September 7, 2025

Dear Columbia Law and Economics Workshop Participants:

Attached is my workshop paper, The Crisis-Driven Politics of the Iron Law of Financial Regulation," which is a piece of a larger project on crisis-driven financial legislation that I have been working on for a number of years. The paper refers to an appendix that contains technical details and additional analyses; I have not suggested that it be circulated (the paper is quite long as it is), but I have provided it to Marta, so that it is available for anyone who wishes to read all or part of it. I look forward to your comments.

Roberta

The Crisis-Driven Politics of the Iron Law of Financial Regulation

Roberta Romano *
Yale Law School, NBER and ECGI

Draft: September 7, 2025

Abstract

Can significant differences in the regulatory impact between important crisis- and noncrisis-driven financial legislation be explained, at least in part, by differences in the characteristics of their enacting Congresses and the deliberative process by which they are enacted? This paper investigates that question and finds that important crisis-driven banking statutes are enacted in a distinctive political environment compared to important noncrisis-driven ones that is conducive to the enactment of policies resulting in large increases in regulation.

First, heightened media salience of banking matters and congressional activity in the runup to crisis-driven statutes' enactment when compared to noncrisis ones incentivize legislators to enact legislation with a large regulatory impact. Second, crisis-driven laws tend to be enacted in Congresses with more liberal legislators than noncrisis ones, and with House majorities having a greater capacity to implement major policy change without requiring bipartisan support, given the majority's size and cohesiveness as a voting block.

Third, crisis-driven laws are often enacted under conditions less favorable to an open deliberative process than noncrisis-driven ones. Large and cohesive House majorities enact important crisis-driven statutes, often on party unity votes, under restrictive rules which can enable majority party leadership to block voting on amendments that might be approved on the floor, reducing or even precluding minority input into policymaking. By contrast, important noncrisis statutes are typically brought to the floor in the House under open rules or by unanimous agreement. In addition, bills enacted as crisis-driven laws are often not subject to a legislative hearing, increasing the likelihood of less vetted, hence less well crafted, legislation, which ought to be a matter of concern, given their far greater regulatory impact than noncrisis-driven laws.

Finally, the numerous findings of specific differences between crisis- and noncrisis-driven statutes are summed up in a principal components analysis. Combining the media and congressional variables, along with statutes' regulatory content and impact, the analysis provides a proof of concept that the politics of important financial crisis- and noncrisis-driven statutes are distinct.

Please do not circulate, cite or quote without permission. Comments welcome.

* I would like to thank discussant David Hasen and participants at CELS 2024, discussant Michael Troege and participants at 14th NYU-LawFin/SAFE-ESCP BS Law & Banking/Finance Conference; Sarah Binder, Robert Oldham, participants at the University of Chicago and Yale law school workshops and the ALEA 2025 annual meeting; Yale Law School librarian Michael VanderHeijden for outstanding research support; and Jeffrey Schroeder, Yale Law School class of 2021 and Francesco Spirli, Yale College class of 2022, for superb research assistance.

Table of Contents

I. Introduction

The regulatory impact of all important financial legislation is not the same: important financial legislation enacted in the wake of financial crises, as a general proposition, is starkly different from important financial legislation enacted in noncrisis times. Crisis-driven statutes have significantly greater regulatory content and complexity and are followed by much greater increases in regulation than noncrisis-driven ones, although the magnitude of the impact differs across crises.[1] The result is that financial crises leave an indelible imprint on U.S. law, a phenomenon that I have referred to as an "iron law of financial regulation."[2]

The mechanics of the legislative process are often treated as a "black box" by commentators on financial legislation.[3] My approach in this paper, by contrast, is to go inside the black box, to investigate the deliberative procedures as well as the composition of Congresses enacting important crisis- and noncrisis-driven financial legislation. The aim is to determine whether there are identifiable differences in the enacting Congresses that could assist in explaining the large difference in regulatory impact between the two categories of statutes.

An additional reason for focusing attention on legislative procedures is that they can

---

[1] Roberta Romano, *Are There Empirical Foundations for the Iron Law of Financial Regulation?* AMER. L. & ECON. REV. (forthcoming 2024).

[2] I have developed the thesis in: Roberta Romano & Simon Levin, *Sunsetting as an adaptive strategy*," 118 PNAS e201528118 (2021); Roberta Romano, *Regulating in the Dark and a Postscript Assessment of the Iron Law of Financial Regulation*, 43 HOFSTRA L.REV. 25 (2014) (hereafter Postscript); Roberta Romano, *Regulating in the Dark*, *in* REGULATORY BREAKDOWN: THE CRISIS OF CONFIDENCE IN U.S. REGULATION 86 (Cary Coglianese, ed., 2012) (hereafter Regulating).

[3] *E.g.,* John C. Coffee, *The Political Economy of Dodd-Frank: Why Financial Reform Tends to Be Frustrated and Systemic Risk Perpetuated*, CORNELL L. REV. 1019 (2012); Peter Conti-Brown & Michael Ohlrogge, *Financial Crises and Legislation*, 4 J. FIN. CRISES 1 (2022).

facilitate or hinder the extent to which legislators' voting decisions are informed. That is an acute concern regarding crisis-driven financial legislation because if the exigencies of a crisis quite rationally incentivize legislators to short circuit the legislative process, it would exacerbate the informational challenges inherent in crafting crisis-driven legislation. Namely, when legislators act in the wake of a crisis, critical facts, including an explanation of a crisis's causes and effects, will be, at best, murky, rendering it especially daunting for legislation to achieve means-end rationality. Even explanations of crises developed by leading economists from information gleaned years after the outset of a crisis can be brought into question by new data about that very crisis a decade thereafter.[4]

Because congressional majorities select legislative procedures they deem best suited to advance their agenda, differences in the composition of the enacting Congresses are also investigated. The content of legislation will be more consistent with the majority party's ideology when its margin of control, in conjunction with the homogeneity of its members' preferences, is greater. That is because the majority party's size and cohesion (which is a function of preference homogeneity) determine whether it will require minority support to enact legislation. Such a combination of factors will, in turn, influence the procedures the majority party leadership uses to structure deliberation, to facilitate an outcome in which its policy preference is more likely to prevail. The composition of Congress is also consequential as it affects the extent to which the content of legislation will be influenced by the president as well as legislators. Financial crises push banking matters onto a president's agenda as well as that of legislators but presidential

[4] *Cf.* Gary B. Gorton & Andrew Metrick, *Securitized banking and the run on repo*, 104 J. FIN. ECON. 425 (2012) *with* Adam Copeland & Antoine Martin, *Repo Over the Financial Crisis*, FRB of New York Staff Report No. 996 (2021), https://ssrn.com/abstract=3988931.

priorities are most attended to by congresses when there is unified party control of government.[5]

I find that there are a number of important differences between important crisis- and noncrisis-driven statutes not only in the media coverage of banking matters in the run up to their enactment but also in the procedures adopted and congressional composition. First, as would be intuited and consistent with the iron law's perspective on what spurs legislation, prior to the enactment of important crisis-driven statutes, there is greater coverage, by at least an order of magnitude, of banks and banking-related matters as well as of congressional deliberations on the legislation, than there is before the enactment of important noncrisis-driven laws. In addition, the public's disposition to government intervention in the economy is greater in years in which crisis-driven statutes, compared to noncrisis-driven ones, are enacted.

Second, the informational challenges for legislators in crisis times that are amplified by greater salience of banking-related matters feeds into notable differences in crisis-driven statutes' legislative progress to enactment. There tend to be fewer legislative hearings on crisis-driven statutes, and they are more frequently considered under a restrictive rule in the House, limiting amendments, compared to noncrisis-driven ones. Moreover, the disparate conditions for floor debate in the House are not explained by findings in the literature of a decline in congressional deliberation over time.[6]

The procedural differences between crisis- and noncrisis-driven statutes result in

---

[5] JAMES M. CURRY, LEGISLATING IN THE DARK: INFORMATION AND POWER IN THE HOUSE OF REPRESENTATIVES (2015).

[6] *E.g.,* JONATHAN LEWALLEN, COMMITTEES AND THE DECLINE OF LAWMAKING IN CONGRESS (2020); Geroge E. Connor & Bruce I. Oppenheimer, *Deliberation: An Untimed Value in a Timed Game*, *in* CONGRESS RECONSIDERED 315 (Lawrence C. Dodd & Bruce I. Oppenheimer, eds., 5th ed., 1993).

members, in crisis times, having to rely more for information on party leadership because even their expertised colleagues (those on the Banking Committee) and their staff are less well-informed when they lack the information and input provided by witnesses with expertise testifying at a legislative hearing. Moreover, an important conventional source of information for legislators in ordinary times -- constituents in industries affected by proposed legislation and their lobbying organizations -- are in disrepute, given the crisis, and are therefore viewed with skepticism, if not shunned. The more limited sources of information relevant to formulating public policy due to differential procedures of crisis- compared to noncrisis-driven statutes magnify the earlier-mentioned informational challenges of legislating in a crisis related to the inability to identify with accuracy factors that may be contributing to a crisis until well after it is over.

The more frequent use of restrictive procedures for considering crisis-driven than noncrisis-driven legislation is of further concern from the perspective of democratic theory. The ability to block amendments for which the preference of a cross-party majority on the floor would differ from that of a drafting committee majority or majority party leadership is an issue whenever such procedures are used, and does not arise solely for crisis-driven legislation. But the democratic deficit is exacerbated even further by the poor information environment in which crisis-driven legislation is considered. As a consequence, the procedural differences by which crisis- and noncrisis-driven legislation is considered suggest that the quality of congressional decisionmaking will, in general, be lower in times of financial crisis, resulting in adoption of policies that are less well-crafted and potentially less representative of a chamber majority on some provisions than might be adopted under an open rule in noncrisis times.

Third, crisis-driven financial laws tend to be enacted in a distinctly different political setting from noncrisis-driven ones. The median legislator is more ideologically liberal in both chambers, the Senate majority is more ideologically homogeneous, and there are more cohesive Democratic party majorities in the House of Representatives (House), with more frequent party-unity votes (a vote on which a majority of one party votes on the opposite side of a majority of the other party) when crisis-driven statutes are enacted compared to non-crisis ones. Most important, the proportion of crisis-driven statutes whose enactment steamrolls the minority is far higher than the steamrolling percentage found in a comprehensive study of congressional voting on major legislation,[7] no doubt due, to some extent, to the exigent circumstances of a crisis. Many, but not all, of the party unity votes enacting important banking legislation occur under unified government with large majority margins.

The controlling party in all U.S. financial crisis Congresses, Democrats, is favorably predisposed to regulation (i.e., more ideologically liberal) and in a number of those Congresses, it had a sufficiently cohesive majority that did not require Republican support to enact legislation (as evidenced by party unity votes). In such circumstances, even potentially well-founded issues raised by the minority regarding the legislation can be ignored, exacerbating the limited deliberation afforded by the procedural decisions to not hold a hearing or to use a restrictive rule.

The greater media, hence public, attentiveness to banking, as well as greater public receptivity to government solutions in crisis times, when combined with cohesive Democratic party control of Congress and the presidency, work in tandem to create a highly accommodating environment for enacting legislation generating large-scale regulatory impact without the usual

[7] See part V, infra.

cross-party compromise accompanying legislation. These circumstances are in sharp contrast to the enactment of important banking statutes in noncrisis times, with banking matters not being as salient as in crisis times, and all but one of the statutes adopted with bipartisan support. Such a political dynamic of crisis-driven legislation ought to be disquieting because, as political scientists have noted, "[i]t is no exaggeration to say that compromise is central to democracy; without it, a democracy -- especially a large, pluralistic democracy – cannot function." [8]

I do not attempt to evaluate the quality of the substantive content of statutes enacted in crisis versus noncrisis times in order to investigate the iron law's intuition that crisis-driven laws have a greater potential for generating policy errors than noncrisis-driven ones. That is because there is no generally accepted metric of legislative quality. I investigate instead the quality of legislative decisionmaking by inference, making use of the intuition that the quality of decisionmaking will be affected by the quality of the procedures adopted to reach a decision. Superior deliberative procedures can produce higher quality outcomes by facilitating more informed decisionmaking and subjecting proposed legislation to a robust assessment, increasing the likelihood of identifying and thereby addressing potentially problematic provisions. I focus on procedures where such a relation is relatively straightforward: legislative hearings that produce useful information about proposed legislation; and rules regulating a chamber's deliberation that can delimit the policy options that can be presented for legislators' consideration.

While errors in financial legislation certainly cannot be entirely avoided given the

[8] E.g., JAMES N. DRUCKMAN, ET AL., PARTISAN HOSTILITY AND AMERICAN DEMOCRACY 36 (2024).

dynamic environment in which regulated financial institutions operate, superior procedures, intuitively, ought to reduce the probability of policy error. The accuracy of the iron law's contention that legislation adopted in crises is, in general, of lower quality than that enacted in noncrisis times is thereby proxied by the extent to which important crisis-driven laws are more frequently enacted using procedures restricting available information and deliberation, which are thereby more likely to produce poorer quality legislative outcomes, compared to important noncrisis-driven laws.

The paper begins by introducing the "iron law of financial legislation" and its empirical foundation, that is, the presence of an association between crises and legislation and a differential regulatory impact between crisis-driven and noncrisis-driven important financial legislation. It then presents data demonstrating that banking matters are far more salient prior to the enactment of important crisis-driven than noncrisis-driven statutes, using a variety of media sources, public opinion polls and presidential priorities as indicated in State of the Union addresses. Thereafter, it analyzes differences in key features of the legislative context in which statutes are enacted – use of procedures that short-circuit deliberation, chamber composition and voting outcomes (in particular, whether legislation was enacted with bipartisan support) – that provide insight into the sharply contrasting dynamic and regulatory impact of important crisis-driven compared to noncrisis-driven financial legislation. The paper concludes with a principal components analysis that combines media and political environment variables and indicators for legislative hearings and restrictive rules with measures of the statutes' regulatory content and impact. The analysis provides a proof of concept, with a visual presentation, that the two categories of statutes, crisis- and noncrisis-driven, are cleanly, and sharply, distinguishable.

II. The Iron Law of Financial Regulation

The iron law is a pattern by which financial crises catapult financial regulation toward the top of the policy agenda, as officeholders respond to media and public demand for government intervention to rein in financial markets and institutions, which are perceived in such crises by many voters to be "bad actors." This pattern generates legislative action when it is most daunting to ascertain with confidence a crisis's causes, let alone how best to remediate the situation, in a political environment highly amenable to increased regulation. In such a scenario, legislators layer new laws and regulation on top of existing ones, increasing firms' costs, as well as the complexity and opacity of the regulatory regime.

A. Factors whose Confluence Produces the Iron Law

The confluence of three factors produces the iron law. The first factor is financial firms' operating environment, which is characterized by dynamic innovation and two types of uncertainty: radical or Knightian uncertainty (future states of the world to which a probability cannot be assigned because they cannot be imagined), and dynamic uncertainty (the confounding of regulation by regulated entities' responses to it, which include financial innovation).[9] Both types of uncertainty create risks that regulators cannot anticipate well. Such unanticipated risks can render existing regulation inapt, whether or not it was effective when promulgated. Accordingly, in the best of circumstances, noncrisis times when legislators can seek out information at a more thorough and deliberate pace, enacting effective financial laws and implementing regulation is a considerable challenge for even the most conscientious legislator.

---

[9] Romano & Levin, *supra* note 2. Financial innovation is often a response to regulation. Merton H. Miller, *Financial Innovations: The Last Twenty Years and the Next*, 21 J. FIN. & QUANT. ANALYSIS 459 (1986).

The second factor, which exacerbates the difficulty in formulating effective financial regulation, is a regularity in legislators' behavior in the wake of a financial crisis, to enact legislation, layering new regulation onto existing regulation, even though there is a scarcity of information to permit formulation of a well-informed and calibrated response. This is because financial crises are paradigmatic "focusing" events thought to move issues to the top of the legislative agenda,[10] as bank failures evoke fear, if not panic, in the public, generating widespread anxiety over personal financial security. As Hirshleifer notes more generally, "regulatory debates are influenced heavily by extreme events and by heart-rending stories" that are vivid to the public, while regulatory costs are invisible, and "explanations based on villainy" lend themselves to "simple cures .. . through regulation."[11] Correspondingly, financial crises in particular spawn a political and legislative environment that is not conducive to reasoned discourse and informed, high quality decisionmaking.[12] From the perspective of legislative quality, it is the paradigmatic context in which congressional procedures that foster deliberation would add value.

There is a substantial literature identifying a connection between event salience (measured by media coverage), election outcomes, government policy prioritization and policy

---

[10] JOHN W. KINGDON, AGENDA, ALTERNATIVES AND PUBLIC POLICIES (updated 2d ed., 2011).

[11] David Hirshleifer, *Psychological Bias as a Driver of Financial Regulation*, 14 EUR. FIN. MGMT 856 (2008).

