress and continued increasing until 94th Congress (Mayhew 1991). Beginning in 1947, the number of hours the House was in session increased from 1,224 to 1,918 hours (about 2 and a half months) in 2006 (Curry 2015). Additionally, during the 80th Congress, the House was in session 4.8 hours a day, and this increased to 8 hours a day by the 109th Congress (Curry 2015). The House also votes more frequently on legislation, as the number of roll call votes increased 325 percent between the 80th and 109th Congresses (Curry 2015). These increased roll call votes are also occurring on more complicated and lengthy legislation. Recent Congresses are more likely to vote on large omnibus bills than earlier Congresses (Sinclair 2012). In the 80th Congress, bills were 2.5 pages long on average. By the 109th Congress the average bill length increased to 15 pages (Curry 2015). The length of the annual *Federal Register* increased from 14,736 pages to 78,724 between the 80th and 109th Congress, an increase of over 500 percent (Curry 2015; Ornstein, Mann, and Malbin 2008). During this period, Congress experienced a “Great Issue Expansion” from the early 1960s until the late 1970s (Baumgartner and Jones 2015). Committees began holding hearings on various new policy areas, beginning with 114 topics and increasing to 187 topics in the 94th Congress (Jones, Theriault, and Whyman 2019). In the 1980s, however, Congress decreased the size of its agenda and passed fewer bills (Lewallen, Theriault, and Jones 2016; Lewallen 2018; Drutman and LaPira 2020). Policy mood would increase until the 1990s, when it began decreasing (Jones, Theriault, and Whyman 2019). At the same time, legislation was more frequently amended. Amendments doubled from approximately 400 to almost 700 each Congress (Sinclair 1995; Smith 1989). This situation increased legislators’ responsibilities and ability to become fully informed about each bill on the legislative docket.

In addition to the increased legislative demands, legislators have other priorities claiming a large portion of their time. Members of Congress must regularly campaign for reelection (Ornstein and Mann 2000). These activities include flying home to their district to meet with constituents in addition to giving speeches and fundraising. The number of people serving on Congressional staff has decreased since the 1970s (Reynolds 2020). All these circumstances, in addition to legislative responsibilities, overwhelm members of Congress and hinders their ability to become fully informed about every bill on the docket.

By the end of the 1970s, the power structure of the House of Representatives had been significantly remodeled. The powers of the Speaker of the House grew, the Steering and Policy Committee established real functions, and the whip system was expanded (Jenkins and Stewart 2013; Polsby 2004). The authority of committee chair decreased as powers were delegated to subcommittees and their subsequent chairs. Legislators had more incentives to specialize in specific legislative topics. Oversight responsibilities were more diffuse among members due to the increased influence opportunities at the subcommittee level. These circumstances resulted in more legislative activity among legislators (Polsby 2004).

DIVIDED GOVERNMENT, POLARIZATION, AND LAWMAKING

The term divided government refers to when the political party of the executive is different from the party that controls the legislature. Periods of divided government made it difficult for legislators to pass major policies as during unified governments, when the executive and both legislative chambers legislators work more productively because they care about their party's reputation for effective government (Lee 2016; Lewallen 2020;

Zelizer 2004). Divided governments became more common after the Civil War but rare again after 1900 (Petrocik and Doherty 1996; Silbey 1996). Whenever divided governments occurred, partisan divisions increased (Lee 2016). Senators in the majority party would use their advise-and-consent authority to help achieve their partisan goals (Cooper and Young 1989). However, other research has shown that there was no difference in legislative productivity during periods of divided government (Herzberg 1996; Fiorina 1996; Mayhew 1991). Divided government also demonstrates that voters have not decided to invest all the governmental operations to a single party (Chafetz 2017). During divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008). Opponents to legislation may be willing to vote for these laws if they contain sunset provisions as it signifies that the status quo will return once the sunset provision expires (Ranchordàs 2015).

Divided governments also impact the relationship between the legislature and the president. Divided government increases legislative oversight of the executive branch (Aberbach 1990; Ainsworth, Harwood, and Moffett 2012; Lewallen 2020; Ogul and Rockman 1990; Parker and Dull 2013; Scher 1963). Divided government also impacts the president's oversight of the legislative branch. Even when the majority party controlling Congress is not of the same party as the president, they still need to consider the president's policy preferences if they want to successfully enact legislation (Sinclair 2012). Failing to consider the president's policy preferences can result in a veto. As a result, presidents have mastered the art of veto bargaining or threatening to veto legislation unless the legislature adheres to certain concessions to the president's policy

preferences (Sinclair 2012). Another concession the legislature can make in such situations is attaching a sunset provision to bills that the president is threatening to veto. In this case, the legislature can offer to attach a sunset provision to the bill in question as a compromise and to give a test period to see if the law works. If the law does not work as expected, the law can be simply allowed to expire.

Periods of polarization also impact lawmaking. Lawmakers must make more concessions to pass laws during periods of significant polarization (Jones, Theriault, and Whyman 2019). Additionally, laws tend to be longer during periods of high polarization as well (Jones, Theriault, and Whyman 2019). Polarization causes laws to increase in length and complexity in order to incorporate the concessions and coalition building necessary to pass legislation.

PURPOSE OF SUNSET PROVISIONS

Sunset provisions, or clauses embedded in legislation that will result in a law ceasing to exist after a specified time frame, offer several legislative advantages. They are used to tackle uncertainty, lack of information and prognosis regarding regulatory policy; to enhance the quality of legislation; instruments to rationalize the legislative process; to reduce regulatory pressure; to gather facts and consider evidence-based information; to respond to temporary information; to act as consensus-finders; and to facilitate the regulation of innovation (Adler and Walker 2019; Calabresi 1982; Ranchordàs 2015). Sunset provisions also regularize the policy process as change can only occur to the policy when it is time for the policy to be renewed (Hall 2004). This stability allows legislatures to control when debates on policies passed with sunset provisions occur.

Sunset provisions help laws evolve with societal changes. Previous scholars have defined the problem of policy drift, in which past policies do not accurately fix current problems as they were not updated for current issues (Hacker and Pierson 2010). Policies often need to be updated for them to remain effective across an extended period (Jones, Theriault, and Whyman 2019). Sunset provisions help alleviate the problem of policy drift. Influences outside the government often create economic and social trends that result in laws needing to be modernized (Hacker and Pierson 2012). The process of updating a law can be difficult if the laws do not contain sunset provisions. Without sunset provisions, laws may not be updated due to the extensive number of policies that members of Congress must consider on a regular basis which does not give them the time to repeal a law and then pass a new one. A law containing a sunset provision, however, can be allowed to repeal without any action on Congress' part, and Congress can solely work on passing updated legislation based on the new economic and social trends.

To give an example of the power of sunset provisions, imagine that Congress passes a law without a sunset provision. If Congress no longer wants that law to exist, Congress will need to pass a second law with the president's signature, or with a supermajority in both chambers to render the first law no longer in effect (Chafetz 2017). If this same law included a sunset provision, however, the law can simply be allowed to expire if Congress wants the law to no longer be in effect.

The desirability of sunset provisions in legislatures is the result of the legislature's internal institutional conditions and relationship with the president as well as the current level of political stability (Gersen 2007). Sunset provisions are sometimes used to respond to temporary problems such as wars and economic crises (Ranchordàs 2015).

Once the temporary problem ceases to exist, the law can be allowed to expire.

Additionally, sunset provisions can act as consensus-finders. Laws with sunset provisions allow legislators to revisit policies as they approach their time for renewal (Adler, Langehenning, and Bell 2020; Hall 2004). Finally, the short-term nature of laws passed with sunset provisions allows policies to reflect changes that occur not only in public opinion but in legislative membership as well (Hall 2004).

It is a common misconception that sunset provisions did not exist in the United States until the 1970s leading some legislators in that decade to believe that they created this legislative tool (Muskie 1977). Previous scholars argue that sunset provisions are a creation of the federal Republic to decrease the power of bureaucratic agencies and improve oversight and serve as consensus-finders in periods of divided government. (Aberbach 1991; Fisher 1983; Hall 2004; Kysar 2006; Maltzman and Shipan 2008; Oleszek 1989; Ranchordàs 2015; Shuman 1992; Tiefer 1989). Laws passed with sunset provisions help with oversight as when the law is about to expire, Congress will hold hearings to determine if the program has functioned effectively (Hall 2004). During the early Congresses, Thomas Jefferson argued for legislation that can be renewed or allowed to expire to help counteract legislative corruption (Ford 1904). Additionally, in *The Federalist No. 26*, Alexander Hamilton argued for the placement of two-year limits on military appropriations to allow for periodic deliberation and periodic checks on policies.

Even when scholars recognize that sunset provisions date back further than the 1970s, their discussion remains limited. For example, Ranchordàs (2015) states that sunset provisions have a long tradition in the United States, but only cites examples of child labor laws from the early twentieth century. Gersen (2007) acknowledges that

temporary legislation was frequently used throughout the colonial legislatures and early U.S. Congresses. While Gersen (2007) addresses the implications of temporary legislation, he does compile a thorough measure of sunset provisions.

As legislatures institutionalize, new laws are more able to withstand change despite the changing social context (Piersen 2004; Thielen 2004). Once the legislature institutionalizes, the legislature becomes more resilient to change over time (Piersen 2004). When legislatures anticipate political dynamics changing drastically in the future, they decide to pass more laws with sunset provisions to allow for a re-evaluation of the law due to changing circumstances.

TYPES OF SUNSET PROVISIONS

The U.S. Congress passed laws with varying expiration term lengths. These include statutes with an exact time frame, expiration at the end of a war, and references to the next session of Congress.