[12] Experimental and observational data suggest that individuals often make poor decisions when acting under stress in circumstances entailing judgment regarding how to resolve dangerous, typically life-threatening, failures of complex mechanical systems JAMES R. CHILES, INVITING DISASTER: LESSONS FROM THE EDGE OF TECHNOLOGY 39, 177-78 (2001). But whether those findings can be extrapolated to lawmaking in a financial crisis is not straightforward: legislators are not confronting an immediate life-threatening event and legislative decisionmaking is not readily comparable to the workings of a mechanical system.

implementation.[13] Legislators' reelection objective is the linchpin in the literature's analysis.[14] The salience of financial crises directs public attention toward government solutions, and it would therefore be unexceptional for financial crises to incentivize legislators to act, despite the inopportune timing for crafting a well-considered, well-tailored response. For even if a statutory fix turns out not to have a long-term ameliorative effect on the occurrence or severity of future crises, or to have a negative impact on economic growth, enactment provides the immediate benefit to legislators of demonstrating responsiveness to the public and media calls for government to address the crisis at hand. The intuition regarding the impact of increased media salience of banking matters on public attentiveness and hence, on legislators' regulatory responses, tracks the finding of a cross-country study by Culpepper and colleagues, that survey respondents' preference for financial regulation increases when they are exposed to news stories about scandals involving a large domestic bank.[15]

---

[13] *E.g.,* Timothy Besley & Robin Burgess, *The Political Economy of Government Responsiveness: Theory and Evidence from India*, 117 Q. J. ECON. 1415 (2002); Claudio Ferraz & Federico Finan, *Exposing Corrupt Politicians: The Effect of Brazil's Publicly Released Audits on Electoral Outcomes*, 123 Q. J.ECON. 703 (2008); James M. Snyder Jr. & David Strömberg, *Press Coverage and Political Accountability*, 118 J. POL. ECON. 355 (2010); Andrew Yates & Richard Stroup, *Media Coverage and EPA Pesticide Decisions*, 102 PUB. CHOICE 297 (2000).

[14] The canonical view that reelection is a legislator's sole objective is DAVID MAYHEW, CONGRESS THE ELECTORAL CONNECTION (1974). A more recent literature emphasizes that legislators have multiple goals besides reelection, such as "making good public policy, seeking individual power in the chamber," or their party's majority control of the chamber, *e.g.*, John H. Aldrich & David W. Rohde, *Lending and Reclaiming Power: Majority Leadership in the House from the 1950s to Trump, in* CONGRESS RECONSIDERED 33, 37 (Lawrence C. Dodd, Bruce I. Oppenheimer & C. Lawrence Evans, eds., 12th ed., 2021). However, as multiple goal proponents acknowledge, reelection "certainly dominates much congressional activity" and is "important for achieving all of the other posited goals." *Id.*

[15] Pepper D. Culpepper, Jae-Hee Jung & Taeku Lee, *Banklash: How Media Coverage of Bank Scandals Moves Mass Preferences on Financial Regulation*, 68 AM. J. POL. SCI. 427

The third and final factor generating the iron law is the design of U.S. political institutions that renders legislation sticky. Numerous constitutional and institutional veto points create speed bumps, which can become roadblocks to enacting legislation (i.e., the need for bicameral approval and that of the president to enact legislation; organization into committees that can create legislative bottlenecks; and the scarcity of time and hence, capacity to act due to limited time for plenary floor action). These structural features of the U.S. legislative process not only provide a substantial challenge to enacting a law in the first place but also, if not more importantly, reduce the incentive of lawmakers to revisit legislation enacted in the exigency of a crisis, in the absence of another emergency. While unified government reduces, and could even eliminate, the importance of the institutional checks and balances of the separation of powers,[16] once legislation is enacted, constituencies quickly emerge that have a vested interest in maintaining the legislative status quo, which create formidable opposition to legislative updating, whether or not one party controls both chambers and the presidency.[17]

Numerous sticking points are endemic to U.S. lawmaking, but the rather technical nature of financial legislation makes it particularly sticky, as the attention and interest of the public and legislators lapse with the fading of a crisis. Regulatory matters are ceded to banking regulators who, consistent with a well-recognized behavioral tendency to adhere to the status quo, further

---

(2024).

[16] As Maurice Duverger trenchantly noted decades ago, unified government (in contrast to divided government) "almost entirely does away with the constitutional separation of powers," blurring "the difference between the presidential and the parliamentary regimes." MAURICE DUVERGER, POLITICAL PARTIES 396-97 (1951).

[17] ERIC M. PATASHNIK, REFORMS AT RISK (2008).

constrain the regulatory regime's responsiveness to new developments.[18] Moreover, as policy benefits often accrue in the future (e.g., reduced probability of a crisis or its severity), while costs are felt immediately (e.g, reduced availability of credit), there is a temporal mismatch that, as the International Monetary Fund (IMF) put it in discussing regulators' implementation of macroprudential policy tools, "lead[s] to biases in favor of inaction."[19] Such behavioral phenomena, in turn, hamper the resilience of the regulatory regime, as they impair prompt adjustment to the dynamic innovation of financial markets.[20]

The conjunction between crisis-driven legislation being enacted in exigent circumstances in an informationally-sparse environment with the dynamism of financial markets results in a heightened probability that it will include at least some, if not numerous, provisions that are not tailored to address the crisis at hand, and still others that will become ineffective or counterproductive over time, as financial innovations emerge in response to legislation and implementing regulation. This dynamic, coupled with the difficulty of revising legislation, produces an increasingly complex and opaque regulatory regime in which episodic deregulatory initiatives that originate in noncrisis times are quickly swamped by subsequent regulation.[21]

---

[18] The classic study of status quo bias is William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7 (1988). Romano provides a review of risk aversion, among other factors, noted in the literature, that reenforce a tendency of banking regulators to favor the status quo. Romano, *supra* note 1.

[19] International Monetary Fund, *Staff Guidance Note on Macroprudential Policy* (2014), https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Staff-Guidance-Note-on-Macroprudential-Policy-PP4925.

[20] Romano & Levin, *supra* note 2.

[21] Romano, *supra* note 1.

B. Empirical Foundations of the Iron Law

In prior work, I investigated whether there is empirical support for two key components of the iron law: (i) whether there is an association between financial crises and important financial legislation; and (ii) whether important financial legislation enacted in the wake of a crisis differs significantly from that enacted in noncrisis times as measured by its content and regulatory effect.[22] My findings of a greater regulatory impact of crisis-driven statutes, which I briefly summarize here, provide the backdrop for this paper's followup inquiry regarding whether differences in the political dynamics of statutes' enactment can explain, at least in part, the large disparity in regulatory outcomes.

I identified crises from the consensus in the economics literature on financial crises that have occurred in the United States.[23] The time frame for analyzing the iron law begins in 1915 with the organization of the Federal Reserve System (Fed). That is because the presence of a central bank transforms the banking environment, and hence, the relation between legislation and crises: as a lender of last resort, a central bank can reduce the risk of bank runs, and thereby the probability of a crisis, which would alter the relation between crises and congressional response that existed in a pre-central bank era.[24] A further reason for commencing the inquiry upon the

---

[22] *Id*.

[23] Roberta Romano, *Online Appendix to "Are There Empirical Foundations to the Iron Law of Financial Regulation*" (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4340045.

[24] The classic statement of a central bank's role as the lender of last resort is WALTER BAGEHOT, LOMBARD STREET: A DESCRIPTION OF THE MONEY MARKET (1873). As would be anticipated, the number of financial crises in the United States did, in fact, dramatically decline following the establishment of the Fed. CARMEN M. REINHART & KENNETH S. ROGOFF, THIS TIME IS DIFFERENT (2009) (Table A.4.1).

creation of the Fed is that there were no federal banking regulations – the growth of which is a focus of the iron law -- until rules promulgated by the Fed in 1915.

I identified important financial legislation from a list of laws, described as "the most important laws that have affected the banking industry in the United States," assembled by the Federal Deposit Insurance Corporation (FDIC). Twenty-five of thirty-two statutes on that list were enacted after 1915 and could be identified as a statute directed at the regulation of financial institutions, using subject matter codes widely used in the political science literature, as described in the online appendix to that article.[25] Statutes are classified as crisis-driven if they are enacted during a crisis or within two years of its final year, although key results are unaffected if the cut off for defining crisis-driven statutes is only one year thereafter.[26]

The three financial crises in the United States since the organization of the Fed -- the Great Depression (1929-33); Savings and Loan (S&L) Crisis (1984-91); and Global Financial Crisis (2007-2010) – are all associated with the enactment of a number of important financial statutes. As indicated in table 1, reproduced from that article, there are ten crisis-driven (identified in italics) and fifteen noncrisis-driven important banking laws, enacted between 1927-2010. These are the laws whose political economy is investigated in this follow up inquiry.

That article provides statistical analyses – a runs test and regression analyses-- that indicate, as might be intuited, that crisis periods are statistically significantly likely to produce important banking laws (i.e., the timing of adoption is not random) but that the timing of the

[25] Romano, *supra* note 23.

[26] *Id.*

enactment of important noncrisis-driven statutes is random.[27] Moreover, in accordance with the contention of the iron law, means-comparison tests and regression analyses show that crisis-driven statutes have large and statistically significantly greater regulatory content and complexity, as do regulations implemented subsequent to their enactment, compared to noncrisis-driven statutes and regulations issued thereafter.

More specifically, the statistical analysis of the regulatory content of statutes and regulations subsequently promulgated by banking agencies (title 12 in the Code of Federal Regulations) uses three text-based measures to identify regulatory content. The first measure is a set of words, frequently used in the regulation literature, that are considered to impose binding constraints on regulated firms, thereby measuring the extent of regulation.[28] The second is a set of conditional words, developed to measure textual complexity, by analogy to a computer software engineering approach to complexity that focuses on the number of times a decision

---

[27] These findings demonstrate that Conti-Brown and Ohlrogge are mistaken when they question my thesis (regarding the iron law of financial regulation), for stating that Congress invariably enacts important financial legislation following financial crises; it does precisely that. Peter Conti-Brown & Michale Ohlrogge, *Financial Crises and Legislation*, 4 J. FIN. CRISES 1 (2022). They further contend that I maintain that Congress only enacts important financial legislation in a crisis. That is most certainly not the claim; rather, it is that the regulatory impact of crisis-driven statutes is far more consequential than that of noncrisis-driven ones, while U.S. political institutions make revision of such statutes and their implementing regulations, daunting. *E.g.,* Romano, *supra* note 1.The online appendix to Romano, *supra* note 1, elaborates on this, among other issues, regarding their analysis.

[28] Omar Al-Ubaydli and Patrick A. McLaughlin, *RegData: A numerical database on industry-specific regulations for all United States industries and federal regulations, 1997-2012*, George Mason University Mercatus Center Working Paper No. 12-20 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2099814 Because the publicly available data et, RegData, begins in 1970, I needed to extend the dataset backwards. To test my methodology, comparing counts for the same year I found small discrepancies and I therefore retallied the restrictive words, as well as words measuring complexity, for all title 12 agencies' regulations over the interval from 1915 to 2015, as described in Romano, *supra* note 23.

must be made (i.e., the number of decision paths), identified by conditional statements, where "the possible execution of the software forks into two paths."[29] The third is an alternative complexity metric, the words that a Senate drafting manual recommends for conditional statements in legislation, which are a subset of the terms in the computer code measure.[30]

The textual measures of regulation and complexity are three to four times higher in crisis-driven than noncrisis-driven statutes and the growth in regulation measured by the textual measures a year or two years after enactment of crisis-driven statutes is greater than that of noncrisis-driven ones. These means-comparison tests are statistically significant. In addition, in multivariate regressions of regulatory content and complexity measures, which control for temporal trends, financial crisis intervals or indicators for enactment of a financial crisis statute are statistically significant (i.e., the increase in regulation is related to financial crises and their legislative responses, and not simply due to a temporal trend).

Although the findings are consistent across methodologies that there is statistically significant, greater regulatory growth and complexity following the enactment of crisis-driven statutes than noncrisis-driven ones, the extent of the regulatory impact of the three crises differs substantially. The compound rate of growth in regulation from the start of the S&L Crisis through two years post-enactment of the last statute associated with the crisis (2 percent) is far lower than that of the Great Depression (12 percent) and Global Financial Crisis (11 percent), similarly calculated from crisis start to two years after the last associated statute's enactment.

---

[29] William Li, et al., *Law Is Code: A Software Engineering Approach to Analyzing the United States Code*, 10 J. BUS. & TECH. L. 297, 317 (2015).

[30] Id. at 318.

This paper's further analysis of the political economy of important banking laws provides an explanation of the anomalous finding regarding the S&L Crisis: the distinct political context in which most S&L crisis-driven statutes were enacted (much lower media salience and divided government with minimal electoral change throughout the duration of the crisis) is not conducive to the passage of legislation greatly expanding regulation compared to the context in which other crises' statutes were enacted.

III. Financial Legislation and the Salience of Banking Matters

The iron law's assertion that legislators are powerfully incentivized to increase regulation in the wake of a financial crisis presupposes a relation between increasing media and public attentiveness to banks in a financial crisis and the enactment of legislation enhancing regulation. A testable implication of the claim is that we should observe heightened salience of banking-related matters prior to the enactment of important crisis-driven financial legislation when compared to important financial legislation enacted in normal times. Such a difference assists in explaining the far greater regulatory impact of crisis-driven statutes, because an increased salience of banking functions as a signal to legislators who, as earlier noted, the political science literature finds are attentive to public preferences, proxied by media coverage, that more extensive regulation is warranted.

A. Measures of Issue Salience

The relevant measure of salience for investigating the connection between legislative priorities and issue salience, whether or not due to a focusing event such as a financial crisis, is a contemporaneous one – issues that matter to the public, and hence to legislators, prior to a statute's enactment-- rather than retrospective salience -- issues current researchers believe to be

important or to have been deemed important at the earlier point in time. Hence, when investigating legislation enacted decades ago, proxies must be devised to measure the extent of public attentiveness to, and opinion on, the importance of an issue at the time. The proxies most often employed in the American politics literature for such an inquiry consist of measures of media coverage. They are viewed as good proxies for public attentiveness because, as earlier noted, there is a strong relationship between public policy formulation and the salience with which the media contemporaneously reports related events.

The most frequently used measure of media salience consists of counts of articles published on the front page of the New York Times (NYT). The NYT is a favored proxy because it is read by national elites; its news coverage is generally representative of that of U.S. national newspapers; and it influences the coverage of other newspapers (national and local) and television news (which is thought to extend the newspaper's reach to "everyman" beyond its elite readership).[31] Its coverage also appears to impact congressional activity: for instance, studies have found NYT front page coverage is related to politically important congressional investigations of executive branch misconduct and the topic of congressional hearings.[32] I therefore collect articles on banking-related issues on the front page of the NYT over the year before the enactment of important banking statutes, separately tallying articles covering the

[31] AMBER E. BOYDSTUN, MAKING THE NEWS 11-12, 79, 84 (2013).

[32] DAVID R. MAYHEW, DIVIDED WE GOVERN: PARTY CONTROL, LAWMAKING, AND INVESTIGATIONS, 1946-2002 (2d ed., 2005). NYT front page reporting has also been related to executive orders and public responses to Gallup opinion polls' "most important problem facing the country" query. BOYDSTUN, *supra* note 31, 196-99.

legislation's progress.[33]

I also employ a variety of other measures of issue salience that have been studied in the literature, albeit less often than the NYT: two additional newspapers (Washington Post (WP) and Wall Street Journal (WSJ)), major television network nightly news broadcasts, Gallup public opinion poll responses to the question "what do you think is the most important problem facing the country?," public mood toward government action,[34] and presidential State of the Union addresses. I adopt this multipronged strategy because using multiple media sources reduces the possibility of mistaken interpretations of salience due to idiosyncratic coverage of a topic by one media source compared to another, which can be a concern in this type of undertaking.[35]

Idiosyncratic coverage is, in all likelihood, not a serious issue for banking articles during financial crises, as studies comparing issue salience across multiple media sources over time find that high salience issues and events receive similar coverage across all sources.[36] But I am also examining banking coverage in conjunction with noncrisis-driven statutes where focusing events similarly powerfully at work as financial crises cannot be assumed to have occurred prior to those statutes' enactment. As a consequence, there is value to be added by examining the coverage of

---

[33] The scope of items included as banking-related is explained in the online appendix.

[34] The measure, constructed by Stimson, is derived from responses to a number of opinion poll questions, with higher values interpreted as indicating a public more receptive to government intervention in economic and social issues. JAMES A. STIMSON, PUBLIC OPINION IN AMERICA. MOODS, CYCLES & SWINGS (1991).

[35] John T. Woolley, *Using Media-Based Data in Studies of Politics*, 44 AMER. J. POL. SCI. 156 (2000). The online appendix discusses the findings in the literature on the influence of these additional media sources that justify their inclusion in the analysis.

[36] *See, e.g.*, Mary Layton Atkinson, John Lovett & Frank R. Baumgartner, *Measuring the Media Agenda*, 31 POL. COMMUNICATION 355 (2014), and literature cited therein.

banking-related matters across multiple media sources, as well as public opinion surveys.

B. Salience of Banking Issues Prior to Enactment of Important Banking Laws

Table 2 reports the average value of all of the media salience measures for the important banking laws identified in table 1, as well as separately for crisis- and noncrisis-driven laws.[37] The table also includes means-comparison tests of whether there is a significant difference in salience across the two categories of statutes in panel A; panel B provides analogous statistical tests for the categorical salience measures in the table (newspaper coverage of statute enactments, Gallup polls with a banking response and State of the Union addresses with a reference to banking issues). Because the iron law has a directional hypothesis, the means-comparison tests are one-tailed, but given the magnitude of the differences, only four of nineteen statistically significant one-tailed comparisons tests in the table are not also significant in a two-tailed test.