EXACT TIME FRAME

The first type of sunset provision used during the early sessions of Congress was one in which an exact time frame was given in which the law would expire. Due to the presence of an exact time frame in the expiration term, this may be categorized as a direct sunset provision (Kouroutakis 2017). Expiration clauses for these laws would read as follows, “And be it further enacted that this act shall continue and be in force for [specified time frame] and no longer.” The expiration terms in these laws ranged from one year to ten years. An example of this type of expiration term occurred during the first session of Congress titled “An Act for laying a duty on goods, wares, and merchandises imported into the United States” which had an expiration date of June 1, 1796.

WAR

Occasionally, the expiration terms mentioned war. These types of expiration terms may be classified as conditional (Kouroutakis, 2017). Expiration clauses for this type would generally follow this format “And be it further enacted that this law shall continue and be in force during the continuance of the present war between the United States and Great Britain.” For example, the “Act for imposing additional duties upon all goods, wares, and merchandise imported from any port or place, for any purpose” passed during the 12th Congress would expire “so long as the United States shall be engaged in War with Great Britain and until the expiration of one year after the conclusion of peace.” Therefore, the legislation was bounded by a future event rather than a specific date.

NATIONAL CONGRESS REFERENCE

Sometimes an act contained an expiration clause that explicitly referenced Congress passing a similar act. This is a second example of a conditional expiration term (Kouroutakis, 2017). An example of this occurred in the 5th Congress in “An Act giving eventual authority to the President of the United States to augment the Army.” This act would expire “at the expiration of the session of Congress next.”

UNCERTAINTY, INSTITUTIONALIZATION, AND SUNSET PROVISIONS

Legislative conditions impact policy enactment decisions. In an ideal world, members of Congress would have detailed and thorough information about policy proposals prior to voting on legislation. However, this is not always the case. Aspects of legislative institutions such as standing committees and staff exist to help overcome such information problems (Austen-Smith and Riker 1987; Chafetz 2017; Curry 2015; Gilligan and Krehbiel 1987; Kingdon 1973). However, early in Congressional history,

committees and staff were not always present to assist members of Congress in gaining information about policy proposals. Even without the necessary information, members of Congress are still expected to pass legislation.

This chapter will demonstrate that, in order to overcome the informational problems, members of Congress often employed sunset provisions (Gersen 2007). In such circumstances, employing temporary legislation is an ideal option because if the law does not work as intended, the law can be easily abolished (Ranchordàs 2015). This is an ideal option as it allows legislators to observe the law's effects as the policy is currently written (Hall 2004). If it is ineffective, it can be repealed after the sunset period; if it is beneficial, then the law can be renewed (Ginsburg, Masur, and McAdams 2014). Without the necessary information, lawmakers are uncertain of the potential effects of a law which makes sunset provisions appealing (Finn 2009). Uncertainty refers not only to policy information but to legislative contexts as well. Legislatures must adapt to changes in the social context to continue passing laws and also consider electoral uncertainty regarding whether the current legislative coalition will remain the same after the next election (Lewis 2003; Vaklifathi 2020). This involves the “partial renegotiation of some elements...while leaving others in place.” Based on this theoretical framework:

LEGISLATIVE UNCERTAINTY HYPOTHESIS: The rate of sunset provision use in Congress will peak in The Committee Era and decrease thereafter

INSTITUTIONALIZATION HYPOTHESIS: Institutionalization will have a negative impact on the rate of sunset provision use in Congress

DATA COLLECTION AND ANALYSIS

Data are collected and coded for the first 116 Congresses⁶ (1789 to 2020) available through the Law Library of Congress. The key, dependent variable is the percentage of sunset provisions by year and by Congress. Data collected include the total number of laws and total number of laws with sunset provisions passed for each Congress (a two-year interval). Data are also coded with a binary variable indicating whether there was a divided government for each Congress. Numerous control variables are operationalized, including Congress' DW-Nominate scores, the percentage of the major party in Congress, number of presidential vetoes per Congress, congressional session length, number of committees, and the Gross Domestic Product (GDP). In order to account for the external environment on policy adoption, two indicator variables are incorporated. The first indicator variable denotes whether the United States was involved in a major war⁷. The second indicator variable signifies the major economic crises in the United States.⁸ Finally, a proxy variable to measure policy mood is used. Due to the extensive time frame in this study, it is not possible to use Stimson's (1999) policy mood measure since the data was only available beginning in the 1950s. Instead, the number of patents issued across Congress' history is used. Grant and Kelly (2008) were the first to use patents issued as a proxy variable for policy mood as they argue that inventions often create demands for new policies, economics, and behaviors that did not yet previously exist. Information regarding variable construction can be found in Table 3.1.

⁶ All collected data is for both the Senate and the House.

⁷ The United States has been involved in numerous wars throughout its history. To allow for variation, this variable only includes the major wars: War of 1812, World War I, World War II, the Vietnam War, Korean War, and the Iraq War.

⁸ The United States has had numerous economic crises. To allow for variation, this variable only includes the following economic crises: the Great Depression (1929-1933), the Great Recession (2007-2009), and the Covid-19 Recession (February 2020-April 2020)

TABLE 3.1: VARIABLE CONSTRUCTION

Variable	Variable Construction
Sunset Provision Rate	(No. of sunset provisions/No. of total laws) x 100
Major Party Percentage of Congress	(No. of Major Party Members/Congress size) x 100
GDP per capita	GDP/1000
Presidential Veto	No. of vetoes per Congress
Congress DW-Nominate	Average Poole & Rosenthal ideology data
Divided Government	(Indicator) 1 if divided, 0 if not
War	(Indicator) 1 if U.S. at war, 0 if not
Recession	(Indicator) 1 if U.S. in recession, 0 if not
Total Laws	No. of total laws passed per Congress
Average Salary	Average member salary per Congress
Average Service	Shor-McCarty Ideology Data
No. of Patents	No. of Patents issued per Congress
Session Length	No. of Days Congress in session per Congress
No. of Committees	No. of Committees per Congress

In contrast to the study of colonial legislatures which utilized four distinct types of expiration terms when they passed sunset provisions, Congress primarily relied on one expiration term type: exact time frame sunset provisions. However, occasionally Congress would utilize a different expiration term when circumstances created uncertainty, such as during times of war. The first time Congress used the war subtype of sunset provisions occurred in the 12th Congress. Congress would pass another law containing a war subtype of sunset provision during the Civil War. In 1862, Congress passed “An Act to Reorganize and Increase the Efficiency of the Medical Department of the Army” which would be “in force during the existence of the present rebellion and no longer.” Given the uncertainty surrounding the end of the Civil War, Congress passed the law to exist only during the present war. Congress would not pass another law containing the war subtype of sunset provisions until World War II in 1942. The 77th – 79th Congresses passed eight laws containing the war subtype sunset provision. These laws ranged from “An Act to provide for sundry matters affecting the Military Establishment”

to “An Act to prevent the making of photographs and sketches of military or naval reservations.” Despite the range of topics of the laws, these eight statutes each expire after “the duration of the present war as determined by proclamation of the President.”

At the beginning of its history, the U.S. Congress was not fully institutionalized. This can be seen by the fact that the legislature was unspecialized, and every legislator participated in each step of the legislative process (Shepsle and Bonchek 1997). By the War of 1812, Congress had implemented a standing committee system which allowed legislators with different strengths to join committees with policy areas that reflected these strengths (Gamm and Shepsle 1989).

RESEARCH DESIGN AND EMPIRICAL STRATEGY

Qualitative and quantitative analyses are conducted to determine the impact that institutionalization had on policy adoption using the lens of sunset provisions. In the quantitative analyses, the independent variable is the number of total laws passed by each Congress. To further assess the impact of legislative institutionalization and, therefore, uncertainty on policy adoption through the lens of sunset provisions, the impact of various indicators for legislative institutionalization on sunset provision adoption is evaluated. To measure the impact of institutionalization, data collection corresponds with Polsby's (1968) indicators of legislative institutionalization. To measure boundaries and universalistic criteria, a variable for legislative pay and a variable for the average years of assembly service for each chamber of Congress calculated from pre-existing data on members of Congress' length of service are incorporated into the analysis. In order to measure increased complexity, a variable measures the number of total laws passed for

each Congress in the time frame. Squire (1992) used similar variables when measuring institutionalization of the California Assembly.

Other control variables include Congress' DW-Nominate and legislative productivity scores, GDP per capita, and Major Party Percentage of Congress. Major Party Percentage of Congress and DW-Nominate scores are included because as the partisan and ideological characteristics of Congress change, so do the results of policy adoption when brought for a vote (Polsby 2004). The expectation is that the variables measuring institutionalization will have a statistically significant impact on the rate of sunset provision use. The Divided Government variable should have a statistically significant impact on the rate of sunset provision use as well. Summary statistics for these variables can be found in Table 3.2.

TABLE 3.2: SUMMARY STATISTICS

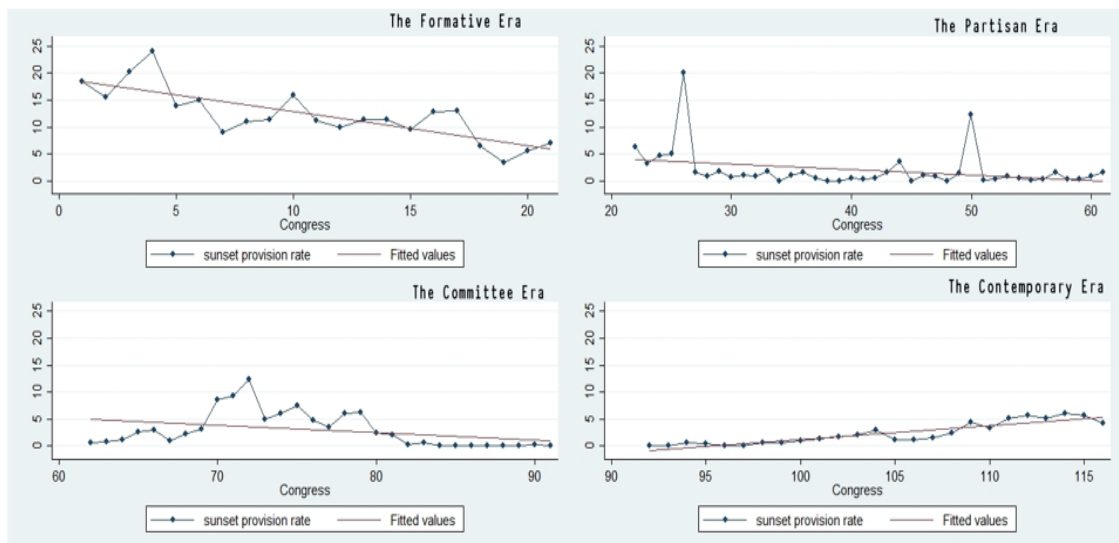
Variable	Obs	Mean	Std. Dev.	Min	Max
Sunset Provision Rate	116	11.36	15.57	0	88
Major Party Percentage of Congress	116	60.34	8.45	39.46	84.91
GDP per capita	116	14.08	16.25	1.16	58.06
Presidential Veto	116	22.72	38.37	0	212
Congress DW-Nominate	116	0.02	0.12	-0.29	0.39
Divided Government	116	0.42	0.49	0	1
War	116	0.22	0.41	0	1
Economic Recession	116	0.05	0.22	0	1
Total Laws	116	462.33	370.99	50	1793
Average Salary	116	30.99	51.73	0.05	174
Average Service	116	13.71	3.42	8.13	20.64
No. of Patents	116	45245.15	66874.58	3	354430
Session Length	116	470.22	69.25	300.5	597.5
No. of Committees	116	69.15	36.48	4	146

In order to further examine the impact of legislative institutionalization, Congressional variation in sunset provision changes over time is examined, as Congress develops new patterns and procedures. This examination supports the argument that institutionalization is inversely related to the sunset provision passage rate. As shown in Figure 3.1, sunset provisions were used frequently in legislation passed throughout the Formative Era, which supports the Legislative Uncertainty Hypothesis

Sunset provisions decreased in popularity during the Partisan Era. The change in sunset provision use during the Partisan Era can be attributed to the various changes made to Congressional procedure to decrease uncertainty such as bill discharge procedures and the increase of responsibility of the Appropriations Committee in passing legislation (Cooper and Young 1989; White 1958). After the decrease in sunset provision use in the Partisan Era, the use of sunset provisions rose in popularity during the Committee Era. The Committee Era saw several transitions that decreased uncertainty such as standardized congressional procedure in addition to an increase in the number of

committee staff (Cavanagh 1983). However, the biggest transition during the Committee Era as the passage of the Legislative Reorganization Act of 1946 which decreased the number of standing committees in addition to strengthening Congress' oversight of the bureaucracy (Galloway 1959; Reynolds 2020). Finally, the rate of sunset provision use remains low during the Contemporary Era, only to see a slight increase beginning with the 110th Congress, but still remaining below ten percent.

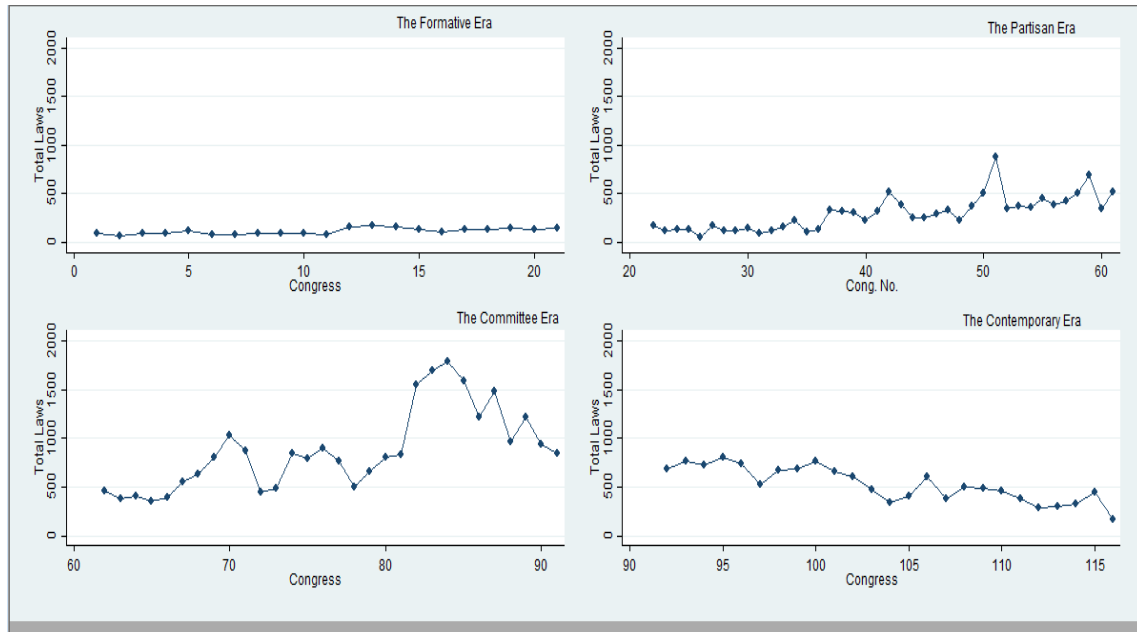
FIGURE 3.1: SUNSET PROVISION USE TREND



Furthermore, the decrease in the rate of sunset provision use across Congressional history cannot be attributed to a decrease in the total number of laws passed, as can be seen in Figure 3.2. As legislative uncertainty decreased throughout Congressional history, the institution enacted more laws, but fewer laws contained sunset provisions. The increase in the number of laws passed by Congress can be attributed to several factors including: a growing nation with greater breadth issues that needed to be handled via legislation, and an increasing membership in Congress. The Reapportionment Act of

1929 set membership in the House of Representatives at 435. This occurred during the 71st Congress in the Committee Era.

FIGURE 3.2: TOTAL LAWS PASSED BY CONGRESSIONAL ERA



REGRESSION RESULTS

Five regression models are performed across the following time frames: the entire Congress from 1789-2020, the Formative Era, the Partisan Era, the Committee Era, and the Contemporary Era. The regressions across the different eras determines the impact of institutionalization on the rate of sunset provision use during each of these eras. The results of these regression models shown in Table 3.3 overall do not lend support to the Institutionalization Hypothesis as only one of the institutionalization variables is statistically significant. However, other variables are statistically significant. Congress DW-Nominate scores, the major party percentage of Congress, the number of presidential vetoes per Congress, and economic recession had a positive impact on the rate of sunset provision use. The total number of committees, divided government, and total laws had a

negative impact. These results contrast with the qualitative results which demonstrate a decrease in the rate of sunset provision use as Congress institutionalized. These results will be discussed in-depth in the upcoming paragraphs.

Four variables had a positive and statistically significant effect on the rate of sunset provision use. The number of presidential vetoes has a positive and statistically significant effect on the rate of sunset provision use. It is reasonable to assume that the more a president vetoes legislation, the more likely Congress will add sunset provisions to legislation. Presidents who are hesitant to sign a bill may be more likely to sign a bill if it contains a sunset provisions as sunset provisions allow for a test period on the law. If the law does not work as expected, then the law can simply be allowed to expire. The economic recession indicator variable had a positive impact on the rate of sunset provision use. Economic recessions require new laws to be passed to address new issues caused by the recession. These laws may not need to last long term, so members of Congress attach a sunset provision. The Congress' DW-Nominate has a positive impact on the rate of sunset provision use as well. As Congress becomes more polarized, it passes more laws with sunset provisions to serve as a consensus between the two, ideologically distinct parties. The final variable to have a positive impact on the rate of sunset provision use is the major party percentage of Congress variable. The larger portion of Congress that a party controls, the more likely members of the majority party are to push through legislation that fits with their policy goals. However, there are two separate issues that can result in the majority party needing to add a sunset provision. First, the president may be of a different party than the majority party controlling Congress, so Congress adds a sunset provision to discourage a veto. Of course, Congress

could override a presidential veto with a 2/3 vote. Another explanation is that when the majority party is passing through its party platform legislation, they may be unsure about the long-term implication of this legislation (even if it is part of their platform), so they add a sunset provision to add a review period.

Three variables have a negative effect on the rate of sunset provision use. The number of committees has a negative and statistically significant impact on sunset provision use. As the number of committees increases, members of Congress are better able to specialize in various law topics. This specialization decreases uncertainty and creates circumstances in which members of Congress do not need to add a sunset provision to help counteract the uncertainty around certain legislation. Total laws, one of the variables representing the increased complexity aspect of institutionalization was negative and statistically significant. As Congress institutionalizes, its functions become more autonomous and specialized. As a result, members of Congress become more knowledgeable within policy areas and there is less necessity to append sunset provisions to legislation. The final variable to have a negative impact on the rate of sunset provision use is the divided government variable. Divided government encourages the parties to reach a consensus to pass legislation. Often, that concession may consist of adding a sunset provision to legislation. There are other types of compromises that can involve adding or removing sections of the bill prior to voting on it. As Congress institutionalized, the legislators became more knowledgeable about various aspects of the policymaking process. Therefore, even if there is a divided government, legislators do not need to add a sunset provision to make a concession to pass legislation.