Crisis-driven statutes are preceded by significantly more media coverage of banking by all media sources, with two general exceptions: the State of the Union quasi-statement means-comparison tests are only marginally significant, and the Gallup poll comparisons are insignificant, although both variables are still considerably greater prior to crisis-driven than noncrisis-driven statutes' enactment. Although all of the NYT comparisons are statistically significant, the difference in coverage of legislation for WSJ editorials and TV news broadcasts is not significant, as is the coverage of statutes' enactment in the WP and in WSJ editorials, despite greater coverage of crisis-driven than noncrisis-driven statutes in all comparisons.

The overall disparity in mean newspaper coverage of banking before the enactment of

[37] Tallies of the number of newspaper items and tv broadcasts on banking issues for each statute are provided in online appendix table A2.

crisis- and noncrisis-driven statutes is stunning. As shown in table 2, the front page coverage related to banking of both the NYT and WP is an order of magnitude greater over the year before the final vote (slightly less so for the WSJ), and the editorial coverage is similarly impressive (an order of magnitude for the WP, and slightly less so for the NYT and WSJ). In addition, the newspapers reported - and editorialized - on the progress of specific statutes moving through the legislative process far more frequently for crisis-driven statutes than noncrisis-driven ones, again at an order of magnitude or close thereto.

Paralleling the discrepancy in coverage of banking and the legislative progress of important financial statutes in crisis and noncrisis times, the coverage of crisis-driven statutes' enactment was similarly markedly higher than that of noncrisis-driven ones (six to seven times more in the NYT, three to six times more in the WSJ, and three to four times more in the WP). Not only do the newspapers have in common reporting disparities across the two categories of statutes but also, their coverage is highly correlated, ranging from .48 to .89, depending on the comparison (front pages, editorials, or the subset of legislation items), with all correlations significant at less than 1 percent. The inescapable conclusion is that there is a world of difference in the political environment in which important financial legislation is enacted in crisis compared to noncrisis times, given a massive increase in the intensity of newspaper attention focused on banking in the wake of financial crises.

The difference in coverage across the two categories of statutes suggests that banking matters are not ordinarily much at the forefront of newspaper editors' or journalists' – hence the public's – attention, outside of times of financial exigency, even upon enactment of what the FDIC identifies as important noncrisis-driven laws. This inference is supported by the large

discrepancy in reporting even for a more business-oriented newspaper such as the WSJ. Legislators could thereby infer from the enhanced banking and related legislative newspaper coverage in the wake of a crisis, complementing, if not magnifying, communications from constituents, that there would be heightened public attention to the banking sector, and a desire, if not an expectation, of a government response. Such a dynamic would, in turn, create in legislators an understandable sense of urgency to take action, compared to the ordinary politics of noncrisis times.

It must be noted, however, that there is another factor, in addition to the acute attention to banking during a financial crisis, that could influence newspaper editors and reporters to follow the progress of crisis-driven banking legislation and its enactment but not noncrisis-driven statutes: partisan controversy in the legislative process. The greater media attention to crisis- than noncrisis-driven statutes is consistent with findings that noncontroversial legislation is far less likely to be reported by the media than controversial laws, not only because of a media preference for reporting on conflict, which generates increased reader interest, but also because of congressional beat reporting, in which conflict dominates coverage due to controversial legislation's taking up more of Congress's time.[38] As indicated in parts IV and V, a larger proportion of important crisis-driven banking laws, compared to noncrisis-driven ones, were controversial, generating strong cross-party conflict.

The salience afforded banking-related matters on television nightly news programs

---

[38] James M. Curry, Frances E. Lee & Robert L. Oldham, *On the Congress Beat: How the Structure of News Shapes Coverage of Congressional Action*, POL. SCI. Q. 1, 25 (2024), https:/doi.org/10.1093/psquar/qqae008; MARY LAYTON ATKINSON, COMBATIVE POLITICS 22-23, 125, 128, 130-31 (2017).

parallels that of newspaper coverage: it is not simply statistically significantly different, but dramatically higher (15.1 compared to 1.1), in the year before the final votes on crisis-driven statutes than noncrisis-driven ones. The vast majority of network coverage is crisis-related (97% for ABC, 91% for CBS and 97% for NBC), indicating that nightly news' banking reporting replicates that of newspapers, far more intensive in crisis, and sparse and sporadic in noncrisis, times, and as reported in the online appendix, is highly and significantly positively correlated with newspapers' coverage of banking on the front page and in editorials.

Network coverage of congressional action, even during crises, is substantially lower than that of the print media. The legislative progress of only two statutes was reported on broadcast news, both enacted in response to the Global Financial Crisis, in contrast to newspapers' reporting on statutes enacted in all three financial crises (as indicated in online appendix table A2). Although the television news dataset is limited to only two crises and then only three-fourths of the last crisis's time span, the reporting closely aligns with that of newspapers. The evident conclusion is that starkly different coverage of banking between crisis and noncrisis times is a multimedia phenomenon.

Table 2 also reports means-comparison tests for Gallup poll responses to the "most important problem" inquiry and the public mood variables. As the table indicates, although the numbers are small, the public is more likely to identify banking related-matters as the "most important problem facing the country" in the year in which a crisis-driven statute is enacted: the banking category response occurs both in a higher percentage of polls (computing percentages from panel B, 38 compared to 33 percent), and in the absolute proportion (panel A) selecting that category as the most important problem (approximately one-third greater at .0044 compared to

.0033). Notwithstanding higher response values in crisis years, the difference is not statistically significant. The results are similar (unreported) when comparing Gallup poll responses in the year prior to the year of a statute's enactment: the percentage and proportion of banking responses are higher in the interval preceding crisis-driven statutes but the difference is insignificant.

Although the public's identification of banking as the nation's most important problem in Gallup polls does not significantly differ between crisis and noncrisis times, Stimson's public mood measure does. The public's mood is statistically significantly more predisposed to government solutions in both the enactment year and the year before enactment of crisis-driven statutes than in those intervals before noncrisis-driven ones. The difference in mean values between the categories of statutes of the customized mood variable that only measures attitudes toward the regulation of business, in both the year of enactment and the year before, are similarly greater for crisis-driven statutes than noncrisis-driven ones, and statistically significant.

While neither of the mood measures are explicitly connected to banking, a reasonable inference is that increased sentiment favoring government action is a function of the widespread economic distress caused by an ongoing financial crises. Whether the public's mood is influenced by media coverage of banking, the media is covering what it perceives to be consistent with the public's mood, or, as is intuitively most plausible, mood and media coverage interact, reciprocally influencing each other, need not be ascertained for my purpose. The critical factor is that media coverage and public mood appear to be mutually reenforcing, and as a consequence, the signal provided to officeholders would be unambiguous, that the public desires a forceful response to address a crisis.

The final salience measure examined in the table, the prevalence of banking references in presidents' State of the Union address in the year of a statute's enactment, is, as with the other measures, far greater in the year of a crisis-driven statute's enactment than a noncrisis-driven one. It is an impressive 26 times more frequent as a percentage of total statements (.013 compared to .0005), and 29 times greater in number (4.4 compared to .15 quasi-statements) in the crisis-driven statutes' enactment years. However, notwithstanding the strikingly large differences across the statute categories for the two measures, they are only marginally statistically significant at 10 percent.

In accord with the literature's finding of the influence of State of the Union addresses on public opinion (as measured by responses to the Gallup poll's most important problem question), there is a statistically significant correlation between either the number of banking references in a State of the Union address or the proportion of banking references, and the proportion of Gallup poll banking responses (respectively .58, significant at less than 1 percent; and .49, significant at less than 3 percent). The State of the Union data are therefore consistent with the presence of a positive relationship between presidential priorities and public opinion regarding the importance of banking and hence, with the contention that presidential priorities affect the congressional agenda through two channels: Presidents' addresses not only encourage members of their party to promote legislation increasing financial regulation but may also affect the public mood by heightening support for government solutions, further spurring legislators to ramp up regulation.

Means-comparison tests cannot control for the extent to which media coverage of banking changes over time. Although crisis- and noncrisis-driven statutes are interspersed throughout the time span under investigation, there is still a question whether the significant

differences in mean coverage reported in table 2 are due to banking reporting increasing over time, independent of crises. To address this issue, I ran ordinary least squares regressions for each variable in the table where the means-comparison test is significant on the year of the final vote (which is the enactment year for all but one statute) and an indicator variable for a statute's being crisis-driven, as follows:

$$y = \beta_0 + \beta_1 * \text{Year} + \beta_2 * \text{Crisisstat}, \quad (1)$$

where y is the media salience measure, "Year" is the year of the final vote on a statute and "Crisisstat" is an indicator variable equal to one for a crisis-driven statute.[39]

Regression results are reported in online appendix table A3. In the vast majority (16 of 19 or 84 percent), the financial crisis statute indicator is positive and statistically significant, whereas the year regressor is insignificant in all but three regressions, in two of which it is negative in sign, i.e., coverage is decreasing, not increasing over time). The most straightforward interpretation of the results is, therefore, that the significant differential in media salience of banking matters reported in table 2 is due to enactment occurring in the wake of a financial crisis and not a temporal trend.

IV. Legislative Procedures Adopted for Important Banking Laws

The heightened salience of banking in the media as a result of financial crises generates a legislative setting that is particularly hospitable to regulation. But a key question is whether there are also differences in the legislative procedures used in enacting crisis- and noncrisis- driven statutes that might impact the quality of decisionmaking, as well as facilitate a heightened

[39] A logit regression was estimated for the dichotomous variable (the indicator variable for whether a front page article or an editorial reported on a statute's enactment).

regulatory agenda, beyond the dramatically disparate media coverage over the year preceding statutes' enactment? [40]

To answer that query, I focus on differences between crisis and noncrisis times in the use of two key procedural mechanisms that can adversely affect the quality of deliberation by short-circuiting it and can thereby facilitate a majority's adoption of its agenda: committees' failure to hold legislative hearings, and limitations on amendments in the House rules or Senate agreements by which bills are brought up for consideration on the chamber floor. The absence of a legislative hearing and limitations on amendments would be expected to have a more deleterious effect on crisis-driven lawmaking than that undertaken in ordinary times, as they would exacerbate the informational challenges inherent in legislating in times of financial crisis.

---

[40] I take a procedural approach to measuring deliberation quality, as have other studies, rather than a qualitative approach analyzing the text of congressional debates, that are briefly reviewed in GARY MUCCIARONI & PAUL J. QUIRK, DELIBERATIVE CHOICES 7-8 (2006) (review of studies). Mucciaroni and Quirk analyze congressional texts, criticizing other studies' methods as reliant on subjective textual characterizations, in contrast to their own, which they contend is more objective by selecting three debated statutes where issues regarding effects were a central focus, and then examining whether legislators' claims regarding the effects are supported by "evidence and informed opinion," as identified by testimony and literature presented in hearings or contemporaneous information in the public domain, whose conclusions are "taken at their word," but prioritizing the analyses of substantial academics over interest groups' consultants. *id.* at 48. Given the number of important banking laws' bills without hearings and the overwhelming number of hearings with no academic witness, in addition to the difficulty of identifying what "evidence and informed opinion" could be used to determine whether a specific provision would reduce a financial crisis or bankers' moral hazard (presumably the "effects" that would be a focus in a debate on financial crisis-driven legislation), it is not a practical strategy for my project. But one finding in their investigation is consistent with my procedural approach: they find that debates were less well informed in one chamber in the two instances where they identify the chamber's debate as having been circumscribed (one in the Senate because the proposal was part of an omnibus tax reform bill which restricts amendments, *id.* at 121, although they later attribute the effect to limited debate time and the item's being a very small piece of the bill; and one in the House, because debated under a restrictive rule, *id.* at 152-53).

A. Committee Processes

Both chambers of Congress are organized in committees to facilitate a division of labor necessary for lawmaking. Although committees' ability to influence the legislative agenda has waxed and waned over time, they process and prioritize information, setting the agenda for Congress, in conjunction with party leadership.[41] After providing an overview of the literature on committee hearings and their informational function, I examine whether there are differences that might affect the quality of decisionmaking between hearings held on the crisis- and noncrisis-driven bills associated with the important banking laws in table 1. I find that the frequency of hearings is lower, albeit statistically insignificant. With the exception of the number of committee members questioning witnesses and the number of majority party committee members participating (both in attending and asking questions), all significantly higher at crisis-driven bill hearings than noncrisis ones, hearing characteristics are indistinguishable between those held in crisis and noncrisis times.

1. Legislative Hearings

Upon introduction, a bill is referred to the committee with subject matter jurisdiction, although it may be referred to more than one committee.[42] A principal activity of congressional

---

[41] LEWALLEN, *supra* note 6.

[42] Multiple referral practices, which weaken committees' legislative influence as the committee with subject matter jurisdiction loses exclusive control over a bill, have changed over time, and they are used by the House far more frequently than the Senate. BARBARA SINCLAIR, UNORTHODOX LAWMAKING 12, 48 (5th ed., 2017). Although not inconsistent with the trend given the timing, only one bill related to an important banking statute was multiply referred in the House (H.R. 4173), Congress's 2010 response to the Global Financial Crisis, and it was not multiply referred when received in the Senate. Multiple referral use is not, then, a procedural device that I analyze because it cannot distinguish crisis- from noncrisis-driven statutes. As the name of the committee with jurisdiction over financial institutions has changed over time, for

committees is the holding of hearings, which may be legislative or nonlegislative. A legislative hearing is "organized around recently introduced bills."[43] Nonlegislative hearings do not address specific bills and can have a number of purposes, such as obtaining information about an issue in general or monitoring executive branch activity.[44] In legislative hearings, committee members seek to obtain information on the views of executive branch officials and affected parties (private sector actors), regarding provisions in a specific bill or bills. Such hearings generate information for subsequent committee deliberation on drafting revisions, as witnesses whose testimony is directed at specific language in a bill can illuminate potential ambiguities and pitfalls in the proposed legislation. They can, for instance, bring to light omissions or adverse effects posed by language that the drafters might not have recognized or fully appreciated.

Information generated in legislative hearings can assist committee members and their staff not only by identifying potential drafting ambiguities or erroneous premises, but also, in honing arguments for use in floor debate, anticipating and countering opposition (which might be inferred from questions posed by legislators who object to a bill's provisions).[45] Staff, no doubt,

---

ease of exposition, I refer to the committee as the Banking Committee, regardless of the official name.

[43] LEWALLEN, *supra* note 6, at 25.

[44] For classifications of committee hearings *see, e.g., id.*; MAYA L. KORNBERG, INSIDE CONGRESSIONAL COMMITTEES (2023). As Lewallen notes, nonlegislative hearings can "help pave the way for future legislation," but they have no specific bill in focus. Lewallen, *supra* note 6, at 147. A hearing not falling into either category (legislative and nonlegislative), as it is not one taking testimony, is a "markup," at which a committee "decides whether ... to amend [a specific] bill and votes on whether to advance the legislation to the floor." *Id.* at 25.

[45] LEWALLEN, *supra* note 6; Edward L. Lascher Jr., *Assessing Legislative Deliberation: A Preface to Empirical Analysis*, 21 LEGIS. STUD. Q. 501(1996).

select witnesses whose testimony is thought to advance their legislators' policy perspectives, but also for their expertise. Accordingly, information gleaned in legislative hearings can assist in producing a better-calibrated and thought-through position, that could aid majority leadership's assembling of a winning coalition by highlighting issues that could potentially generate rank-and-file members' misgivings or objections. As a consequence, when a bill with a legislative hearing is sent to the chamber floor for consideration, it is likely to have been more carefully vetted than a bill without one and, all other things equal, perceived by rank-and-file members as a product of a higher quality decision. For instance, as a well-known textbook on congressional procedures puts it, "Measures brought to the floor without first undergoing the scrutiny of hearings are more likely to receive sharp criticism. . . .The importance of the committee stage is based on the assumption that the experts–committee members–carefully scrutinize a proposal, and hearings provide a demonstrable record of that scrutiny."[46]

Moreover, a plausible inference from the textbook's characterization of legislators' perspective is that those legislators who are not in leadership positions can be beneficiaries of legislative hearings, given the information hearings generate. As Curry explains, a key factor enabling party leaders to exert influence over members is "information imbalance": committee chairs and party leadership control information about the content of bills and their scheduling, and have knowledge regarding the preferences of members (through leadership's use of party whips in the organizational hierarchy); hence, as Curry continues, by "influencing what information rank-and-file lawmakers are exposed to, leaders can influence their positions on bills

[46] WALTER J. OLESZEK, ET AL., CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS 126 (11th ed., 2020).

and issues," including, their "preferences on new issues, policies and bills as they emerge and evolve," as well as "issues and bills [on which] members . . . have solid preferences."[47]

Leaders have sway, as Curry further explains, because legislators often have "preference ambiguity," i.e., they do not know how they will vote even as they "are headed to the floor," which renders them persuadable by information leadership provides, given their own limited knowledge.[48] Committee members attending legislative hearings, by contrast, have independent access to information regarding bills and their potential impact, reducing leadership's ability to influence their positions, and potentially increasing their own influence among more uninformed rank-and-file colleagues, who often take positional cues from committee members, recognizing their expertised knowledge.[49] And as earlier noted, the holding of such a hearing can enhance rank-and-file members' confidence in the quality of decisionmaking, by reassuring them that committee members have evaluated the proposed legislation with care.