**TABLE 3.3: IMPACT OF SUNSET PROVISION USE INDICATORS IN
CONGRESS 1789-2020**

	Model 1	Model 2	Model 3	Model 4	Model 5
Major Party Percentage of Congress	-0.07 (0.01)	0.38 (0.69)	-1.28 (1.24)	-1.61 (4.27)	9.64* (3.29)
GDP per capita (\$1000)	-0.09 (0.01)	0.99 (0.48)	-0.04 (0.08)	0.08 (0.13)	0.06 (0.08)
Presidential Veto	0.036*** (0.009)	23.24 (16.83)	1.00*** (0.21)	0.52 (0.94)	0.70 (1.38)
Congress DW-Nominate	7.41* (2.95)	-18.90 (163.99)	127.72 (81.43)	-453.39 (633.49)	1177.91** (360.89)
Divided Government	-2.11*** (0.69)	14.65 (90.44)	-3.68 (17.79)	-57.84 (60.29)	-30.61 (23.75)
War	-0.62 (0.99)	-	-	-	-
Economic Recession	3.78* (1.46)	-	-	-	-
Total Laws	-0.007** (0.002)	-57.56** (18.20)	14.40 (10.72)	-155.48* (70.37)	4.89 (7.97)
Average Salary	-0.04 (0.05)	97.89 (140.55)	-14.22 (22.23)	20.41 (15.01)	3.55 (2.10)
Average Service	0.31 (0.28)	-	-	-	-
No. of Patents	0.01 (0.00377)	-0.10 (0.31)	0.004 (0.003)	-0.004 (0.004)	0.00006 (0.0002)
Session Length	-0.006 (0.005)	0.26 (0.15)	-0.0002 (0.14)	-0.038 (0.78)	-0.08 (0.58)
No. of Committees	-0.08*** (0.01)	-1.60 (0.88)	-2.18* (1.05)	-2.35 (2.07)	0.33 (2.54)
Intercept	13.48 (3.64)	606.79 (201.34)	160.25 (180.07)	3239.49 (1220.49)	-685.29 (376.88)
N	116	20	45	26	25
R-squared	0.66	0.82	0.57	0.63	0.88

Note: P< 0.001 ***, P<0.01 **, P<0.05 *

CONCLUSION

Previous research has discussed the four major eras in U.S. congressional history as well as the various changes that occurred in the institution. However, prior research has not discussed how the changes that occurred throughout Congress' history impacted its policy adoption. This longitudinal study examines sunset provision use across Congressional history from 1789 to 2020 to show how the four party eras impacted Congress' policy adoption.

Based on the qualitative evidence, the results indicate that legislative institutionalization is inversely related to the rate of sunset provision use. This analysis demonstrates that as Congress institutionalized, it was less likely to pass laws with sunset provisions. As Congress institutionalized, members began to serve longer and, as a result, amassed knowledge of the implications of various policies. When they gain this knowledge, there is less uncertainty surrounding the policy process, so members of Congress do not need to add a sunset provision to add for a test period as they are already familiar with the impacts of various policies. As Congress becomes more institutionalized, standing committees became more specialized in their functions. This specialization allowed members of Congress to gain more knowledge about narrower policy subtypes. When bills under consideration are referred to these committees, these legislators have less uncertainty about bills within their specialized area. As a result, members of Congress are less likely to append sunset provisions to legislation. Finally, as Congress institutionalized, merit systems replaced nepotism and longer serving members of Congress being selected for committee chair positions. This further decreased uncertainty as longer serving members could share their expertise on policy outcomes with the rest of the committee. As a result, sunset provisions would not need to be added to legislation because the longer serving members of Congress were better able to share their expertise.

Additionally, the results also show qualitative support for the Uncertainty Hypothesis as the rate of sunset provision use peaked in the Committee Era and began decreasing. However, there is little quantitative support for the Institutionalization Hypothesis as very few of the institutionalization variables were statistically significant.

Overall, these results demonstrate the various aspects of Congress that have an impact on uncertainty – such as the presence of divided government or the number of committees.

To help mitigate uncertainty, members of Congress append sunset provisions to legislation.

CHAPTER 4: LEGISLATIVE PROFESSIONALISM AND INFLUENCE ON LAWMAKING

INTRODUCTION

How does legislative professionalism impact lawmaking? Previous research has demonstrated that professionalism has several positive effects including increased membership stability and diversity, greater policymaking capacity, and increased responsiveness to constituents (Rosenthal 1996; Squire 1992, 2000, 2007, 2017; Thompson 1986). However, little research has focused on the impact of professionalism on the adoption of oversight mechanisms. Prior research on the adoption of oversight mechanisms, or the monitoring of bureaucratic agencies, programs, and policy implementation, focuses on policy evaluation and program review (Elling 1979; Chadwin 1974; Crane 1977; Pethel and Brown 1972; Poggione and Reenock 2009; Rosenthal 1981), committee structure and staff (Aldrich and Rohde 2005; Brown 1979; Etheridge 1984; Patashnik and Peck 2017; Rohde 2005; Walker 2015), and post-audit function (Rosenthal 1974). Despite the growth of research studies regarding oversight mechanisms in state legislatures, evidence is limited regarding the impact of the legislative environment on the adoption of legislative oversight mechanisms. This chapter will specifically explore the impact of legislative professionalism and divided government on the adoption of oversight mechanisms.

A few scholars have researched the impact of state legislative professionalism on oversight (Clingermayer 1991; Hamm and Robertson 1981; Huber, Shipan, Pfahler 2001; Rosenthal 1981). Hamm and Robertson (1981) and Baugus, Bose, and Jacob (2021) found that legislatures with low levels of professionalism are more likely to use sunset

legislation. In contrast, Huber, Shipan, and Pfahler (2001) found that higher levels of legislative professionalism led to increased levels of statutory control.⁹

This chapter explores a variation of oversight mechanisms that previous scholars did not consider. Instead of focusing on sunset legislation which allows for a periodic review of bureaucratic agencies, this chapter focuses on sunset provisions in legislation. Sunset provisions and sunset legislation are related but distinct concepts. Sunset provisions are clauses embedded in legislation that will result in the expiration of a law at a certain period unless it is explicitly renewed by the legislature. Sunset legislation, in contrast, will result in a government agency automatically terminating or ceasing to exist unless the legislature acts to allow the agency to continue to exist. Sunset provisions result in laws expiring on a certain date unless the law containing the sunset provision is specifically reauthorized by the legislature, while sunset legislation results in agencies ceasing to exist unless reauthorized by the legislature. This chapter focuses on sunset provisions because it allows for the direct study of the impact of legislative resources on policy adoption.

Furthermore, a different measure operationalizes oversight and statutory control in tandem with a variable denoting the rate of sunset provision use across 12 states of varying professionalism levels from 1980 to 2016. To further investigate the impact of legislative conditions on oversight mechanism adoption, the presence of divided government is analyzed. States with higher levels of professionalism use sunset provisions more frequently. These findings have broader consequences for understanding how legislative conditions impact the adoption of oversight mechanisms.

⁹ Statutory control refers to authority provided by legislation. Sunset provisions are an example of statutory control as they require legislation to undergo review in a specific time frame set by the expiration term within the sunset provision.

Understanding the factors that impact lawmaking is important because the longer a law exists, the larger potential impact it can have to shape society's economic, social, and political welfare (Maltzman and Shipan 2008). As a result, the passage and repeal of laws change the status quo and the governing structure (Whyman 2016). Since laws passed with sunset provisions have an attached expiration date, determining the factors that lead to their use can help illuminate an aspect of the legislative process that can potentially have detrimental effects on society.

The chapter proceeds as follows. The subsequent section discusses previous research on sunset provisions and the literature connecting professionalism with state adoption of oversight mechanisms is discussed. Next, data on sunset provisions for twelve states from 1980 to 2016 are introduced and described. Data include both the presence of divided government and professionalism level descriptively and in multivariate models. The chapter culminates with a discussion of research implications and avenues for future research.

SUNSET PROVISIONS

Prior research on the use of sunset provisions argues they are used for a variety of reasons, including to tackle uncertainty; to overcome a lack of information and prognosis regarding regulatory policy; to enhance the quality of legislation; to gather facts and consider evidence-based information; to respond to temporary problems; to act as consensus-finders and facilitate the regulation of innovation as well as to build legislative coalitions (Ranchordàs 2015). The desirability of sunset provisions in legislatures is the

result of the legislature's internal institutional conditions¹⁰ and relationship with the executive branch as well as the current level of political stability (Gersen 2007). The term "legislature's internal institutional conditions" refers to several aspects of the legislature including divided government, level of institutionalization, and professionalism level.

Among states that utilize sunset provisions, there are four types of sunset reviews: comprehensive, regulatory, selective, and discretionary (Baugus and Bose 2015; Baugus, Bose, and Jacob 2021). Comprehensive reviews require all agencies and laws to undergo a sunset review on a set schedule. Selective Reviews only require certain agencies and laws to undergo sunset review. Regulatory reviews occur when licensing and regulatory boards undergo review while discretionary review occurs when legislatures choose which agencies and statutes undergo sunset review. Selective reviews determine which agencies get reviewed when they are created. The use of sunset provisions is considered selective review because when bills are under consideration, legislators determine which laws will and will not include a sunset provision, thereby determining which laws will get reviewed when they are passed.

Sunset provisions are sometimes used to respond to temporary problems such as wars and economic crises (Ranchordás 2015). Once the temporary problem ceases to exist, the law can be allowed to expire. Additionally, sunset provisions can act as consensus-finders. During divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008). Opponents to legislation may be willing to vote for these laws if they contain sunset provisions as the compromise signifies that the former status quo will

¹⁰ The term "legislature's internal institutional conditions" refers to several aspects of the legislature including divided government, level of institutionalization, and professionalism level.

return once the sunset provision expires (Ranchordàs 2015). Prior research does not fully examine the impact of legislative resources on the adoption of laws with sunset provisions. This is the void this chapter seeks to fill.