---

[47] CURRY, *supra* note 5, at 33.

[48] *Id.*

[49] E.g., KEITH KREHBIEL, INFORMATION AND LEGISLATIVE ORGANIZATION 70, 83-84 (1991). Krehbiel provides the canonical explanation of the organization of Congress into committees: to facilitate the efficient production of information from specialization. Curry explains that committee chairs' control of information vis à vis committee members, as well as rank-and-file, is a function of their control over bill drafting ("mark up") along with the timing of when such drafts are released (drafts known as the "chairman's mark"), CURRY, *supra* note 5, at 81-83. Not having access to that information can render it difficult, for instance, for members to devise effective amendments for floor consideration. *Id.* at 84, 88. Although bills are revised following a legislative hearing, no doubt an explanation for why Curry does not emphasize an absence of legislative hearings as a mechanism of information control, members can plausibly infer information about a bill's probable text from a legislative hearing and hence can better evaluate floor options. However, restrictions on floor debate can function as a mechanism to prevent members' ability to use this knowledge on the floor.

2. Empirical Investigation

Do banking committee legislative hearings perform a valuable informational function regarding prospective legislation? To put it another away, do legislators at hearings engage in considered deliberation over key issues? Evaluating the hearings by means of a benchmark from the political science literature for what makes for an effective deliberative hearing, I find that hearings on important banking laws' bills easily exceed that hurdle. Given the value-added of effective deliberative legislative hearings in generating information, I then compare the frequency of legislative hearings on crisis-driven versus noncrisis-driven statutes' bills. The hypothesis under investigation is that committees will be less likely to hold legislative hearings in the exigency of a crisis than in noncrisis times, as the majority party would seek to move bills quickly through the legislative process due to a perceived media and heightened public mood for a government response. Such a strategy could also work to the benefit of the majority by subjecting its proposals to less critical assessment, further facilitating the adoption of its agenda.

The informational function of legislative hearings suggests that, if data were to confirm the hypothesis that hearings are less frequently held on crisis- than noncrisis-driven bills, then we could infer that the quality of congressional decisionmaking would, on balance, be relatively higher in noncrisis than crisis times.[50] I find evidence consistent with the thesis that legislative

[50] I explore differences in the political composition of the Congresses enacting important banking laws in part V. Although one might conjecture that the larger the majority's margin of control, the less likely it would hold a legislative hearing, the data are inconclusive. The Congress in which the majority had the greatest margin was the 1935-36 Congress, in which, as table 3 indicates, both chambers held extended hearings on related bills to the bill enacted as the Banking Act of 1935, Pub. L. No. 74-205, 49 Stat. 684 (1935) (codified at 12 U.S.C. § 228) . However, the Congress with the next largest margins, the New Deal Congress of 1933-34, did not hold any hearings on any related bills or the bill enacted as the Banking Act of 1933, Pub. L. No. 73-66, 48 Stat. 162 (1933) (codified at 12 U.S.C. § 227). In addition, the correlation

hearings do have an informational function, and that such hearings tend less likely to be held on crisis-driven bills than noncrisis-driven ones, but the difference in hearing frequency across the two bill categories is not statistically significant. The construction of the hearings data set is provided in the online appendix.

a. Information Function of Legislative Hearings

A helpful benchmark for assessing the effectiveness of the important banking bills' legislative hearings is whether they meet six indicators proposed by Lascher for assessing whether committee hearings meet a standard of a deliberative hearing, with deliberation defined as "a decision-making process" in which participants engage "in 'reasoning on the merits, the substance of the discussion pertaining to the public good, use of information and open-mindedness."[51] The six indicators that he identifies are: (i) being well-attended by members; (ii) witnesses with a variety of perspectives; (iii) arguments "framed in terms of some conception of the public good;" (iv) participants can present "information (e.g., outside reports) relevant to their arguments;" (v) opportunity for participants to "critique each others' arguments and respond to such criticism;" and (vi) legislators and witnesses interact ("show signs of responding to arguments)."[52] All six indicators are repeatedly observed in the transcripts of legislative hearings on important banking statutes' bills.

Legislative hearings on important banking statutes' bills satisfy Lascher's first criterion as

---

between the holding of a hearing and the size of the majority's margin in the chamber, or the majority party cohesiveness measures discussed in part V, is insignificant.

[51] Lascher, *supra* note 45, at 507.

[52] *Id.* at 509.

they are well-attended. Well over half of the members on the subcommittee or full committee holding a hearing were present at all but one hearing, for an average attendance rate of 81 percent across all hearings. This attendance is considerably higher than that of congressional activities reported in the political science literature (typically under 50 percent).[53] The financial crisis setting is surely an important factor differentiating the two contexts. But financial crises are only part of the story: crisis-driven bill hearings average only a somewhat higher attendance rate than noncrisis-driven ones (87 compared to 79 percent), a statistically insignificant difference, and both categories of bills have a much higher participation rate than that reported in the literature. It is therefore possible that Banking Committee members are more engaged than legislators on other committees, or more plausibly, that the topic – important banking regulation – generates heightened participation.

While the aggregate difference in participation rate across crisis- and noncrisis-driven hearings is relatively small, when analyzed by party membership, majority party members are statistically significantly more likely to participate in crisis-driven hearings than noncrisis-driven ones (as reported in online appendix table A7), as measured by attendance as well as questioning

---

[53] *E.g.,* RICHARD L. HALL, PARTICIPATION IN CONGRESS 34, 46, 118 (1996) (committee activity, markup hearings); CHARLES L. CLAPP, THE CONGRESSMAN: HIS WORK AS HE SEES IT 235 (1963) (committee work, including hearings); Lawrence C. Dodd & Bruce L. Oppenheimer, *The House in Transition: Partisanship and Opposition*, *in* CONGRESS RECONSIDERED 34, 46 (Lawrence C. Dodd & Bruce L. Oppenheimer, eds., 3d ed., 1985) (committee and subcommittee meetings); Roger H. Davidson, *Subcommittee Government: New Channels for Policy Making, in* THE NEW CONGRESS 99, 110 (Thomas E. Mann & Norman J. Ornstein, eds., 1981) ("All too often, consideration of policy issues is limited to the chairman, perhaps one or two colleagues, and staff aides.") As discussed in the online appendix, I count members as present if they attended at least one session of a hearing, and as questioners, if they asked a question of at least one witness, which is a lower threshold for participation than in some studies but is similar to that of others.

witnesses, whereas there is no significant difference in participation by minority party members. This finding is consistent with Hall's thesis that committee members participate in committees when they believe that it is worth the "cost" - time and effort - of the investment, i.e., when they anticipate that they could have an impact on the legislative product.[54] Because majority party members are far better positioned to have influence on the crafting of legislation than minority party members and a crisis setting is perceived to render the enactment of legislation highly probable, majority committee members would rationally be most likely to participate actively in hearings on crisis-related bills to obtain information that could assist in refining proposals or mustering support for their policy agenda. This activity dovetails with the earlier noted observation that hearings can reassure rank-and-file legislators that their designated experts – Banking Committee members – have carefully crafted the proposed legislation.

Lascher's second criterion is as easily met as the first, as the Banking Committees did, in fact, call "a wide variety of witnesses." The committees heard, on average, the testimony of twenty-two witnesses, from industry (trade associations and individual institutions), government (federal and state agencies and legislators), and, albeit fewer in number, consumer organizations and academics. Online appendix tables A5 and A6 summarize the categories of witnesses, and identify the organizations (private and public) represented. Moreover, hearing transcripts uniformly confirm that they provide an occasion for legislators to gather information regarding possible pitfalls in a statute's drafting, and to probe witnesses' claims, as members hear from individuals and organizations representing many of the potentially most informed and affected

[54] HALL, supra note 53. The online appendix discusses Hall's thesis and related data in depth.

parties. The vast majority of witnesses had pertinent hands-on expertise, as they held leadership positions in the financial sector and financial regulatory agencies (federal and state).

Consistent with witnesses being selected with a view to obtaining informed judgments regarding bills under consideration, in a comprehensive analysis of witness testimony in congressional committee hearings from 1960-2018, Ban and colleagues find that the analytical information content from trade associations is the third highest among witness categories.[55] Multiple trade associations testified at all of the Banking Committee legislative hearings, on average, eleven organizations. These associations represent a broad array of financial institutions from a variety of industry segments that are often in competition (savings and loan associations, credit unions, community banks, mortgage banks, among others, as indicated in online appendix table A6).

Despite plainly not being disinterested parties regarding proposed legislation, industry witnesses are among the individuals most likely to be in possession of pertinent local knowledge regarding a bill's probable impact. Accordingly, legislators and their staff, while quite aware of witnesses' potentially "talking their book," so to speak, nevertheless can gain valuable insight into the possible implications of proposed legislation on financial firms and the broader economy from hearing witnesses' divergent, and at times clashing, perspectives. Although the majority party selects the bulk of the witnesses, House rules accord the minority selection rights, ensuring

---

[55] Pamela Ban, Ju Yeon Park & Hye Young You, *How Are Politicians Informed? Witnesses and Information Provision in Congress*, 117 AM. POL. SCI. REV. 122, 129 (2023). "Analytical information" content is measured using a keyword analysis identified in three ways: words (i) related to cognitive orientation from the Harvard IV-4 dictionary, (ii) appearing in information-seeking statements identified in a prior study by one of the authors, and (iii) similar word stems. *Id*. at 128.

that a range of perspectives will be heard, even if the majority takes a one-sided approach to its witness selection.[56]

The transcripts indicate legislators grappling with clashing viewpoints at the hearings, given the variety in, and numerosity of, witnesses, further in keeping with Lascher's second criterion for a deliberative hearing. Including representatives from multiple trade organizations ensures that a committee will not only hear different industry sector perspectives regarding a bill's potential impact, but also facilitates an assessment of the credibility of witnesses' expressed misgivings about provisions as members question them regarding others' testimony, in keeping with Lascher's fifth and sixth criteria.

Paralleling the often differing points of view provided by expertised private actors, committees frequently heard from numerous government officials from multiple federal agencies, as well as state governments. A federal official testified at all but one hearing, and usually more than one federal agency was represented, ensuring legislators' exposure to a variety of regulatory perspectives, as the leadership of agencies with the greatest expertise on, and whose work would be most affected by, proposed legislation, yet having differing regulatory functions, testified most frequently (Fed, FDIC and Office of Comptroller of the Currency (OCC)), as indicated in online appendix table A6. Consistent with the Banking Committee hearings having a robust informational function and the prominent role of federal officials as witnesses, Ban and

---

[56] KORNBERG, *supra* note 44, at 27 ("official rules of the House and Senate entitle the minority to one witness.") Kornberg also references a House rule that provides the minority the right to call witnesses "during at least one day of a hearing" upon the request of a majority of the minority committee members to the committee chair. *Id.* If relations between the parties are "collegial" in a committee, then the minority can have greater input into witness selection, and in some instances, majority and minority party committee staffers put together a joint witness list.

colleagues' study found the testimony of federal agency officials has the most informative analytical content of all witness categories.[57]

It is noteworthy that a sizeable proportion, approaching a majority, of Banking Committee members attending and asking questions are law school graduates, because those legislators have had at least a modicum of exposure to training in the law of evidence, that is useful for assessing the credibility of witnesses.[58] For instance, Lubet applies the law of evidence to analyze conclusions of prominent ethnologists regarding their fieldwork, and demonstrates incisively that they are often problematic. As he explains, "concepts of the law of evidence" assist in determining when "witnesses' stories" "should [be] accept[ed]" and when they "should [be] doubt[ed]," when to "seek confirmation" and what "counts as "meaningful corroboration" of statements, regardless of the context in question not being subject to a trial court's rules of admissibility.[59]

Legislators with exposure to the law of evidence can improve the quality of information obtained from hearings by ensuring that the benefits from meeting Lascher's criteria are realized, that is, legally skilled legislators can more robustly ferret out the facts to better evaluate potential

---

[57] Ban, Park & You, *supra* note 55, at 128-29.

[58] Lawyers' representation on the full committee or subcommittee holding the hearing (averaging 46 percent) is similar to their attendance (averaging 45 percent of members attending) and slightly higher among the questioners (averaging 48 percent of members asking questions).

[59] STEVEN LUBET, INTERROGATING ETHNOGRAPHY 10 (2018). Although there is a higher proportion of nonlawyers than lawyers on the Banking Committees and, correspondingly, participating in the hearings, there is no statistically significant difference between the proportion of members present and asking questions who are lawyers and nonlawyers. Nor is there any difference in the proportion of lawyers or nonlawyers present or asking questions between crisis-driven and noncrisis-driven bill hearings.

drafting issues and their resolution. Such skill is especially of value in the frenzy of a crisis when there is considerable uncertainty over what has contributed to a crisis, and hence what needs to be done, while accurate information is difficult to come by.

Lascher's fourth criterion is also well met: hearing records are replete with quantitative data regarding banking institutions and the economy that both private and public sector witnesses provide in support of the policy they advocate and in response to questions posed to them. These detailed submissions indicate that the information legislators elicit from legislative hearings, at least in the banking context, does not consist of conclusory self-serving statements in support of or opposition to particular provisions, although policy advocacy is the central focus of most witnesses' testimony.[60] And it perhaps goes without saying that witnesses uniformly present their policy positions as furthering the public good (Lascher's third criterion).[61]

Transcripts of the Banking Committees' legislative hearings, furthermore, frequently

---

[60] *Consolidation of National Banking Associations: Hearings before a Subcomm. of the Sen. Comm. on Banking and Currency on S. 1782 and H.R. 2*, 69th Cong. 66 (1926) (table of increase in number and resources of active banks by state from 1900 to 1925, provided by Henry Parker Willis, Banking Professor, Columbia University) (*hereinafter* McFadden Act Hearing).

[61] E.g., *The Gramm-Leach-Bliley Act: Financial Services Modernization: Hearings Before the Sen. Comm. on Banking, Housing, and Urban Affairs*, 106th Cong. 3 (1999) (statement of Treasury Secretary Rubin: "Chairman Gramm, as we approach financial modernization legislation, our objective has always been the same: To serve the interest of businesses, consumers, and communities, while at the same time protecting the safety and soundness of the financial system") (*hereinafter* Gramm-Leach-Bliley Act Hearing); *Financial Institutions Reform, Recovery, and Enforcement Act of 1989–(H.R. 1278): Hearings before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the H. Comm. On Banking, Finance and Urban Affairs*, 101st Cong. 23-24 (1989) (statement of Barney R. Beeksma, Chairman and CEO, U.S. League of Savings Institutions: "In this regard, Mr. Chairman, we support the concept that you have advanced of a higher qualified thrift lender test that affirms in statute our business existing dedication to homeownership. . . [T]o ensure the continued opportunity for solvent and healthy thrifts to faithfully serve housing needs in their communities, we recommend the following changes in the administration's bill.")

demonstrate that hearings fulfill Lascher's fifth and sixth criteria. Committee members actively seek to obtain and sift through information, as well as to reconcile inconsistent testimony. Members follow up testimony with questions about how a bill would impact financial institutions and markets, whether revisions should be made and how they could be revised to be responsive to witnesses' concerns, ask witnesses to explain their or others' understandings of the impact of specific provisions and to respond to other witnesses' statements.[62] They also submit written

---

[62] *E.g., Financial Institutions Supervisory and Insurance Act of 1966 on S. 3158 (Superseded by H.R. 17899) and S. 3695 (Superseded by H.R. 18021): Hearings Before the H. Comm. on Banking and Currency*, 89th Cong. 53 (1966) (question of Rep. Ashley, Member, H. Comm. on Banking and Currency, to Chairman of Federal Loan Home Bank Board: "[W]ould S. 3158 affect those savings and loan members of the Home Loan Bank Board using credits which are not of FSLIC insured?"); *Control and Regulation of Bank Holding Companies: Hearings Before the H. Comm. on Banking and Currency*, 84th Cong. 20 (1955) (*hereinafter* "Control and Regulation of Bank Holding Companies Hearings") (Question of Rep. Patman, Member, H. Comm. on Banking and Currency, to Chairman of the Fed: "This bill does not deal with the other two types of multiple banking at all. Do you think it should, as well as holding companies?"); *Consideration of Regulatory Proposals: Hearings Before Sen. Comm. on Banking, Housing, and Urban Affairs*, 109th Cong. 46 (2006) (*hereinafter* "Consideration of Regulatory Proposals Hearings") (question of Sen. Crapo, Member, Sen. Comm. on Banking, Housing, and Urban Affairs, to witness representing Consumer Federation of America who expressed concern about impact of proposed exemption of small banks from bank examination cycle on compliance with the Community Reinvestment Act: "Okay. So then if we made that distinction and the change was only on the safety and soundness exams, then your concern would be alleviated?"); McFadden Act Hearing, *supra* note 60, at 369 (question of Sen. Glass, Member, Subcomm. of Sen. Comm. on Banking and Currency: "What is the objection to having a provision in the bill prohibiting the establishment by any national bank in any State the laws of which prohibit the establishment of branch banks by State banks?"- asked of bank executive also representing Greater South Side Chamber of Commerce of Chicago, Illinois); Consideration of Regulatory Proposals Hearings, *supra*, at 46 (question of Sen. Crapo, Member, Sen. Comm. on Banking, Housing, and Urban Affairs: " I think the Banking Committee is going to be hearing from law enforcement to get their point of view on this issue [cost of compliance with anti-money-laundering reporting], but it does sound like there is potentially some room for us to help make an improvement. Does anybody else want to take a stand on this?"); Control and Regulation of Bank Holding Companies Hearings, *supra*, at 252 (question of Rep. Bass, Member, H. Comm. on Banking and Currency questioning the executive of a bank holding company: "Are you familiar with the amendments that Chairman Martin suggested to the Committee 2 days ago? [Mr. Bush. I heard his testimony.] Would you comment on your reaction to his suggestion?")*;*

questions to witnesses following a hearing seeking further clarification of testimony.[63] Moreover, illustrating that members approach hearing responsibilities seriously, those having to leave before a hearing's conclusion often ask another legislator to ask questions on their behalf, and when time is pressing, agree to submit their questions in writing subsequently.[64] It is surely more than coincidence that almost all of the members quoted in the footnotes engaging in such followup activity are lawyers, seeking to pinpoint and flush out pertinent arguments and clarifying information.