Sunset provisions can also help benefit democracy and separation of powers. Kouroutakis (2016) argues that adding sunset provisions to legislation decreases the risk of passing experimental legislation by adding a review period through the addition of sunset provisions to legislation. Fagan and Bilgen (2015) find that adding a sunset provision to legislation results in 60 percent more support from legislators. As a result, sunset provisions allow for legislation to be passed prior to legislators knowing whether the legislation will positively impact their constituents (Baugus, Bose, and Jacob 2021).

Information is important for passing policy. However, legislators often do not have accurate information regarding the implications of laws if they were passed (Ranchordàs 2015). This lack of information can be attributed to numerous aspects of legislative careers that legislators need to address at the same time, including reelection concerns and constituent concerns (Adler and Wilkerson 2012; Baumgartner and Jones 2015; Vakilifathi 2020; Weingast and Marshall 1988). To overcome a lack of information and uncertainty regarding policy, legislators attach a sunset provision to allow for a test period to determine if the law or program works as intended. If the law or program works, the law can be extended either for a set period, or indefinitely. The quality of legislation is often evaluated based on legal certainty and the ability of the law to respond to real life problems (Ranchordàs 2015). However, as society changes, the problems that laws need to address also change. Therefore, to allow for flexibility, legislators can attach a sunset provision. By doing so, lawmakers can allow laws to expire that no longer

address current issues. This situation turns the legislative process into a learning path while also allowing legislators to gather facts and consider evidence-based information. Finally, legislation is the result of a compromise between political parties. Sunset provisions provide an option for opponents to support legislation if the status quo returns after the sunset provision expires (Ranchordàs 2015).

Previous scholars argue that sunset provisions are a creation of Congress to decrease the power of bureaucratic agencies and improve oversight and serve as consensus-finders in periods of divided government. (Aberbach 1991; Kysar 2006; Maltzman and Shipan 2008; Ranchordàs 2015). This misconception is largely because, in the 1970s, sunset clauses were used to overcome the power of bureaucracies (Ranchordàs 2015). These sunset clauses were among numerous oversight reform proposals introduced due to the increased animosity between the Nixon Administration and Congress. (Aberbach 1991).

When lawmakers do not have sufficient information about new legislation, they may not understand the potential risks of a new law. Sunset provisions can help legislators assess potential risks of new legislation. As a result, sunset provisions improve the quality of legislation. When the law reaches the end of the sunset period, legislators can review the success of the policy to determine whether it should be renewed. If the policy is determined to not be as successful as originally expected, legislators can decide to not extend it.

When legislators decide whether to renew a law, they have more information about a law's impacts in comparison to when they pass other laws. This is the result of having precise information of the law's impact. Furthermore, sunset provisions offer the

opportunity for frequent legislative oversight. Such oversight rationalizes the legislative process through the incorporation of information regarding law effectiveness, and subsequent removal of ineffective legislation. Due to the termination of unnecessary policies, sunset provisions also reduce regulatory pressure on the bureaucracy. State legislatures each have distinct information and power disadvantages due to variations in legislative professionalism (Baugus and Bose 2015). The sunset process is an effective method for a legislature to assert itself, to increase its influence over the agendas of high-profile agencies within various special-interest groups, and to ensure that the legislature meets some of its goals (Baugus and Bose 2015).

Sunset is oversight. Sunset laws were first advocated by Colorado Common Cause that was adopted by that state as the first sunset legislation (Adams and Sherman, 1978). As a result, most state sunset laws contain a certain amount of material which is in keeping with Common Cause issues (New York Senate Research Service 1976).

How does sunset accomplish legislative oversight? Sunset allows for a periodic review of agencies and laws to determine if they are performing as intended. If laws are performing adequately, then they are allowed to continue; if not the laws are allowed to expire (Adams and Sherman 1978; Common Cause 1978; Shimberg, 1976; Price 1978; Licata 1977). Legislatures have always had the ability to terminate laws and programs, but sunset legislation allows for a more formal, periodic, and systematic review (Baugus and Bose 2015).

The Collection of the Honorable James Robert Jones (D-OK) and Glenn Lee English, Jr. (D-OK) at the University of Oklahoma's Carl Albert Congressional Research and Studies Center contains numerous newsletters detailing the adoption of sunset

legislation at the state level. Both Congressmen note that sunset legislation requires “legislators to periodically review government programs and agencies and decide whether to continue them” (James R. Jones Box LG 31, Folder 14; Glenn English, Jr. Box 40 Folder 31). Additionally, they noted that sunset legislation “provides that programs and agencies would automatically terminate on a periodic basis unless explicitly renewed by law.”

Legislative environments impact control of the bureaucracy (Huber and Shipan 2000). Periods of divided governments result in legislatures passing laws with sunset provisions to achieve a political consensus (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008; Oleszek 2007; Ranchordás 2015). Opponents to legislation may be willing to vote for these laws if they contain sunset provisions as it signifies that the status quo will return once the sunset provision expires (Ranchordás 2015). To appease the median voter in state legislatures, members of both parties form coalitions to pass their desired laws (Schickler 2000). To achieve party goals, party leaders build majorities for or against legislation by setting the legislative agenda and influencing choices (Sinclair 1983). Such agenda control helps the majority party establish a record to help gain reelection (Smith 2007).

STATE DIFFERENCES BETWEEN SUNSET PROVISIONS AND SUNSET LEGISLATION

There are numerous types of laws that require periodic review, but do not actually contain sunset provisions, such as reauthorization of appropriation legislation (Adler and Walker 2019). Sunset provisions and appropriation legislation are similar in that they both reset the legislative baseline (Chafetz 2017). They differ, however, in that

appropriation legislation does not actually contain sunset provisions. For example, 30 state legislatures pass annual budgets. Sixteen states pass a biennial budget, and four states have a biennial session and pass a biennial budget. Even though these budgets are passed on an annual basis, they do not contain sunset provisions.

In contrast to appropriations, sunset provisions are clauses embedded within legislation that will result in a law ceasing to exist unless it is explicitly renewed by the legislature. Laws that contain sunset provisions will need to be reviewed again by the legislature to determine whether the law should continue. Legislators will need to debate the law, whether it worked as intended, and then vote whether to reauthorize the entire law. If legislators decide to reauthorize the law, they can decide to renew the law for a specific period, or indefinitely.

POLICY ADOPTION & DIFFUSION

Legislators pass policies for a variety of reasons. Positive theories of legislative institutions argue that legislator's heterogeneous preferences are the result of imperfect information and policy's external effects (Shepsle and Weingast 1994). When taking policy positions, legislators must consider the costs or benefits that the policy will have on the legislator's constituency. The legislator's decisions have implications for their reelection prospects. Even assuming that the legislator is familiar with the political demographics of his or her constituency, it can be difficult to choose a policy that will maximize his or her reelection chances in the next election (Cox, McCubbins, and Sullivan 1984). Specifically, scholars assume that policymakers are rational, and each government tries to process all information to assess the effectiveness of a policy.

However, the governmental officials' ability to obtain and analyze information is constrained by their capacity.

Due to their inability to analyze copious amounts of information, state government officials might, therefore, limit their attention to neighboring jurisdictions with similar demographics or to leader governments (Berry and Berry 1990; Berry and Baybeck 2005; Meseguer 2004).¹¹ Policy diffusion via the learning mechanism becomes increasingly more likely as a policy's relative advantage, compatibility, and observability increase, and as the policy's complexity and trialability decrease (Maksen and Volden 2011; Rogers 2004). Jurisdictions facing a problem will look to the policies of other states to find a solution to the problem or merely to keep up with these neighboring states (Boehmke and Witmer 2004; Mooney 2001; Volden 2006; Walker 1969).

However, partisanship can impact the learning diffusion mechanism (Butler et al. 2017). Recent experiments have uncovered the role of political ideology in the learning mechanism of policy diffusion. Their experimental findings indicate that policymakers are unwilling to learn if their ideology does not support the policy, but this can be overcome if the policy is successful or has been adopted by co-partisans in neighboring communities (Butler et al. 2017; Butler and Pereira 2018). Furthermore, states tend to rely on information from other states that are ideologically similar instead of geographically proximate when deciding to adopt policies (Desmarais, Harden, and Boehmke 2015). Finally, policymakers are more likely to copy the policy adoptions of other jurisdictions that have similar partisan and ideological orientations (Grossback, Nicholson-Crotty and Peterson 2004; Volden 2006).

¹¹ Policy diffusion refers to the adoption of policies by one government impacts policy adoption in other governments

Additionally, a large amount of attention has been focused on why legislatures decide to adopt new policies based on geography (Berry and Berry 1990; Mallinson 2019), interest groups (Garrett and Jansa 2015), and policies adopted by other governments (Karch 2006; Shipan and Volden 2006). Other work looks at why certain policies diffuse more than others (Boushey 2016; Makse and Volden 2011; Mallinson 2015).

Vulnerable legislative majorities, or partisan majorities that are likely to be lost in the next election cycle, also create an environment in which legislators are less likely to pass laws with sunset provisions. By not passing laws with sunset provisions, legislators are insulating their laws from easy repeal. When electoral uncertainty increases, legislators' preference for bureaucratic insulation increases (Vakilifathi 2020). Such insulation is also likely to occur if policy priorities differ between the executive and the legislature (Lewis 2003; Moe 1989). The more divergent these policy priorities are between the executive and the legislature, the more likely the legislature will pursue bureaucratic insulation (Epstein and O'Halloran 1999; Farhang and Yaver 2016; Lewis 2003; Wood and Bohte 2004). By passing laws with sunset provisions, vulnerable legislative majorities would be able to maintain their successful policies by forcing opponents to schedule hearings in order to vote on a law's renewal rather than just waiting for the law to expire. Legislative majorities who are aware they might lose their majority status in the next election do not want their policies to expire during the next legislative session. Therefore, they schedule a vote on the legislation so that their legislative majority can vote to renew the legislation.