A fair reading of the record suggests that banking committee legislative hearings perform a valuable function in the deliberative process, as most legislators in attendance conscientiously

---

Strengthening the Supervision and Regulation of the Depository Institutions: Hearings Before Sen. Comm. on Banking, Housing, and Urban Affairs, vol. I, 102nd Cong. 371 (1991) (*hereinafter* Sen. 1991 Hearing vol. I) (question of Sen. Heinz, Member, Sen. Comm. on Banking, Housing, and Urban Affairs: "Mr Litan, do you have a point of view on [other witness's suggestion of need for an inspector general or other agency to check the adequacy of regulatory decisions resolving banks])?"

[63] *E.g.,* Gramm-Leach-Bliley Act Hearing, *supra* note 61, at 332 (question submitted by Sen. Sarbanes, Member, Sen. Comm. on Banking, Housing, and Urban Affairs, to Hjalma E. Johnson, president-elect, American Bankers Association: "Q.1. In your testimony, you stated that the unitary thrift holding company issue is "of critical importance to bankers, particularly community bankers." And you testified that the American Bankers Association "believe[s] that commerce and banking should not be allowed to mix in the wholesale fashion permitted under the unitary thrift concept." Your position is similar to that taken by Chairman Greenspan and by Secretary Rubin. Please discuss in greater detail the reasons supporting your concerns over mixing banking and commerce in the unitary thrift.")

[64] *E.g., Regulation Q and Related Matters on H.R. 4986: Hearings Before the Subcomm. on Financial Institutions, Supervision, Regulation and Insurance of the H. Comm. on Banking, Finance and Urban Affairs*, 96th Cong. 728 (1980) (statement Rep. St. Germain, Chairman, Subcomm. on Financial Institutions Supervision, Regulation and Insurance of H. Comm. on Banking, Finance and Urban Affairs: "Mr Barnard, I understand our colleague, Mr. D'Amours, had to take himself to another meeting and he asked you to propound a few questions on his behalf.")

seek to become better informed regarding potential issues in a bill under consideration, rather than merely register a symbolic presence. They thereby can reduce the "information imbalance," identified by Curry, as earlier mentioned, between party leaders and members. But hearings are often said to be symbolic events, particularly when they are televised. None of the hearings held after television was introduced appear to have been broadcast.

In any event, the distinction between substantive and symbolic remarks is not as self-evident as it might seem initially: Hall notes that a proposal that might seem to be a "symbolic gesture . . . might stake out a bargaining position for subsequent stages of the legislative process;" "form the backdrop for some future electoral contest, thereby improving the accountability of agents to their districts;" or "be offered with an eye to affecting some future agenda, . . . 'softening up' the relevant policy community or attentive public."[65] That is, it may be "difficult "or "misguided" to "categorize the seriousness or superfluity of particular actions."[66] Regardless of Hall's characterization of behavior that some might consider symbolic, a transparently functional, rather than symbolic, focus of members' conduct in Banking Committee legislative hearings is repeatedly conveyed by the transcripts.

Consistent with legislative hearings being working sessions with an informational function and not merely opportunities for publicity seeking showboating, the hearings were not perceived by media as of sufficient interest to merit coverage. The frequency of newspaper and television reporting on committee hearings is barely perceptible compared to that on a bill's progress on the floor or in conference. Of the 1,145 (172) front page articles, 717 (211) opeds

---

[65] HALL, *supra* note 53, at 26.

[66] *Id.*

and 133 (8) TV news broadcasts that reported on banking matters (important banking statutes' legislative progress) in the year before enactment, as tallied in online appendix table A2, only eight (three WP editorials, four WSJ front page stories and one WSJ editorial), were on a hearing in table 3, all of which concerned the earliest hearings (1926 and 1935).[67]

Without question, hearings might have been reported in another, less visible location than newspapers' front page or on television news broadcasts in nonprime times. But that would render them considerably less salient to the public, and hence attendance at such hearings would offer legislators limited, if any, opportunity for self-aggrandizement compared to information-gathering. The data therefore best accord with the conclusion that legislators seeking a publicity forum are not likely to obtain it at a Banking Committee's legislative hearing. Rather, the data are consistent with characterizing the hearings as having a practical informative function for committee members both to ascertain facts and their implications for policy options, thereby facilitating the honing of draft legislation, and to communicate to rank-and-file colleagues that

[67] The WP editorials were short pieces on Representative McFadden testifying at the Senate hearing on his proposed legislation, *National Banking Laws*, WASH. POST, Feb. 18, 1926, at 6; and taking issue with Federal Reserve Governor Eccles' testimony describing the banking bill under consideration as "intended to force" banks to lend, *Cart Before Horse*, WASH. POST, Mar. 7, 1935, at 8; or to "buy any amount of bonds which the Government chooses to force upon them," *Forced Financing*, WASH. POST, Mar. 21, 1935, at 8. There was one additional WP editorial on testimony at a hearing not included in the table because there was a subsequent hearing on a bill more closely related to the enacted bill, and hence not included in the legislation item counts, although included in the tally of all WP editorials. The WSJ articles and editorial all concerned Eccles' testimony at the 1935 House hearings (of which the reporters were critical): *Questions for a Committee*, WALL ST. J., Mar, 7, 1935, at 4 (editorial); *A Subsidy to Banks Is the Way Gov. Eccles Of the Federal Reserve Board Views Interest U.S. Pays Them on Its Bonds*, WALL. ST. J., Mar. 16, 1935, at 1; U.S. Must Control Credit Machinery, Eccles Insists," Wall St.J. Mar. 19, 1935, at 1; *Eccles Agrees Interest Really Isn't "Subsidy,"* WALL. ST. J., Mar. 20, 1935, at 1; *Eccles Would Make Banking System "More Responsive,"* WALL ST. J., Mar. 20, 1935, at 1. As the legislative hearings were open hearings, one can infer that the absence of coverage was due to reporters' lack of interest and not restricted access.

they have conscientiously done so.

b. Hearing Frequency

The data provide some support for the hypothesis that the exigency of a crisis incentivizes lawmakers to short circuit the legislative process with regard to hearings. There are a total of twenty-seven legislative hearings on important banking statutes' bills (enacted or related bills, as described in the online appendix), fifteen of which were in the House and twelve in the Senate.[68] Only four crisis-driven statutes' bills were the subject of a hearing, whereas there were hearings on bills for ten noncrisis-driven statutes. However, despite the substantially lower proportion of crisis-driven statutes whose bills were the subject of a legislative hearing than noncrisis-driven ones (40 compared to 67 percent), the difference, as indicated in table 3, is only marginally significant at 10 percent.[69]

The absence of a legislative hearing could adversely affect the information available for noncommittee members in floor deliberation. That is not only because a bill will be less well vetted as committee members will have less information to identify potential drafting errors or ambiguities but also, because committee reports on banking bills are associated with hearings and they are a potential source of information for noncommittee members and their staff.

---

[68] Data on characteristics of the hearings – length, number and type of witnesses, and legislators' participation – are provided in online appendix table A5. Six of the House hearings were on four crisis-driven statutes' bills: two subcommittees held hearings on one statute's bill, and in the other, a subcommittee and the full committee did. Three of the Senate hearings were on three crisis-driven statutes' bills, all of which were also the subject of House hearings. For textual simplicity, I refer to hearings held by either the full committee or a subcommittee as committee hearings, identifying the specific body only if referring to a specific hearing.

[69] The table includes the statutes enacted as titles within omnibus statutes as there was a legislative hearing on a bill that became one of those titles. The difference in the holding of a hearing by statute category is also insignificant if only those on enacted bills are compared.

Specifically, there is a significant positive correlation between Banking Committees' holding of legislative hearings and the issuance of committee reports (House correlation .4223, significant at .0447; Senate correlation .4393, significant at .0360).[70]

The frequency of legislative hearings is far greater for statutes enacted in the first half than in the second half (83 compared to 39 percent) of the time span under investigation (dividing the enacted statutes approximately equally, there are twelve in the first half, 1927-89, and thirteen in the second half, 1990-2010). As more crisis-driven statutes were also enacted in the second half of the interval (60 percent), there is a striking difference in the frequency of hearings on crisis-driven statutes' bills over time, being much higher for those enacted by 1989 than for those enacted thereafter (75 compared to 17 percent). There is also a discrepancy, albeit smaller, in the frequency of hearings on bills of noncrisis-driven statutes over time (88 compared to 57 percent).

The differential frequency of hearings across time in the data set complicates analysis as it suggests the possibility that the observed lower frequency of crisis-driven statutes is a function of a temporal decline in legislative hearings, rather than due to a crisis context (the hypothesis I am investigating). Such a possibility would be consistent with Lewallen's documentation, in a comprehensive study of hearings held from 1981-2018, of a decline in legislative hearings from a peak in the 1980s, commencing in the Senate (in 1985-86) and the House (in 1991-92), which he explains as a function of reduced benefits to committees of legislative-related activities due to

[70] Excluding the two statutes enacted in omnibus legislation, no committee report was issued for four statutes' bills in both chambers (two crisis-driven and two noncrisis-driven), none of which bills were the subject of a hearing. For another two statutes' bills (both non-crisis-driven), there was no committee report in the House, albeit there was a hearing on one of the two. The difference in report issuance across statute categories is not statistically significant.

centralization of authority in party leadership.[71] Dividing the set of statutes by those temporal benchmarks and examining hearings separately by chamber, House hearings on crisis-driven bills declined from 57 to 0 percent using the 1992 cutoff, with a much smaller decline for noncrisis-driven bills (63 compared to 57 percent), while Senate hearings on crisis-driven bills declined from 50 to 38 percent using the 1984 cutoff, with a similarly large decline for noncrisis-driven ones (75 compared to 43 percent).

Given possible confounding of the enactment of many crisis-driven statutes at a time when the frequency of holding legislative hearings had declined, I sought to disentangle the alternative explanations of fewer legislative hearings for crisis-driven statutes by running logit regressions for the presence of a Senate or House hearing on an indicator variable for a financial crisis statute and, tracking Lewallen's pivot years for the two chambers, an indicator variable for a year after 1984 or 1992 (in the Senate and House models, respectively).[72]

---

[71] LEWALLEN, *supra* note 6, at 26, 37. As Lewallen details, the "centralization of agenda-setting authority and responsibility" in party leadership and away from committee chairs, *id.* at 3, along with corresponding rule changes (further enhancing the power of party leadership), increased the uncertainty for committees over whether their bill would be considered on the floor and reduced the incentive of committees to compete with each other to obtain floor debate time. The operation of these factors alters the opportunity costs to committees of engaging in lawmaking activity by reducing the probability of success, resulting in committees rationally redirecting their time and resources from legislative hearings to nonlegislative hearings overseeing the executive branch.

[72] Because Lewallen's graphical data suggest a more nuanced trend regarding Banking Committee hearings that is not monotonic, *id.* at 32-34, I ran additional models with a financial crisis statute indicator and two time indicator variables, an indicator for a year between 1984-2004 (Senate model) or 1992-2004 (House model), and an indicator for a year after 2005 (both chamber models), to incorporate the nonmonotonic breakpoint in the banking committee graphs, and Lewallen's specific reference to Senate Banking Committee legislative hearings rising from the 109th Congress (2005-06). *Id.* at 32-33. All regressors are negative and insignificant in these models as well.

Probability (Hearing = 1) = $F(\beta_0 + \beta_1 * \text{Crisistat} + \beta_2 * \text{After19xx})$, (2)

where F(z) is the cumulative logistic distribution, $F(z) = e^z/(1 + e^z)$, "Crisisstat" is an indicator variable equal to one for a crisis-driven statute and "After19xx" is an indicator variable for a year after 1984 or after 1992. I further ran a variant of model (2) for the Senate that included an interaction term:

Probability (Hearing = 1) = $F(\beta_0 + \beta_1 * \text{Crisistat} + \beta_2 * \text{After1984} + \beta_3 * \text{CrisAft84})$, (2')

where the regressor, "CrisAft84" multiplies the two indicator variables, "Crisisstat" and "After1984." An interaction term cannot be included in the House regression because there was no hearing on a crisis-driven statute enacted after 1992.

The effort to disentangle the effects was not successful. In the House and Senate models of equation 2, both regressors are statistically insignificant, although the signs are negative (i.e., directionally, there are fewer hearings both on financial crisis statutes and on statutes enacted in later years). In addition, the interaction term was insignificant and positive in sign in the additional Senate regression (equation 2'). Furthermore, the regressions do not explain much as the log likelihood ratio chi-squares are insignificant and the pseudo R-square values are small. I therefore cannot conclude that the absence of legislative hearings for bills of crisis-driven statutes is a function of their consideration in crisis times rather than of changes in legislative practice, despite there being a large disparity in hearing frequency for crisis- compared to noncrisis-driven bills in the later time frames.

B. Floor Procedures Limiting Debate

Although much of the work on legislation occurs in committees, how a bill is considered on the chamber floor is also a key factor in congressional deliberation, as the procedures adopted

to govern debate affect the quality of decisionmaking by delimiting the range of possible policy options on the agenda. My principal focus is whether the rules selected to govern consideration of bills in the House differ between crisis- and noncrisis times. The Senate's consideration of bills is more summarily discussed because it operates under more consensus-based procedures than the House, resulting in less variation across Congresses operating in crisis and noncrisis times.

The legislative consideration of important banking statutes resembles the "textbook" account of the legislative process from the committee with subject matter jurisdiction to the floor. This is because important banking statutes' bills are typically referred solely to the Banking Committee and cross-chamber differences are reconciled by conference committee. This practice sharply contrasts with the "unorthodox lawmaking" that has become increasingly prevalent and is characterized by strong leadership control through multiple committee referrals and a variety of non-conference committee mechanisms for cross-chamber reconciliation.[73]

1. Procedure for Bill Consideration in the House

As Sinclair describes, "major legislation is brought to the House floor by a special rule

[73] The classic study demonstrating the inaccuracy of the textbook description of the legislative process, given the increasing prevalence of what she terms "unorthodox" lawmaking is SINCLAIR, *supra* note 42. As noted previously, only one of the important banking statute's bills had the "unorthodox" feature of being multiply referred. In addition, as indicated in online appendix table A13, most cross-chamber differences were reconciled by conference. Of the twenty-three statutes not included in omnibus legislation, eighteen were resolved in conference and two more were resolved by the second chamber enacting the bill it received from the first chamber as is. I undertook a logit regression of an indicator variable for use of a conference to reconcile bill differences on two regressors, an indicator variable for a financial crisis-driven statute and the year of enactment. Both variables were statistically insignificant, supporting the contention that the feature of unorthodox lawmaking of cross-chamber differences reconciled by a mechanism other than a conference would not distinguish between statute categories and, more generally, is not applicable to important banking statutes.

that allows the measure to be taken up out of order."[74] A rule structures deliberation, specifying the time for debate and amendments that can be offered and waiving House rules regarding deliberation (e.g., it can waive the ability of members to raise points of order, such as, objections to amendments, that would otherwise violate House rules).

a. Overview of Rules for Floor Consideration of Bills

The majority party leadership exercises control over legislative debate through its influence over the Rules Committee that drafts the special rule, allocating a much higher proportion of seats to the majority compared to the ratio of majority to minority seats on other committees, thereby ensuring firm party control of the legislative process.[75] Alternative means by which bills can be brought to the floor besides a rule are by unanimous consent or by suspension of the rules (which requires a 2/3 vote, limits debate to forty minutes and prohibits amendment), but given supermajority requirements, such procedures are routinely used only for noncontroversial bills that have bipartisan support.[76]

Special rules take a number of forms, depending upon the extent to which they regulate floor debate. A simple or open rule does not contain debate restrictions and permits all germane amendments. There are three types of rules that restrict amendments: "modified open," which

---

[74] *Id.* at 27.

[75] The extent to which party leadership exercises control over the rules committee, which determines the rule, has varied over time, with greater committee independence from leadership during the years referred to as the "period of committee government" from 1920 through the early 1970s. Barbara Sinclair, *Parties and Leadership in the House*, *in* THE LEGISLATIVE BRANCH 224, 226-27 (Paul J. Quirk & Sarah A. Binder, eds., 2005).