IMPACT OF LEGISLATIVE PROFESSIONALISM ON POLICY ADOPTION

Professional legislatures have longer legislative sessions, better staff resources, and salaries that allow members to work as legislators full-time (Berry, Berkman, and Schneiderman 2000; Carmines 1974; Karnig and Sigelman 1975; LeLoup 1978; Ritt 1973; Squire 2017). Professionalism also impacts other aspects of legislatures and lawmaker behavior. As legislatures professionalize, membership turnover decreases (Berry, Berkman, and Schneiderman 2000; Moncrief, Niemi, and Powell, 2004). Professionalism also impacts policy outputs (Carmines 1974; LeLoup 1978; Thompson 1986). Professional legislatures are more likely to adopt regulatory policies (Coggburn 2003; Ka and Teske 2002; Kellough and Selden 2003; Schmeida and McNeal 2013; Slemrod 2005). Furthermore, more professional legislatures allow for more constituent contact which permits legislators to be more attentive to constituent concerns and better represent their voters' views (Lax and Phillips 2009, 2012; Maestas 2003; Squire 1992; Wright 2007). The differences between professional legislatures and citizen (or less professional) legislatures are shown in Table 4.1.

TABLE 4.1: PROFESSIONAL V. CITIZEN LEGISLATURES

Type of Legislature	Professional	Citizen
Staff	Large	Small
Sessions	Long	Short
Compensation	High	Low

Statutory control of the bureaucracy is a principal-agent problem. Legislators traditionally exercise control of the bureaucracy to ensure that the bureaucratic agencies are functioning as intended (Clingermayer 1991). Means of legislative control include

investigatory hearings, post-auditing, budgetary control, and influence over bureaucratic organizational structure (Hamm and Robertson 1981; Keefe and Ogul 1977; Jackson and Howard 1976). However, these means of control are based on the available legislative capacity (Huber, Shipan, and Pfahler 2001). State legislatures, much like Congress, exhibit control of the bureaucracy via legislation.

Scholars disagree on the impact of legislative capacity on adoption of bureaucratic oversight mechanisms. Huber, Shipan, and Pfahler (2001) argue that highly professionalized legislatures are more likely to adopt statutory control mechanisms. To exercise statutory control, legislators need the ability and knowledge to write the necessary legislation (Huber, Shipan, and Pfahler 2001). Levels of professionalism vary across the states, therefore not all legislators can devote surplus time to their legislative careers (Huber, Shipan, and Pfahler 2001; Squire 1992, 2017). In part-time state legislatures, the opportunity costs of devoting attention to legislative activities are high (Huber, Shipan, and Pfahler 2001; Squire, 1992, 2017). In these situations, legislators would be less willing to exercise oversight over bureaucratic agencies. Additionally, with less time to focus on their legislative careers, legislators would be less likely to know the specific outcomes that will occur based on certain oversight mechanisms. In highly professionalized legislatures, it is easier to retain highly qualified legislators who have gained knowledge about policy impacts. When the legislators are highly knowledgeable, they have a profound impact on legislative efforts to limit agency discretion. Prior research has not reached a consensus on the impact of professionalism on adoption of oversight mechanisms. Legislative professionalism has been found to both increase and decrease the adoption of statutory control mechanisms over the bureaucracy (Baugus,

Bose, and Jacob 2021; Hamm and Robertson 1981; Huber, Shipan, and Pfahler 2001).

Other scholars disagree, arguing that low professionalized legislatures are more likely to exercise control over the bureaucracy, specifically in the use of sunset legislation (Baugus, Bose, and Jacob 2021; Clingermayer 1991; Hamm and Robertson 1981). Low professionalized legislatures have high turnover and are unlikely to adopt sunset legislation or participate in a comprehensive evaluation of all state bureaucratic agencies (Baugus, Bose, and Jacob 2021; Hamm and Robertson 1981). When legislators are unsure about the impact of new regulations, they will attach a sunset provision to help overcome the information problem (Clingermayer 1991; Gersen 2007; Ranchordás 2014). By using sunset provisions in this manner, legislatures help improve the effectiveness of public administration (Ranchordás 2014).

Based on this theoretical framework, there are several testable hypotheses:

H1A: A state legislature's level of professionalism will be inversely or negatively related to its rate of sunset provision use in legislation

H1B: A state legislature's level of professionalism will be positively related to its rate of sunset provision use in legislation

H2: The presence of a divided government will have a positive impact on a state legislature's rate of sunset provision use

H1A will be supported if the sunset provision rate is high at low levels of legislative professionalism, or if the sunset provision rate is low at high levels of legislative professionalism. H1B will be supported if the sunset provision rate is low at low levels of legislative professionalism, or if the sunset provision rate is high at high levels of legislative professionalism. H2 will be supported if the sunset provision rate is high during divided government. This research seeks to answer the following questions:

Does a state legislature's level of professionalism have an impact on its sunset provision use rate? Secondly, does the presence of a divided government in a state have an impact on its sunset provision use rate?

To illuminate the debate of the effect of professionalism on the use of sunset provisions, this chapter examines the impact varying levels of professionalism has on the use of sunset provisions across twelve states from 1980 to 2016. Four cases are taken from each of three ordinal levels of legislative professionalism—low, medium, and high. States in the dataset include Idaho, New Hampshire, Wyoming, South Dakota (Low Professionalism); Missouri, Florida, Iowa, Alabama (Medium Professionalism); New York, California, Massachusetts, Pennsylvania (High Professionalism). Cases were selected to provide for variation in geography and political culture.

DATA AND VARIABLES

To test these hypotheses, data are collected and coded for 12 states from 1980 to 2016 were collected and coded from the Session Laws Library available through the HeinOnline database. The decision to analyze data from 1980 to 2016 was made because many states did not have legislative data readily available past 2016. Therefore, in order to make the data cohesive across the states, only data until 2016 are utilized. Four states were chosen across each level of professionalism (NCSL 2017; Squire 1992; 2007; 2017). Also included are variables for sunset provision rate, legislative professionalism, legislator ideology and citizen ideology. Legislator ideology and citizen ideology variables account for the role of partisan ideology in oversight mechanism adoption. The key dependent variable of interest is the sunset provision rate. The other variables are included to further ascertain the impact of the state political climate on the adoption of

sunset provisions in the states. Information regarding variable construction can be found in Table 4.2.¹²

TABLE 4.2: VARIABLE CONSTRUCTION

Variable	Variable Construction
Sunset Provision Rate	(Number of sunset provisions/Number of total laws) x 100
Professionalism	Squire Index
Divided Government	(Indicator) 1 if divided, 0 if not
Term Limits	(Indicator) 1 if term-limited legislature, 0 if not
Citizen Ideology	Richard Fording update of Berry et al. (1998) measure
Legislator Ideology	Shor-McCarty Ideology Data
Governor Vetoes	Number of vetoes per year
Turnover	Yearly percentage change of members

Summary statistics for the variables can be found in Table 4.3. The primary independent variable tied to my hypotheses is the Squire Index for legislative professionalism. Legislative professionalism has three components: member pay and benefits, time demands of service, and staff and facilities (Squire 2017). Highly professionalized legislatures will have access to increased staff resources and better facilities as well as higher salaries (Squire 2017). Furthermore, highly professionalized legislatures tend to be full-time which increases legislators' time demands of service (Squire 2017). Therefore, legislators in highly professionalized legislatures will not work other jobs, ordinarily. In contrast, low professional legislatures have less access to staff and facilities, receive lower wages, and have lower time demands of service since these legislatures tend to be part-time (Squire 2017). Most legislators in these states must hold other occupations to earn an income.

¹² Governor veto data was collected from the HeinOnline database. Each state maintains a yearly list of laws that were vetoed. Legislative turnover data was collected from Ballotpedia.