[76] *E.g.*, Stanley Bach, *Suspension of the Rules, the Order of Business, and the Development of Congressional Procedure*, 15 LEG. STUD. Q. 49, 60 (1990).

permit amendments with some restrictions "either through a pre-printing requirement or an overall time limit on [the] consideration of amendments;" "structured," which limit amendments to a specified set; and "closed," which prohibit amendments except for those of the reporting committee.[77] As Sinclair observes, "[i]n the contemporary House, most rules are somewhat restrictive," noting that "from 1989-2008, 68 percent of rules have been something other than open rules (modified open, structured/modified closed, or closed)."[78] Sinclair further asserts that party leadership "strongly influences" the Rules Committee's choice of rule (in effect, the extent to which amendments are limited), because the rule is "considered crucial to [a] bill's success."[79]

Before debate on a bill can commence in the House, the Rules Committee's proposed rule must be approved by a majority. A rule is formulated as a resolution, with a customary debate time of an hour, equally divided between the two political parties, but a noncontroversial rule typically does not use all of the allotted time.[80] Members participating in the debate on a rule often address the substance of the bill and not solely the rule itself. While many rules are

---

[77] House Committee on Rules, *Special Rules*, https://rules.house.gov/about/special-rule-types In recent years, there has been a rise of additional rule types, so-called "creative rules," that can handle complex bills, such as omnibus bills or those referred to multiple committees, and that give majority leadership greater control over the agenda on the floor. OLESZEK, ET AL., *supra* note 46, at 173-80. I classify the rules for the important banking laws by the label used by the Rules Committee when the rule is brought to the floor, all of which are within the categories enumerated in the text.

[78] SINCLAIR, *supra* note 42, at 28. The percent of rules having some restriction was 100 percent during the 111th Congress (2009-10), *id.*, the Congress in which the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified in scattered titles and sections), a response to the Global Financial Crisis, was enacted.

[79] SINCLAIR, *supra* note 42, at 29.

[80] *Id.* at 38.

unanimously adopted without a roll call vote, voting on a restrictive rule is often a party unity vote, with the majority party unanimous in support and the minority "almost always vot[ing] unanimously" against a rule that is "substantially restrictive."[81]

b. Strategic Uses of Rules

Majority party leadership use rules to structure policy choices and to ensure party voting coherence, which may include shielding party members from having to vote on minority party amendments that the majority party opposes but that could have popular support in a member's district, by blocking such amendments from being considered. The tactic can similarly prevent amendments that might garner majority support in the chamber that the majority party leadership opposes (i.e., if the policy preference of the median voter in the chamber on an issue differs from the median voter of the majority party and its leadership).[82] Schickler provides an historical gloss

---

[81] *Id.* at 40.

[82] As Marshall succinctly puts the issue, an "intended consequence" of the majority party's centralization of control in leadership, and its consequent use of the Rules Committee, is "to move policy away from the floor median and closer to the central preferences of the party caucus." BRYAN W. MARSHALL, RULES FOR WAR: PROCEDURAL CHOICE IN THE US HOUSE OF REPRESENTATIONS 2 (2005). Wiseman and Wright theorize, and provide data indicating that the preference of the median legislator is closer to that of the majority party median than that of the minority party and hence, that even if the majority party does not exercise negative agenda power, such that it "operates under a fully open agenda," policy outcomes will still "be biased in favor of the majority party." Alan F. Wiseman & John R. Wright, *The Legislative Median and Partisan Policy*, 20 J. THEORETICAL POL. 5, 26 (2008). But it certainly does not follow that deliberation under an open rule would produce an identical outcome in all circumstances to that enacted under a restrictive rule: that would depend on the relative size of the majority and the heterogeneity of the preferences of the members of both parties, which would permit the majority party to steamroll the minority, a measure of voting cohesiveness analyzed in part V, *infra*. Moreover, Wiseman and Wright's contention regarding the proximity of the median voter to the median majority party member is not true for all Congresses, albeit such contrary instances are rare: in one of the Congresses in which an important banking law was enacted, the 84th Congress (1956), the House median legislator's preference (.012) was closer to that of the minority (.27) than majority (-.3035) party, and was true of the Senate (chamber median .029; minority median

on rules' strategic uses, contending that the rise of restrictive rules in the 1980s "served [the majority party's] partisan interest" to counter the minority's aggressive use of floor amendments "to embarrass the majority," and had a policy component, benefitting liberal Democrats by preventing Republican amendments that "might otherwise have won over moderate and conservative Democrats."[83]

Whether majority leadership advocated rules that blocked amendments that would have been adopted in the deliberation over important banking laws is a scenario that cannot, of course, be ascertained because there is no record of amendments that would have been proposed for consideration under an open rule, and what the voting outcomes would have been. Nevertheless, there are suggestive data in the literature that restrictive rules can have such an effect. For example, Marshall finds that the restrictiveness of a special rule is inversely correlated with minority support and Monroe and Robinson find that "restrictive rules are associated with more extreme (to the majority side) proposals than nonrestrictive" ones.[84] The use of restrictive rules

---

.28, majority median -.242) (my calculation of nominate scores, which are explained in text and accompanying note 112, *infra*).

[83] ERIC SCHICKLER, DISJOINTED PLURALISM 235 (2001).

[84] Marshall, *supra* note 82, at 80; Nathan W. Monroe & Gregory Robinson, *Do Restrictive Rules Produce Nonmedian Outcomes? A Theory with Evidence from the 101st-108th Congresses*, 70 J. POLITICS 217 (2008). Monroe and Robinson use nominate scores to identify cut points for final passage roll call votes, which in a spatial model of voting preferences represent the "ideal point" or policy preference of the "hypothetical legislator" who would be indifferent between a bill's passage or failure. *Id.* at 225-26. Marshall further examines the relation between the use of restrictive rules and whether the majority party median member's position is closer or further from the chamber median than the median majority party member on the legislative committee that reported the bill. He characterizes the data as suggesting that party leadership uses restrictive rules when proposed legislation is "vulnerable to amendments that can pull outcomes toward the floor median." Marshall, *supra* note 82, at 82, 120. He therefore concludes that "one major lesson from the analysis of rule choice is that one of the most

can, it would seem, enable the majority party leadership to circumscribe congressional deliberation by eliminating consideration of alternative policy options, potentially thwarting what could be the democratic choice were a Condorcet winner procedurally suppressed, which would be a disturbing outcome from the perspective of democratic governance.

However, it is equally true that restrictive rules have a number of important compensating benefits, such as, "sav[ing] time and prevent[ing] obstruction and delay," "focus[ing] attention" on key issues and "structur[ing] choices ... to promote a particular outcome," preserving "compromises reached at the prefloor stage," and "reducing uncertainty" (e.g., limiting the amendments to those stated in the rule enables both supporters and opponents of a bill to "focus their efforts").[85] The perceived benefits of restrictive rules suggest that majority party leadership,

---

important factors in determining the choice of restrictive rules is the policy position of the majority party," i.e., such rules are used strategically for partisan purposes. *Id.* at 120. It should further be noted that even when amendments are permitted under a restrictive rule, the majority often structures the process to advance its position by permitting only minority amendments that would fail – either as a single amendment in the form of an alternative substitute to the majority's bill (which is therefore expected to be defeated), or by a "king-of-the-hill" rule that sets up a series of votes but if more than one passes, only the last to be voted upon wins (hence the majority sequences its preferred amendment to be last). STANLEY BACH & STEVEN S. SMITH, MANAGING UNCERTAINTY IN THE HOUSE OF REPRESENTATIVES: ADOPTION AND INNOVATION IN SPECIAL RULES (1988).

[85] SINCLAIR, *supra* note 42, at 30-31. Schickler's historical account of the development of House rules similarly notes the interest of all members in restrictive rules to improve the House's "capacity to legislate" as a rationale for the rise of their usage, but emphasizes that "Democrats' partisan and policy interests" determined the form the rules' limitations took. SCHICKLER, *supra* note 83, at 236. The text presents the predominant approach in the literature to explain the use of restrictive rules, referred to as the partisan theory. The informational, rather than partisan, theory, proposed by Krehbiel, views restrictive rules as an optimal mechanism that incentivizes committee specialization, their members' investment in producing information, that is then shared with the chamber, and that reduces uncertainty over policy outcomes. As Marshall succinctly explains that theory, "the chamber exchanges restrictive rules to facilitate the passage of policies developed by ... committees in return for the committee's production of information." Marshall, s*upra* note 82, at 64. In an empirical study of the use of restrictive rules, Sinclair finds

when operating in the wake of the exigency of a financial crisis with heightened media coverage and public support for government solutions, would be even more powerfully incentivized to use restrictive rules to limit debate and facilitate enactment of the party's agenda, than they would be in ordinary times. The use of restrictive rules therefore presents a trade-off between the extent of deliberation and the forward movement of the majority's agenda into law that is, no doubt, only further intensified by the perceived need to act in the wake of financial crises. In other work I advocate the legislative practice of sunsetting, revisiting crisis-driven statutes and implementing regulations years after enactment, when better information will be available concerning a crisis's causes or unintended consequences of a particular provision, and the possibility of engaging in calm and reasoned deliberation is more likely.[86] Sunsetting could mitigate ex post the potentially adverse consequences of legislators having traded off expedited lawmaking against more extensive chamber deliberation, and potentially incentivize greater cross-party cooperation ex ante on legislative initiatives.[87]

As a practical matter, it is extremely difficult, if not all but impossible, for opponents of a proposed rule to revise it on the floor. The Rules Committee member managing the resolution can end debate by moving the previous question, because approval of such a motion results in an immediate vote on the preceding motion, which is the motion to approve the resolution (i.e.,

---

strong support for the partisan theory, and only, at best, weak support for the informational theory. Barbara Sinclair, *House Special Rules and the Institutional Design Controversy*, 19 LEG. STUD. Q. 477 (1994).

[86] E.g., Romano & Levin, supra note 2. More fully working out the operation of effective sunsetting and its implications than I have done previously is the topic of future research.

[87] In instances of bills that were not subject to legislative hearings, sunsetting can also remediate drafting issues that might have been identified had such a hearing been held.

rule). Sinclair explains the significance of moving the previous question: a rule can be amended only by a vote defeating the previous question motion, as those opposed to the rule then control the floor and can adopt their own rule.[88] Such an outcome is extremely rare, an analogue to the proverbial black swan, because a loss of such a critical motion is perceived to be "devastating for the majority party" and consequently, a majority party member's vote against the party's position, which could defeat the rule, would likely come at a considerable professional price.[89]

c. Use of Restrictive Rules to Consider Important Banking Laws

Table 4 provides information on the type of rule under which the important banking statutes were deliberated in the House. Crisis-driven statutes have a far higher frequency of being considered under a restrictive rule than noncrisis-driven ones. There is only one noncrisis-driven statute that was considered under a restrictive rule (the Gramm-Leach Bliley Act of 1999,[90] a major deregulatory initiative), whereas all crisis-driven statutes were subject to restrictive rules, except for the two enacted in the aftermath of the Great Depression, which is well before such rules began to be commonly employed.[91] As is evident from visual inspection of the rules listed in table 4, a statistical test in table 5 confirms the significantly higher probability

---

[88] SINCLAIR, *supra* note 42, at 38-39.

[89] *Id.* at 39. As of 2022, a rule had "not been voted down for consideration in two decades." CONGRESSIONAL RESEARCH SERVICE, THE LEGISLATIVE PROCESS ON THE HOUSE FLOOR: AN INTRODUCTION 8 (Updated Dec. 14, 2022).

[90] Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 U.S.C. and 15 U.S.C.).

[91] Barbara Sinclair, *House Majority Party Leadership in an Era of Divided Control, in* CONGRESS RECONSIDERED, *supra* note 6, at 237, 249 (Rules Committee did not become "arm" of majority party leadership until the mid-1970s and use of restrictive rules increased dramatically by the late 1980s).

of a crisis-driven statute's being considered under a restrictive rule than a noncrisis-driven one.[92]

The pattern of rules adopted for crisis-driven statutes is consistent with data tracking Congress's increasing use of restrictive rules since the 101st Congress (1989-90),[93] but casual empiricism would suggest that it is not a function of a time trend because the consideration of the more recent noncrisis-driven legislation has not proceeded under restrictive rules. Nevertheless, in the interest of thoroughness, given the conjunction of the enactment of financial crisis statutes during the interval in which the use of restrictive rules increased, I estimated a logit regression model to disentangle whether the higher frequency of restrictive rules for financial-crisis driven legislation is due to an exigent enactment environment or a temporal trend, as follows:

$$\text{Probability (Restrictive rule = 1)} = F(\beta_0 + \beta_{1*}\text{Crisistat} + \beta_{2*}\text{Statyear}) \quad (3)$$

where the dependent variable equals one for a bill considered under a restrictive rule and zero otherwise, F(z) is the cumulative logistic distribution, $F(z) = e^z/(1 + e^z)$, "Crisisstat" is an indicator equal to one for a crisis-driven statute and "Statyear" is the year of the statute's enactment; the two statutes included in omnibus legislation are excluded. The effort at disentangling the effects was successful: the crisis statute indicator is significantly positive (probability = .011), whereas the time indicator is only marginally significantly positive (probability = .083). These findings are most consistent with the contention that Congress is more likely to restrict debate when considering legislation in crisis rather than noncrisis times,

---

[92] Table 5 compares only statutes considered under a special rule. Online appendix table A8 indicates that the probability of a restrictive rule is still significantly higher for crisis-driven statutes if restrictive rules are compared to open rules and all other mechanisms of consideration, such as by unanimous consent.

[93] Sinclair, *supra* note 91, at 249.

independent of an increasing use of restrictive rules over time.

Apart from a majority's powerful incentive to enact legislation quickly in the exigency of a financial crisis, the greater use of restrictive rules for crisis-driven legislation implies that there was considerable controversy over those bills' content between the political parties. Such an inference is in accord with Sinclair's finding that restrictive rules are more likely to be used when a bill divides the two parties.[94] This characterization is also in accord with the finding, reported in table 4, that House procedures that are used for noncontroversial matters – action by unanimous consent or by suspension of the rules – are adopted solely for noncrisis-driven legislation. Further tracking this observation, as shown in online appendix table A8, there is a statistically significant higher probability of the use of consensual-based mechanisms when the House is considering bills for noncrisis- than crisis-driven statutes.

In addition, the online appendix analyzes whether the greater use of consensual measures to consider noncrisis bills is a function of time. As time regressors are insignificant, the disparity in use is best explained by a differential political dynamic: when the House enacts important financial legislation in noncrisis times, it is typically a bipartisan product with overwhelming support, in contrast to crisis-driven legislation, hence the feasibility of using consensual mechanisms to bring bills to the floor. This contention accords with a significant difference in the final votes on important banking laws: as reported in table 8 and appendix tables A13 and analyzed in part V, there is no party unity vote on a noncrisis-driven statute in the House, whereas there are a number of party unity votes on crisis-driven legislation.

---

[94] Sinclair, *supra* note 85.

d. Participation in Deliberation over Rules

Representatives' participation in debates over the approval of rules is analyzed in the online appendix, in aggregate and separately by party and by position (membership on the Rules or Banking Committees or rank-and-file). Not surprisingly, significantly more legislators speak when a rule is restrictive than nonrestrictive, in virtually all aggregate and all groupings (i.e., when considered separately by party and by legislative position), the exceptions being marginally significant (at 10 percent) for Rules Committee members by party status and Democrat rank-and-file members, as reported in online appendix table A9. A marginally greater number of representatives spoke on the adoption of rules for crisis- than noncrisis-driven bills, with the only statistically significantly higher participation rates for Banking Committee members, and more granularly, Republicans on the Banking Committee.

The most noteworthy finding is that significantly more Republicans -- in total, on the Banking Committee, and the rank-and-file – speak on restrictive rules than nonrestrictive rules. These data can straightforwardly be explained in relation to the political dynamics of deliberation: legislators most negatively impacted by restrictions on amendments are more motivated to participate in debate and oppose the adoption of the restrictive rule. Minority party members, not only among the rank-and-file but also on the banking committee, are quite often denied the ability to offer amendments under a restrictive rule.[95] This characterization of the data

[95] *E.g.*, BACH & SMITH, *supra* note 84, at, 71 (over 40% of restrictive rules over 1975-80 permitted no minority amendments, a tally that does not account for rules that permitted more majority than minority member amendments). The average number of minority-sponsored amendments under restrictive rules for the important banking laws, 1.6, is half that for nonrestrictive rules, 3.7, whereas the average number of majority-sponsored amendments is about the same for both settings (5.3 versus 6.8, restrictive and nonrestrictive rules, respectively). But the difference in mean is not statistically significant for either the minority- or majority-

– that a rule's limitation on a member's ability to have input into legislation by offering amendments incentivizes their participation in the debate over the rule – is consistent with Monroe and Robinson's conclusion regarding the use of restrictive rules from 1989-2004 that "[r]ank-and-file minority party members have clearly been the biggest losers in the trend toward restrictive procedures in the House."[96] Moreover, Republicans' greater participation is, no doubt, a function of substantive objections to bills' content, in keeping with Sinclair's earlier noted finding that restrictive rules are more likely to be used when the parties are divided over a bill and data in part V indicating that a number of crisis-driven bills were enacted along party lines.