TABLE 4.3: SUMMARY STATISTICS

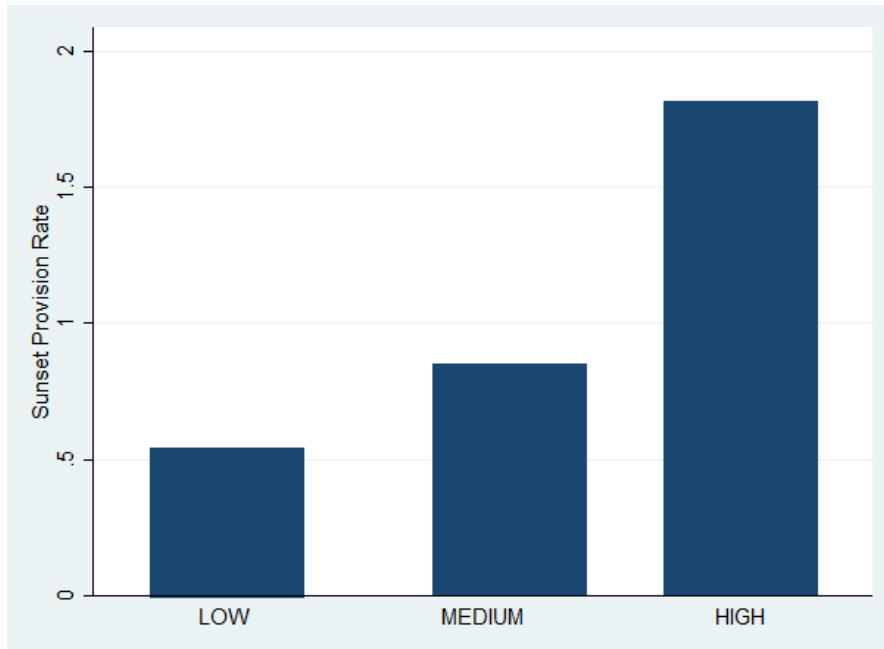
Variable	Obs	Mean	Std. Dev.	Min	Max
Term Limits	444	0.23	0.42	0	1
Professionalism	444	0.25	0.18	0.027	0.659
Divided Government	444	0.52	0.50	0	1
No. of Governor Vetoes	444	25.97	49.11	0	311
Turnover	444	26.24	23.24	0	100
Citizen Ideology	444	48.26	16.00	13.47	93.91
Legislator Ideology	444	46.41	14.10	20.56	73.62
Sunset Rate	444	1.03	1.89	0	25

There are a few outliers in the data, as can be seen in Table 4.3. First, the New Hampshire General Court only passed 4 laws in 1980 since the legislative session was a recessed session, or a continuation of a legislative session from a previous year. One of the 4 laws passed contained a sunset provision, resulting in a 25 percent rate of sunset provision use for that year. Regarding governor vetoes, in 1983, New York Governor Mario Cuomo vetoed 311 of the 1021 laws passed that year.

DATA ANALYSIS

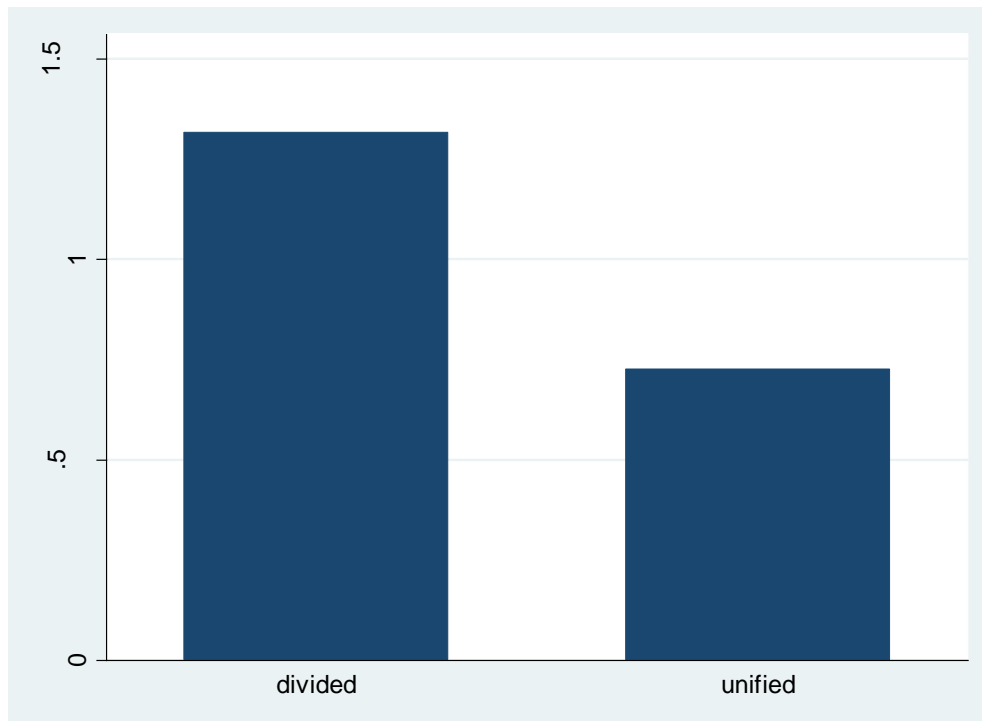
Figure 4.1 displays the average sunset provision rate across the levels of professionalism. Highly professionalized legislatures used sunset provisions more frequently. These results are consistent with findings in prior research by Huber, Shipan, and Pfahler (2001). Since legislators in highly professionalized legislatures have more time to devote to their legislative careers, they are willing to engage in more frequent oversight activities, such as passing laws with sunset provisions. Similarly, legislatures with low levels of legislative professionalism less frequently utilized sunset provisions. Those with medium scores of legislative professionalism have moderate rates of sunset laws.

FIGURE 4.1: AVERAGE SUNSET PROVISION RATE BY PROFESSIONALISM LEVELS 1980-2016



The average rate of sunset provision use across divided and unified governments is displayed in Figure 4.2. Divided governments, where the two parties have joint control of political institutions, are more likely to attach sunset provisions to statutes. The data displayed in this graph support hypothesis **H2** the presence of a divided government had a positive impact on a state legislature's rate of sunset provision use. These results support prior research that found sunset provisions are more likely to be used during divided governments to achieve consensus on legislation (Huber, Shipan, and Pfahler 2001; Maltzman and Shipan 2008; Oleszek 2007; Ranchordás 2015).

FIGURE 4.2: AVERAGE RATE OF SUNSET PROVISION USE ACROSS DIVIDED AND UNIFIED GOVERNMENTS 1980-2016



PLAN FOR ANALYSIS

Further analysis controls for other factors beyond these simple relationships. Three regression models are estimated. In the first model, the sunset provision rate is regressed on legislative professionalization. The second model includes an additional covariate, namely an indicator variable for whether a state had a divided government for each year included in the period. In the third model, all covariates listed in Table 4.2 are included.

The results of the regression models are shown in Table 4.4. Across all three regression models, three variables are statistically significant and associated with frequency of sunset provisions in statutes: legislative professionalism, divided

government, and the number of governor vetoes. The legislative professionalism score was positive and statistically significant in all three statistical models. This means that as a legislature professionalizes, it is more likely to pass laws with sunset provisions. Highly professionalized legislatures are more likely to add sunset provisions, presumably because legislators are more aware of the implications of adding such an oversight mechanism to legislation. The legislators may be more aware of such implications because they are able to devote more time to their careers and therefore are more knowledgeable about the impacts of oversight mechanism. As a result, these legislators are more likely to use sunset provisions. Additionally, the indicator for divided government is positive and statistically significant in Model 2. These results for divided government mean that the presence of divided government may lead legislators to make a concession to pass legislation by adding sunset provisions. Finally, variables for professionalism and the number of gubernatorial vetoes are positive and statistically significant in Model 3. Gubernatorial vetoes may have a positive impact on rate of sunset provision use because as governors increasingly use vetoes, legislatures will add sunset provisions to allow for a test period on legislation that the governor may be reluctant about passing long-term. These results do not support hypothesis **H1A** because a legislature's level of professionalism had a positive impact on the rate of sunset provision use in the states. Instead, these results support hypothesis **H1B**. These results also provide some support for hypothesis **H2** as the presence of a divided government had a statistically significant effect on a state legislature's rate of sunset provision use. However, in the full model, this variable becomes not significantly different from a null effect. Of course, the explanatory power of the regression models is rather small

($R^2 < .15$), as other factors may well influence statutory sunset provisions, such as crisis, uncertainty about new regulatory platforms, and similar explanations to those discussed in previous chapters. Nevertheless, the relationship between legislative professionalism and application of sunset provisions is consistently strong.

TABLE 4.4: IMPACT OF LEGISLATIVE PROFESSIONALISM ON SUNSET RATE

Variable	Model 1	Model 2	Model 3
Professionalism	3.73 *** (0.45)	3.56 *** (0.63)	2.08 *** (0.76)
Divided Government		0.37 ** (0.17)	0.31 (0.17)
No. of Governor Vetoes			0.009 *** (0.002)
Turnover			0.0003 (0.0031)
Term Limits			0.36 (0.20)
Citizen Ideology			-0.01 (0.008)
Legislator Ideology			0.01 (0.007)
Intercept	0.11 (0.14)	-0.04 (0.15)	0.06 (0.35)
R-Squared	0.13	0.14	0.19
N	444	444	444

Standard errors in parentheses; *** $p < 0.001$; ** $p < 0.01$ * $p < 0.05$

In order to investigate the association between legislative professionalism and sunset laws, three additional regression models are estimated.. The first is an OLS

regression with the

professionalism variable broken into its three constituent parts – salary, session length, and resources. The other two regression models are fixed and random effects models, respectively, to account for the differences in legislative professionalism across time.

Given that professionalism is comprised of three components: legislative pay, session length, and staff, it is important to determine which aspect of professionalism has an impact on the rate sunset provision use across the states. In order to determine the impact of legislative professionalism on sunset provision use, an updated version of Bowen and Greene's (2014) Legislative Professionalism Component scores is utilized. The dataset breaks down legislative professionalism into three components: legislative expenditures, legislator salary, and session length. Additionally, fixed and random effects regressions with the comprehensive legislative professionalism variable are conducted in order to account for the differences in legislative professionalism across time in my dataset. The results from these regressions are in Table 4.5.

In Model 4, only one portion of legislative professionalism is positive and statistically significant: session length. As the session length increases, legislatures are more likely to pass laws with sunset provisions. The extra time may provide opportunities to amass the knowledge requisite to understand the impacts of adding such an oversight mechanism to legislation. Additionally, the variable for citizen ideology is negative and statistically significant, and the number of governor vetoes is positive and statistically significant. In Models 5 and 6, professionalism is positive and statistically significant, and the number of governor vetoes is also positive and statistically significant. These latter two models provide a validity check on the results found above.

The variables found as significant and associated with sunset provisions under these alternative statistical assumptions.