2. Procedure for Bill Consideration in the Senate

The procedure by which legislation is brought up for consideration in the Senate is altogether different from that of the House: the majority leader "just takes the bill to be considered off the calendar."[97] That is, with the precedential procedural right of first recognition,

---

sponsored proposals. Similarly, the difference in approval rate of minority- or majority-sponsored amendments across restrictive and nonrestrictive rule settings is not significant. But the approval rate is slightly higher for amendments brought under restrictive rules, suggesting that in the restrictive rule setting, the Rules Committee is likely to be pressed to allow amendments that have substantial support by the majority party's members, whereas, when amendments are not screened by the Rules Committee, which (on its own or through majority leadership input), is informed of member preferences, the probability of an amendment's adoption should be lower.

[96] Nathan W. Monroe & Gregory Robinson, *Do Restrictive Rules Produce Nonmedian Outcomes? A Theory with Evidence from the 101st-108th Congresses*, 70 J. POLITICS 217, 219 (2008). The majority of individual amendments offered on the floor during the banking bills' consideration (as opposed to Banking Committee amendments included in a bill as presented to the floor, or packaged together for a vote) are proposed by the Banking Committee or by Banking Committee members under both restrictive and nonrestrictive rules, averaging, respectively 83 and 79 percent, an insignificant difference.

[97] SINCLAIR, *supra* note 42, at 57.

the majority leader makes a motion for a bill to be considered.[98] This procedure may "seem[] simpler than that used in the House," but in reality, the Senate majority leadership has "much less control" over legislation than that of the House[99] because of the substantial rights and prerogatives Senate procedures make available to individual senators.

a. Overview of Senatorial Prerogatives and Reaching Consensus

The filibuster is the most notable senator's right that limits the maneuverability of the majority leader in scheduling bills for consideration on the floor. It enables a senator to prevent debate on a motion indefinitely until a supermajority (sixty senators) agree to stop it by invoking cloture. Because ending a filibuster through cloture is time-consuming,[100] the majority leader will typically not bring up a bill until after reaching agreement with the minority leader, with both leaders having obtained the consent of all of their parties' members.

Floor debate in the Senate typically proceeds by unanimous consent, often in formal unanimous consent agreements ("UCA"s), which specify matters similar to those in House

---

[98] *Id.*

[99] *Id.*

[100] To end a filibuster on a motion, such as a motion to proceed, cloture needs to be imposed, which commences with a cloture motion, signed by sixteen senators, and if adopted (by a requisite sixty votes), limits debate on the motion for which cloture was invoked to a maximum of an additional thirty hours. CONGRESSIONAL RESEARCH SERVICE, HOUSE AND SENATE RULES OF PROCEDURE: A COMPARISON 8 (updated Apr. 16, 2008). Before 1975, the requisite supermajority to end a filibuster was 2/3. *Cloture Procedure*, *in* RIDDICK SENATE PROCEDURE 282, 332, at https://riddick.gpo.gov/documents/Cloture%20Procedure.pdf Under the Senate's cloture rule, the cloture vote is to occur on the "second day of [the] session after it is filed." *Id.* at 282.

restrictive rules, such as limiting debate time and amendments.[101] The agreements are negotiated between the majority and minority party leaders, and may evolve over a bill's consideration, requiring, in sharp contrast to the House, interparty compromise. But on occasion, majority leaders bring motions to proceed when a unanimous consent agreement has not been reached. Sinclair characterizes such decisions by a majority leader, who "may know" that he does not have the votes to end a filibuster, as "want[ing] to make a "political point."[102]

b. Mechanisms Used to Bring Up Important Banking Laws for Consideration

Despite considerable procedural differences, there is a similar disparate pattern between how consideration of crisis- and noncrisis-driven important banking laws commences in the Senate, to that in the House. All of the noncrisis-driven statutes' bills were put on the Senate calendar without objection (e.g., by unanimous consent or unopposed motions to proceed), as indicated in table 6. By contrast, three crisis-driven statutes' bills were brought up by a motion

[101] In the time frame of the bills under investigation, Oleszek indicates that initial UCAs tended to limit the type of amendment that could be made, not the number, such that amendments must be relevant, characterizing the agreements as a means to limit the time for debate and such a condition avoids a lengthy set of nonrelevant amendments that could be offered under the Senate's otherwise absence of a germaneness requirement. WALTER J. OLESZEK, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS 207, 247 (7th ed., 2007). Nevertheless, only one of the banking statutes' UCAs with amendment restrictions contained a germaneness restriction; the others' restrictions specified the amendments that would be considered. In more recent years (since 2010, the year in which the last important banking statute was enacted), it appears that UCAs structuring the amendment process are "no longer common[ly]" reached before a bill is considered, and instead serve a "primary objective" of limiting the time for debate, with amendment negotiations continuing after debate begins, WALTER J. OLESZEK, ET AL., *supra* note 46, at 255-56.

[102] SINCLAIR, *supra* note 42, at 71-72.

to proceed that was opposed.[103] As intuited from these data and as reported in table 7, the difference in the use of unanimous consent to bring up crisis- and noncrisis-driven bills is statistically significant.

The procedural difference between the mechanism by which crisis- and noncrisis-driven bills are brought to the Senate floor parallels the divergence in use of special rules and roll call votes on motions in the House between the two bill categories, and makes plain a majority's advantage in moving bills forward aggressively in crisis times. Crises apparently prod the Senate majority leadership to adopt an approach similar to that used by the majority leadership in the House, in effect, to steamroll the opposition due to disagreement between the parties over a bill's substantive content, contrary to the Senate's typical consensual approach to legislation, although the number of times that the Senate leadership had recourse to the strategy is far fewer than that in the House, and in the end it reached a compromise with the minority to move forward.

Two statutes were considered under time limitation agreements and eight were subject to UCAs (three of which were for consideration of a Senate bill substituted for the House bill whose number is identified as the enacted bill), as indicated in table 6.[104] Of the UCAs, five restricted

---

[103] As summarized in notes to table 6, the opposition to the motions to proceed delayed the bills' consideration for several days (ranging from four to twelve days), until an accommodation between the political parties was reached and the minority agreed to move forward.

[104] I have not included in the count of UCAs instances when a unanimous consent request was made on the floor (e.g., to offer a specific amendment) and approved, and it was later referred to as a "unanimous consent agreement." *E.g.,* 102 CONG. REC. 6,760 (Apr. 23, 1956) (statement of Sen. Thye) ("Are the independent bankers of America acquainted with the amendments which were made a part of the bill by the unanimous-consent agreement this afternoon?," referring to request made on the floor by Sen. Carter for approval of committee amendments en bloc), in the absence of an initial UCA announced when a bill's consideration began.

amendments (on three crisis- and two noncrisis-driven bills' consideration), four of which also contained a time limit for debate (the outlier being a noncrisis-driven bill).[105] Given that only five important banking laws were subject to amendment limitations, there are too few observations to undertake a statistical test comparing UCA restrictions across the two categories of statutes. The data do suggest, however, that, in contrast to deliberation in the House, deliberation over crisis-driven bills in the Senate is, as a general proposition, not more restrictive

[105] Because UCAs frequently evolve during floor debate, identifying an initial agreement does not necessarily indicate whether legislators agreed to restrictions on amendments thereafter, which Sinclair indicates appears to be the more common occurrence in recent years. SINCLAIR, *supra* note 42. Two bills, both crisis-driven, were considered under such evolving UCAs. The initial UCA of the Senate's bill for the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-173, 103 Stat. 183 (1989) (codified as amended in scattered sections in 12 U.S.C.), adopted during the bill's consideration, simply specified amendments to be considered at the start of the next day, and on that day, a second UCA was announced that limited the remaining amendments. DAILY SENATE CALENDAR OF BUSINESS, Apr. 19, 1989, at 2 (Unanimous Consent Agreement on S. 774 (Order No. 45)), babel.hathitrust.org/cgi/pt?id=umn.31951p01199-837; 135 CONG REC. 7,120 (April 19, 1989) ("Unanimous-Consent Agreement") (presented by Sen. Mitchell). In addition, the Senate's bill for Dodd-Frank was considered under an evolving UCA: a new UCA was adopted almost every day, indicating what amendments were to be considered, sometimes with time limits and sometimes with prohibitions on the offering of first, second and third degree amendments. DAILY SENATE CALENDAR OF BUSINESS, May 5, 6, 7, 11, 12, 14, 17, 18, 19, 20, 2010 (all at 2) (Unanimous Consent Agreement 3. 3217 (Order No. 349)), https://www.govinfo.gov/app/collection/ccal/111/scal/2010-05. Because those UCAs only restricted amendments on amendments, I did not include this statute in the tally of statutes with UCAs restricting amendments in the text. However, these agreements had the ultimate effect of restricting amendments because cloture was successfully invoked on May 20, which caused all pending amendments to be withdrawn. 156 CONG. REC. 8,844-8,845 (May 20, 2010) (statement of Sen. Reid) (asking for unanimous consent (referencing unanimous consent agreement) on final motion "if successful, then all pending amendments be withdrawn"); *id.* (statement of Presiding Officer) (on approval of Reid's request,, that "All pending amendments are withdrawn. . . .") The ordering therefore turned out to be consequential: on May 6 it was noted that there were 141 amendments pending, 156 CONG. REC. 7,513 (statement of Sen. Dodd), but as table A11 indicates, a total of fifty-six amendments reached the floor over the entire period of the bill's consideration, which began on April 29.

than that over noncrisis-driven bills.[106] But such a conclusion does require a caveat: the tally of bills considered without limits on amendments can be misleading because there are additional tactics by which the majority leader can cut off amendments on the floor even though a UCA has no limitations, such as, the ability to "fill up the amendment tree" (use of the leader's "prerogative of first recognition to offer amendments in all of the parliamentarily permissible slots"). [107] Still, such a tactic would not appear to have been used in the consideration of important banking bills.

As earlier noted, with no successfully negotiated UCA, three crisis-driven bills were brought up by the majority leader's motion to proceed. In the context of a financial crisis, a majority leader's calculation to employ such a tactic is surely more than a symbolic gesture

---

[106] The Congress.gov website includes all amendments to bills, including amendments senators submitted for printing but that never were brought to the floor, as of 1981. For statutes enacted in earlier years, I reviewed Congressional Record daily digests to locate pages in the Congressional Record where amendments were printed, from when a bill was introduced on the floor through its enactment, as well as the pages in the Congressional Record on which the bills were debated, and identified a few instances of amendments that senators did not propose on the floor. Online appendix table A11 provides information on the number and sponsorship of amendments filed, and amendments filed and subject to action, in panel A. There are no systematic differences in sponsorship between amendments that are not advanced to the floor and those that are subject to floor action: paired two sample difference in means-comparison tests by sponsor type (Banking Committee member, Democrat, Republican, cosponsor of another party), as well as total number), are all statistically insignificant, as indicated in panel B of the table. There are also no statistically significant differences in the number of amendments filed or the number actually brought to the floor across the two categories of statutes, although both averages are higher for crisis-driven than noncrisis-driven ones. Because Curry and Lee find that the number of amendments in the Senate has decreased since the 106th Congress (1999-2000), JAMES M. CURRY & FRANCES E. LEE, THE LIMITS OF PARTY: CONGRESS AND LAWMAKING IN A POLARIZED ERA 9 (2020), I also sought to control for such a trend by regressing the number of amendments proposed by Democrats and Republicans (in total and separately) on an indicator variable for a year after 2000 and a financial crisis statute indicator. Neither regressor was significant.

[107] SINCLAIR, *supra* note 42, at 84.

destined to fail (Sinclair's earlier-noted explanation for the use of such motions). The leader raising the threat of cloture may anticipate that increased media attention and heightened public sentiment for government solutions during financial crises might induce a minority strongly opposed to a bill's substantive provisions to acquiesce in moving the majority's proposal forward to consideration on the floor, due to concern over possible political backlash by voters against members perceived to be blocking legislation).[108] Supporting the contention that a financial crisis alters minority party senators' behavior, in contrast to the success of the majority leader's motions to proceed on crisis-driven banking bills, Sinclair identifies a number of failed motions to proceed, in which a minority filibuster prevailed and no agreement was reached between the parties, preventing a majority's bill from ever reaching the floor.[109]

---

[108] It is, of course, also possible that a crisis could incentivize a majority, particularly a small or ideologically diverse one, to agree to concessions to the minority to obtain unanimous consent to move legislation forward expeditiously. Sinclair provides examples of UCAs that obtained minority consent in exchange for guaranteed votes on the minority's amendments, such as a UCA on a "must-pass bill" to raise the debt limit in January 2010. SINCLAIR, *supra* note 42, at 72. The opposition to a motion to proceed on three crisis-driven banking bills might therefore have been instances in which the minority was seeking guaranteed votes on amendments that the majority party was not willing to accept.

[109] *Id.* at 72. Of course, the comparison between Sinclair's study and this one is inexact because my dataset only includes enacted bills (i.e., only motions that did not fail). But consistent with a crisis-based explanation of the difference, cloture was threatened but not required to move these bills to the floor. There was only one successful cloture vote on the three bills with contested motions; four additional cloture motions on two of the bills, including the bill with a successful motion, failed or were withdrawn. The cloture vote that passed not only had bipartisan support, including that of the minority (Republican) party's leadership, but also bipartisan opposition, in roughly equal numbers across the parties, as noted in table 6. The motion succeeded on the third cloture motion's vote; given session time constraints (proximity to the Thanksgiving recess), the leadership on both sides wished to proceed to the bill, some controversial issues having been resolved in negotiations among senators and the administration in the interim, while remaining controversial issues were to be resolved by consideration of amendments on the floor. *E.g.*, 137 CONG. REC. 31,372 (Nov. 13, 1991) (statement of Sen. Riegle); 137 CONG. REC. 31,401(Nov. 13, 1991) (statement of Sen. Garn).

V. Characteristics of Enacting Congresses and Voting Outcomes

While legislative procedures affect substantive legislative outcomes, both procedures and outcomes are a function of the characteristics of the enacting Congresses. In this section, seven key characteristics related to congressional majorities' ideological preferences and voting strength are compared across crisis- and noncrisis- Congresses, along with differences in the degree of voting partisanship on the two categories of statutes.

There are a number of significant differences in the composition of enacting Congresses for crisis-driven statutes compared to noncrisis-driven ones that facilitate the passage of statutes with a far greater regulatory impact and complexity, such as larger majorities of more liberal legislators. In addition, the frequency of party unity votes is far higher for crisis- than noncrisis-driven statutes. The less frequent occurrence of bipartisan support for crisis-driven statutes parallels the observation of more contested procedural motions preceding consideration of crisis-driven bills compared to noncrisis-driven ones, underscoring their sharply distinct political dynamics and larger regulatory impact and complexity.

A. Congressional Variable Definitions

The first key variable, legislators' ideology, is identified by a widely-used measure in the political science literature, nominate scores, that are constructed from legislators' roll call votes. Poole and Rosenthal, who created the measure, find that legislators' preferences are well-explained along one dimension, arrayed along a left-right continuum, which they straightforwardly label as a liberal to conservative spectrum (more liberal legislators have more

negative nominate scores and more conservative ones more positive ones).[110] I then identify the nominate score of the median legislator, as well as each party's median score, for each chamber in each Congress enacting an important banking statute.[111] The median voter is a key legislative pivot point, particularly in the House, because it operates by majority vote.[112] I also examine an alternative proxy for a chambers' ideology, the percentage of legislators in a chamber who are Democrats.[113]

The second critical characteristic is a chamber's "legislative potential for policy change" (LPPC), a measure of the ability of a majority to enact its policy agenda without minority support. The LPPC measure was created by Hurley and colleagues for the House, and is generated from the size and cohesiveness of a majority's coalition compared to that of the minority, where cohesiveness is defined as the extent to which party members vote together.[114]

---

[110] KEITH T. POOLE & HOWARD ROSENTHAL, IDEOLOGY & CONGRESS (2d rev. ed. of CONGRESS: A POLITICAL-ECONOMIC HISTORY OF ROLL CALL VOTING, 2007). The continuum of nominate scores from left to right (negative to positive values) lines up with moving from Democrats to Republicans.

[111] Nominate scores are obtained from Jeffrey B. Lewis, et al., *Voteview: Congressional Roll-Call Votes Database* (2024), available under the data tab at: https://voteview.com.

[112] Although the 2/5 voter is also a pivot for the Senate given that sixty votes are required to terminate a filibuster, because none of the banking statutes' final votes were subject to a filibuster, I do not collect scores for those pivotal legislators.

[113] In a few instances in the Senate, an independent legislator caucused with the Democrats, and is therefore included in the count of Democrats.

[114] Patricia Hurley, David Brady & Joseph Cooper, *Measuring Legislative Potential for Policy Change*, 2 LEG. STUD. Q. 385 (1977). Given the possibility of filibusters, an LPPC metric is of limited insight for analyzing the capacity for a Senate majority to initiate major policy change in the absence of more than sixty members. Nevertheless, I constructed LPPC values for the Senate to undertake an analogous analysis to that of the House comparing legislative capacity for major action across crisis- and noncrisis-driven Congresses.

The online appendix explains the LPPC variable's construction.

Higher LPPC values indicate a majority has less need of minority support to enact legislation, and thereby identify a Congress with an increased potential for enacting large policy shifts, such as legislation calling for extensive financial regulation. The intuition for the measure is that the size of a majority is not sufficient for a party to enact major legislation, as the party must vote as a bloc, particularly if the opposition is doing so, to succeed legislatively. Hurley and colleagues use computer simulations to calculate a minimum LPPC threshold below which it would be "virtually impossible" for a majority to act on its own. I compare LPPC values, as well as the frequency with which those values are above the minimum threshold, for crisis and noncrisis Congresses.