TABLE 4.5: IMPACT OF LEGISLATIVE PROFESSIONALISM ACROSS TIME

Variable	Model 4	Model 5	Model 6
Professionalism		2.36** (0.83)	2.17** (0.77)
Expenditures	0.006 (0.001)		
Session Length	0.003 * (0.001)		
Salary	0.005 (0.003)		
Divided Government	0.28 (0.17)	0.40** (0.18)	0.34 (0.17)
No. of Governor Vetoes	0.007** (0.002)	0.008*** (0.002)	0.009*** (0.002)
Turnover	0.002 (0.003)	0.001 (0.005)	0.0004 (0.003)
Term Limits	0.35 (0.22)	0.31 (0.22)	0.35 (0.20)
Citizen Ideology	-0.02** (0.008)	-0.008 (0.008)	-0.009 (0.007)
Legislator Ideology	0.007 (0.007)	0.005 (0.008)	0.008 (0.008)
Intercept	0.37 (0.35)	0.08 (0.005)	
N	444	444	444
R-Squared	0.23	0.21	0.21

Standard errors in parentheses; *** p< 0.001; **p < 0.01 * p < 0.05

CONCLUSION

This chapter extends the previous research in two important ways. First, it contributes to the research on the impacts of state legislative professionalism. Previous research has shown that legislative professionalism increases membership stability and diversity, policymaking capacity, and responsiveness to constituents (Rosenthal 1996; Squire 1992, 2007, 2017; Thompson 1986). Little focus has been paid to the impact of

professionalism on the adoption of oversight mechanisms. Prior research tends to focus on policy evaluation and program review (Elling 1979; Chadwin 1974; Crane 1977; Pethel and Brown 1972; Poggione and Reenock 2009; Rosenthal 1981), and committee structure and staff (Aldrich and Rohde 2005; Brown 1979; Curry 2015; Etheridge 1984; Patashnik and Peck 2017; Rohde 2005).

This chapter finds that legislative professionalism has an impact on the adoption of oversight mechanisms such as sunset provisions. The analysis demonstrates that highly professionalized legislatures utilize more sunset provisions than legislatures of other professionalism levels. These results supports Hamm and Robertson's (1981) findings but contrasts with Huber, Shipan, and Pfahler (2001) and Baugus, Bose, and Jacob (2021). Legislators in highly professionalized legislatures are more likely to pass laws with sunset provisions because the longer legislative sessions provide the time to amass the requisite knowledge to understand the implications of using such oversight mechanisms.

Second, this research extends previous research on the impact of divided government. It is well known that during divided governments, legislatures will pass laws with sunset provisions to achieve a political consensus (Huber et al. 2001; Maltzman and Shipan 2008; Oleszek 2007; Ranchordás 2015). The quantitative analyses demonstrated that the presence of divided government resulted in a higher rate of sunset provision use in the state legislatures from 1980 to 2016. Divided government increases the rate of sunset provision use as legislators must reach a consensus to pass legislation, and sunset provisions serve as this concession as the law will cease to exist if not explicitly renewed by the legislature. However, it should be noted that the positive, statistically significant relationship between divided government and sunset provision use disappears in all but

one statistical model when a control variable for gubernatorial vetoes is included. This relationship demonstrates the impact of a gubernatorial veto action on legislative oversight behavior.

Finally, this chapter also expands on the previous research by examining the impact of gubernatorial vetoes on the adoption of oversight mechanisms. This research demonstrates that the more vetoes a governor uses, the more likely the legislature is to add sunset provisions to approved legislation. Governors who are unsure about the implications of legislation may decide to not veto legislation if the legislature appends a sunset provision as it would allow for a test period to determine how the law works. This would be consistent with a bargaining process between the executive and the legislative branches; a compromise can be found with a temporally limited statute.

CHAPTER 5: CONCLUSION

In order to regularly enact governmental policies, legislators require numerous resources to become fully informed about policy under consideration. Unfortunately, information for busy legislators is often lacking in the policy process. In order to overcome a dearth of information, legislators take cues and guidance from lobbyists (Hall and Deardorff 2006), committees (Krehbiel 1991), constituents (Jones and Baumgartner 2005), and each other (Kingdon 1989) to make decisions on bills as if they were fully informed. Even though these resources help legislators enact policy directives, legislators are still not well-informed about every, or perhaps any, bill under consideration in their legislature. Therefore, legislators sometimes add sunset provisions to bills to allow for a trial period. Future legislators can make policy evaluations and maintain, amend, or end these statutes.

Sunset provisions offer legislators possible alternatives to handle this problem of uncertainty (Ranchordàs 2015). Yet, a dearth of literature exists using sunset provisions as the dependent variable. Instead, earlier literature on sunset provisions does not focus on legislative development and uncertainty as a reason legislators employ sunset provisions. The research presented in this dissertation offers a detailed analysis of the application of sunset provisions in several legislative settings and adds to the knowledge about legislative outputs.

This dissertation builds on the literature regarding the impact of information on policy adoption (Burstein 2014; Ranchordàs 2015). This phenomenon is explored via an

examination of the impact of legislative institutionalization and professionalism through the lens of sunset provisions. First, a quantitative analysis of the colonial and early state legislatures from 1757 to 1795 explores the impact of legislative institutionalization on sunset provision use. In contrast to modern legislatures which use only one type of expiration term (exact time frame), the colonial and early state legislatures used five different types of expiration terms: an exact time frame, at the end of a war, referenced the national Congress, referenced the next meeting of the legislative assembly, or gave a non-specific time frame. This variation of expiration terms within sunset provisions is demonstrative of the legislative uncertainty existing in the legislatures during this period of American Political Development. As the colonial and early state legislatures became more institutionalized, the variation in the types of sunset provisions decreased, and the exact time frame category of sunset provision became the only expiration term used. Additionally, the analysis also demonstrates that sunset provisions decreased in popularity as the colonial and early state legislatures became more secure in their institutionalization which presumably resulted in reduced legislative uncertainty.

In the second analysis, the impact of legislative institutionalization on policy adoption is explored by examining sunset provision use throughout sessions of the United States Congress from 1789 to 2020. The results indicate that legislative institutionalization is inversely related to the rate of sunset provision use. As Congress grew more institutionalized in the modern sense, members served in office longer and became more knowledgeable about policy implications. This increased knowledge led to less member uncertainty about the policy process and, as a result, fewer laws were passed with sunset provisions. The findings also show that the rate of sunset provision use began

to decrease in the Committee Era, which suggests that committees serve an important role in information-gathering for legislators. During the Committee Era (1910s-1960s), the committees became more specialized in their functions and members of Congress began to amass more knowledge about certain policy topics. This development decreased legislative uncertainty and resulted in members of Congress including fewer sunset provisions in newly-enacted legislation.

In the third empirical analysis, the impact of legislative professionalism on policy adoption is explored. Highly professionalized legislatures utilize more sunset provisions than legislatures of other, lower levels of professionalism. This research supports a view closer to the findings of Hamm and Robertson (1981) findings that sunset is associated with intergovernmental conflict. The results here contrast with Huber, Shipan, and Pfahler (2001) and Baugus, Bose, and Jacob (2021) who found that low professional legislatures are more likely to use oversight mechanisms. Based on findings from twelve states across the range of professionalization, legislators in highly professionalized legislatures are more likely to pass laws with sunset provisions. This may be because the legislators have additional time to amass the requisite knowledge to understand the implications of using such oversight mechanisms. The findings also suggest that the presence of divided government resulted in a higher rate of sunset provision use in these state legislatures from 1980 to 2016. Divided government—or interbranch conflict resulting in more frequent gubernatorial vetoes—increases the rate of sunset provision use. Legislators must reach a consensus to pass legislation, and sunset provisions serve as this concession as the law will cease to exist if not explicitly renewed by the legislature.

While this dissertation makes important contributions, it also creates avenues for future research. In the future, interviews should be conducted with members of Congress, state legislators, and their staff in order to gather more qualitative data on the importance of sunset provision use in lawmaking at both the federal and state level. These individuals are at the forefront of policy adoption, and it would prove useful to get their views on this important policy device. The state chapter dataset could be expanded to include more states rather than just the twelve that are currently present. Additionally, the idea of “copy-and-paste lawmaking” in state legislative policy adoption could be incorporated to explore whether states have more or less uncertainty when adopting policies that are successful in other states. Specifically, future research should explore if the state legislatures are less likely to include sunset provisions in laws that have been successful in other states. The time frame in my state legislative dataset should be expanded to include the time span of 1940 to 2020 as the current dataset only covers the span after the state legislative professionalization movement took hold. The legislative professionalization movement began in the 1960s. By expanding the time frame to include a time period before the professionalization movement commenced, it would provide a clearer test of the impact of professionalization on oversight mechanism adoption.

Finally, as previously stated, this dissertation only explored the passage of laws with sunset provisions. There are circumstances in which sunset provisions are proposed additions to legislation, but the sunset provision is never added, or when sunset provisions are added to bills, but the bills are not passed into law. Future research should explore these situations more in-depth to determine why legislators decided against

adding a sunset provision to legislation in addition to finding out why a bill could not pass even though it had a built-in test period attached through the inclusion of a sunset provision.

What does seem certain, however, is that sunset provisions are strategic options for lawmakers who seek policy alternatives when longer term implications are hidden within the fog of uncertainty. Any statute, of course, can be repealed or altered by a legislature at a later date. Yet statutory authorizations are remarkably sticky. As economist Milton Friedman (1984:115) once observed, “Nothing is so permanent as a temporary government program.” The option to force a reconsideration of a policy directive is a strategic decision on the part of legislators to adopt policies without guarantees of a long-term commitment. This study of sunset provisions in several different political environments in American legislative history shows that legislators engage in strategic behavior regarding sunset provisions.

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