Because, as elaborated in the appendix, the LPPC score had to be adapted to be used for my dataset and was constructed to measure majority strength in the House and not Senate, I further examine, as a robustness test, congressional characteristics that parallel the LPPC's two components: a majority's margin of control and its ideological heterogeneity. The margin of control is the difference between the number of majority party legislators and other legislators in a chamber.[115] Paralleling the LPPC's use of majority size, the majority margin is another measure of the majority party's size and hence its potential voting strength. The majority party's ideological heterogeneity, following the literature, is measured by the standard deviation of the nominate scores of party members.[116] It is a fair alternative to the LPPC's measure of a party's

[115] Because the independent senator caucused with the Democrats, he is included in the majority.

[116] *E.g.,* Wiseman & Wright, *supra* note 82, at 19 (standard deviation of nominate scores measures party heterogeneity).

voting cohesiveness as a bloc because a reasonable inference is that the more homogeneous party members are ideologically, the higher the probability that they will vote together.

The final two congressional characteristics that I investigate are party polarization and divided government, variables frequently used in the literature to explain constraints on the ability of Congress to enact important legislation, albeit not without contestation.[117] Party polarization refers to the degree to which the policy preferences of the majority and minority parties are distinct. I use the partisan polarization measure constructed by Binder, which divides the number of party members who are ideological moderates (members whose nominate scores are closer to the chamber median than to their party median) by the distance between the two party medians' nominate scores.[118] Greater polarization implies a Congress with fewer centrists, that is, fewer legislators with cross-party overlapping preferences, rendering it less probable that the political parties will agree on legislation than were the level of polarization lower.[119]

Divided government is an indicator variable for a Congress when the party of the

---

[117] *E.g.*, MAYHEW, *supra* note 32 (contrary to common wisdom of importance of unified government, finding divided government does not decrease probability of important legislation); SARAH A. BINDER, STALEMATE (2003) (polarization more important than divided government in creating legislative gridlock); Lawrence C. Dodd & Scot Schraufnagel, *Party Polarization and Policy Productivity in Congress: From Harding to Obama*, *in* CONGRESS RECONSIDERED 437 (Lawrence C. Dodd & Bruce I. Oppenheimer, eds., 10th ed., 2013) (finding moderate polarization fosters policy productivity, not low level of polarization).

[118] *See* BINDER, *supra* note 117. Sarah Binder generously provided her polarization data for the Congresses in my data set.

[119] This contention is consistent with Dodd and Schraufnagel's assertion that there is a curvilinear relation between polarization and congressional productivity, i.e., that there must be some degree of polarization to enact legislation. They show that the more productive Congresses have moderate polarization rather than high or low polarization, but note an exception for responses in times of "severe economic crises." Dodd and Schraufnagel, *supra* note 117, at 438.

president differs from the majority party controlling at least one chamber.[120] Although it might seem intuitive that such a political constellation would render adoption of major new policies arduous, there is disagreement in the literature over whether divided government is an impediment to the enactment of such initiatives.[121]

B. Analysis of Differences in Congressional Characteristics

Panel A of table 8 provides the mean values of congressional characteristics at the time of chambers' votes on bills' passage, for all statutes and separately for crisis- and noncrisis-driven ones, along with means-comparison tests, and panel B provides chi square and Fisher's exact tests for comparisons of the categorical variables.[122] As table 8 shows, crisis-driven statutes tend to be enacted in a highly distinctive legislative environment compared to that of noncrisis-driven ones: a large and cohesive majority of more liberal legislators (i.e., those more predisposed to government solutions to policy issues).

---

[120] *E.g.,* Michael Laver & Kenneth A. Shepsle, *Divided Government: America is Not "Exceptional,*" 4 GOVERNANCE 250, 252 (1991). In all but one Congress enacting an important banking law that is identified as operating under divided government, the majority party of both chambers differs from that of the president.

[121] An important criticism of Mayhew's finding that divided government does not adversely effect the enactment of major legislation is related to the challenge of defining congressional productivity. MAYHEW, *supra* note 32, acknowledges that his tally of important laws lacks a denominator and that there is, as a consequence, no measure of how many potential laws were not enacted, a necessary component for a thorough assessment of the legislative performance of divided, compared to unified, government. Binder constructs such a metric and finds, contrary to Mayhew, that Congress is less productive when operating under divided government. BINDER, *supra* note 117.

[122] Online appendix table A14 provides analogous comparisons and statistical tests for the these variables at the time of votes on conference reports or other means of cross-chamber reconciliation, as a number of the variables' values differ due to changes in sitting legislators in between the two votes (e.g., deceased legislators, who may or may not have been replaced).

More specifically, the median legislator in both chambers is significantly more liberal, the House majority is significantly more cohesive and able to undertake major legislative initiatives (significantly higher LPPC values) and the Senate majority is significantly more homogeneous ideologically, when crisis-driven statutes are enacted, compared to noncrisis-driven ones.[123] Not surprisingly, given such a constellation of findings, both chambers have a marginally significant (at 10 percent) higher percentage of Democrats when enacting crisis-driven legislation. In addition, more crisis-driven Congresses (six of ten) have an LPPC value greater than the minimum critical value for a majority to be theoretically able to enact policy change without minority support than noncrisis ones (four of thirteen).[124]

The statistically significant wide gap of the LPPC variable across the two sets of statutes provides insight into the strikingly divergent regulatory impact between crisis- and noncrisis-driven statutes. When a majority has a slim marginal advantage brokering a cross-party compromise becomes a prerequisite for getting legislation over the finish line (the central insight

---

[123] As reported in the online appendix table A14, when measured at the time members voted on conference reports, with fewer observations, only the House LPPC and median Senate legislator ideology variables remain statistically significant. The other variables that are statistically significant in table 8 are marginally significant at 10 percent.

[124] Six of ten crisis-driven statutes were enacted under divided government, whereas only four of fifteen noncrisis-driven statutes were. The higher level of polarization and more frequent divided government for crisis Congresses are consistent with the contention that the exigency of a crisis can override normal politics when the conjunction of such factors would prevent enactment of major legislation. But the statistical insignificance of those variables' mean difference across the two categories of statutes limits drawing a conclusion with confidence that lower polarization and more frequent unified government explain noncrisis enactments. Oldham's study of congressional lawmaking in times of crisis, which examines a broader set of crises than financial ones, similarly finds that polarization and divided government do not prevent legislative responses to crises as they do in "politics-as-usual" ordinary times. Robert Oldham, *Crisis Lawmaking and Legislative Centralization* (unpublished manuscript, 2024), consistent with Dodd and Schraufnagel's contention, *supra* note 119.

motivating the construction of an LPPC variable), and what we tend to observe in normal times, bipartisan support of major legislation. This finding and interpretation of the data aligns with Curry and Lee's comprehensive analysis of legislation identified as majority party priorities since 1973: they find that despite increased cohesive party voting and polarization, lawmaking in recent Congresses is as bipartisan as it was in the 1970s, and when majority parties succeed in enacting their priorities, they are rarely adopted by party unity votes, usually garnering substantial minority support, including that of minority party leaders.[125]

In characterizing the tactics by which majority parties succeed in legislating their priorities, Curry and Lee identify as the most prominent (54 percent), a majority commencing the process with a strong partisan proposal but "back[ing] off," with the most controversial provisions "dropped" or "watered down," to obtain bipartisan support for passage.[126] They also report majority "steamrolling" legislation through to enactment (e.g., a majority enacts partisan priorities with few, if any compromises) in 14 percent of legislative successes since 1985.[127] By contrast, there is a far higher rate of party unity votes on the adoption of crisis-driven financial legislation (50 percent of crisis-driven statutes) than the instances of steamrolling that Curry and Lee observe.

A large number of the bipartisan successes in Curry and Lee's study occur in Congresses operating under divided government, where compromise is a necessity, as presidential approval

---

[125] CURRY & LEE, *supra* NOTE 106.

[126] *Id.* at 95. A second pathway to success also commences with a majority seeking a partisan bill but rather than back down, the majority fashions "bipartisan logrolls," in which its priorities are paired with minority priorities to "build a bipartisan coalition." *Id.*

[127] *Id.* at 98.

provides leverage for the minority's negotiating position. For instance, they observe that the "backing down" strategy was statistically significantly more likely to be used under divided government.[128] The bipartisan support in legislative successes that Curry and Lee report is also a product of Senate rules that, except in the special circumstance of budget reconciliation, require a supermajority for legislation to advance (i.e., the sixty votes required for a cloture motion to end a filibuster).[129]

However, the moderating influence of the Senate on House partisanship is a function not only of the size of the Senate majority but also of the intraparty ideological divergence across chambers.[130] Consistent with the Senate having a moderating influence on House initiatives, in all ten crisis Congresses, the median House Democrat's nominate score is more negative than (that is, ideologically to the left of) that of the median Senate Democrat, indicating a more liberal House than Senate. The more moderate Senate median compared to that of the House is, to some extent, a function of senators' staggered terms, which has the effect, as Erikson and Wright observe, that the "Senate's partisan division responds more sluggishly to national trends" than the House and, further, that "electing more members [of one party] increases the likelihood of policy movement in the ideological direction of the advantaged party."[131]

---

[128] *Id.* at 95.

[129] *Id.* at 45.

[130] As Curry and Lee note, intraparty disagreement is an important factor in a majority's failed priorities under unified government, including situations where "a unified majority party could have succeeded alone." *Id.* at 66.

[131] Robert S. Erikson & Gerald C. Wright, *Voters, Candidates, and Issues in Congressional Elections*, *in* CONGRESS RECONSIDERED, *supra* note 117, at 91, 110, 112. It is also due to senators having a larger and hence more diverse constituency than representatives, holding

A wave election therefore tends mechanically to produce a smaller ideological shift in the Senate's median voter than in the House, as fewer members are up for reelection due to staggered terms. Still, the ideological difference of the median Democrat across chambers is lower (i.e., the medians are ideologically closer) in crisis than noncrisis Congresses, as there were most often large swings in party control in elections during and following crises.[132]

The closer proximity of interchamber preferences in crisis years has the effect of reducing the likelihood that the Senate moderates House initiatives. That follows because when a majority party's median member in each chamber shares similar policy preferences, legislation adopted in the House by a party unity vote is less likely to be substantially revised through bipartisan compromise in the Senate (depending, of course, on the size and cohesiveness of the Senate majority). The probability of such an outcome is increased under unified government – the circumstance under which the most contested crisis-driven laws are enacted -- as presidential preferences are often in sync with that of chamber majorities who may well have been elected on the president's coattails.[133] This analysis is consistent with Curry and Lee's finding that a majority of the instances of successful steamrolling of the minority occurred under unified

---

office state-wide rather than in the smaller geographical unit of a district (except for the seven states that have only one representative-at-large). *Id.* at 110.

[132] The difference between the nominate scores of the median Democrat in the House and Senate in years when crisis-driven statutes were enacted averages -.0236, which is closer than that in noncrisis years of -.039, but it is not statistically significant. It is also much smaller in the crisis Congresses where the election had a sweeping effect on the congressional majority than those whose elections had minimal effect on majority party control (Great Depression and Global Financial Crisis of -.019 and .046, respectively, in contrast to .064 in S&L Crisis Congresses, as elaborated in part V., *infra*).

[133] *E.g.,* Erikson & Wright, *supra* note 131, at 95-97.

government.[134]

Unified government during a financial crisis further incentivizes the majority to short-circuit efforts at bipartisan lawmaking. A partisan outcome becomes more probable because negotiating a cross-party agreement is likely to hinder an expedited legislative response due to the transaction costs of the majority's having to reach an accommodation with the minority on the content of legislation. Corroborating this conjecture, the percentage of crisis-driven statutes enacted by party unity votes (50 percent in the House and 33 percent in the Senate), as earlier noted, far exceeds the 14 percent steamrolled successes reported by Curry and Lee, although differences in the data sets (in time interval, number and subject of statutes) caution against reaching a firm conclusion. Combining (i) the heightened salience of banking matters in crises and (ii) crisis-driven bills' circumscribed vetting due to procedures adopted by the majority, with the majority's (iii) liberal ideological cohesiveness, (iv) ability to steamroll the minority under unified government; and (v) strong incentive to enact its agenda in the exigency of a crisis, it follows ineluctably that crisis-driven legislation will generate far larger increases in regulation of the financial sector than noncrisis times.

C. Voting Outcomes

Information on party unity voting on important banking laws is provided in table 8, in the aggregate and separately for crisis- and noncrisis-driven laws.[135] As a comparative benchmark,

---

[134] CURRY & LEE, *supra* note 106, at 98.

[135] As there are no final votes on statutes included in titles in omnibus acts, those statutes are excluded from the table calculations. Although each statute may in theory have four recorded votes; only four do (two crisis- and two noncrisis-driven ones), as indicated in online appendix table A13. I examine only the final roll call votes on statutes, and not votes on amendments, because they are the most visible and easiest for constituents to decipher. *E.g.*, RANDALL B.

the percentage of party unity votes of all roll call votes in a chamber in a Congress, along with the percentage of majority party unity votes are also included.

As table 8 indicates, there are dramatically more (and statistically significant) party unity votes on crisis-driven than noncrisis-driven laws, paralleling the finding of a greater number of contested motions on proceeding to consider crisis- driven than noncrisis-driven bills.[136] As might be intuited, the opposition to restrictive rules and consent agreements reported earlier are indicia of objections to bills that are carried through to the final vote. Party unity votes also occur somewhat more frequently in the House than the Senate (six such votes on five statutes, as opposed to four on three statutes, respectively).[137] This is consistent with institutional

---

RIPLEY, MAJORITY PARTY LEADERSHIP IN CONGRESS 8-9 (1969). Hence, for legislators with reelection concerns quite apart from policy preferences, these votes are important position-taking activity. Arnold's comprehensive study of newspaper coverage of members of the House supports that characterization, as he found that most newspapers reported roll call votes "extensively," with half of all articles providing an incumbent's policy position reporting a roll call vote, and surveys indicate that half of respondents could answer a question whether they agree or disagree with their representative's votes, and 18 percent could answer a similarly-phrased question that refers to a vote on a particular bill. DOUGLAS ARNOLD, CONGRESS, THE PRESS, AND POLITICAL ACCOUNTABILITY 121 (2004).

[136] Party unity votes on a statute and consideration under a restrictive rule are significantly positively correlated, calculated by the Spearman rank coefficient or Pearson Correlation coefficient (correlation .44, probability .04). This finding accords with the earlier mentioned data of Sinclair indicating that restrictive rules are used for bills on which the parties divide. Because the table observations are by statutes, party unity votes are identified by a dummy variable equal to one for any statute with one such vote. As a consequence, statutes that had more than one such vote (e.g., a party unity vote in both chambers, or such a vote on both a bill and conference report) provide only one observation. Online appendix table A13 identifies the bills and conference reports that were approved by party unity votes.

[137] All of the House party unity votes were on crisis-driven statutes, whereas one of the Senate's party unity votes was on a noncrisis-driven one. One might worry that if reelection concerns are a significant motive for enacting financial legislation in the wake of a crisis, then the minority party by voting against a number of crisis-driven laws would suffer adverse electoral consequences. However, as discussed in the online appendix, members' reelection bids were not

procedures enabling majority leadership in the House to exercise greater agenda control, along with high House LPPC values in many of those Congresses incentivizing the leadership to use its procedural advantages to stymie deliberation and bulldoze the opposition, by suppressing consideration of amendments that a chamber majority (but not a majority of the majority party) might potentially support.

As there was also a significantly higher proportion of party unity votes of all roll call votes taken in the House in crisis Congresses compared to noncrisis ones (.59 compared to .49), it might appear that the party unity votes on crisis- driven financial legislation are not a unique phenomenon. However, such a conclusion would be mistaken. The two variables are not significantly correlated (correlation of .2985, significance .2145).[138] If the overall level of partisanship were to explain voting on banking statutes, then the two variables would be in sync.

Equally important, a number of noncrisis Houses had higher levels of party unity votes than crisis Houses, yet none had a party unity vote on an important banking statute. Accordingly, the extent of partisan voting in a Congress is, at best, only one factor contributing to party unity voting on important banking statutes, and most certainly not a determinative one.

However, because the percentage of party unity votes has increased over time,[139] a

---

affected by negative votes on crisis-driven statutes (most legislators voting against the statutes were reelected and the explanations for the incumbents who lost are unrelated to those votes).

[138] An illustration of how the two variables do not line up is that in the House with the highest level of party unity roll call votes, 1933, there was no party unity vote on the important crisis-driven banking statute it enacted, whereas there is a party unity vote on the important crisis-driven banking statute enacted in the House with the lowest level of party unity roll call votes, 2010.

[139] CURRY & LEE, *supra* note 106, at 3-4.

temporal trend might contribute to a higher level of all party unity votes in the House over time and in that scenario, party unity votes on important banking statutes might simply be a function of such a trend. I therefore investigated whether a temporal trend, rather than a statute's being enacted in the wake of a financial crisis, explains banking statutes' party unity votes, by estimating a logit model predicting the probability that a statute has a party unity vote on a bill or conference report in either chamber, as follows:

$$\text{Probability (Party unity vote = 1)} = F(\beta_0 + \beta_1 * \text{Crisistat} + \beta_2 * \text{Voteyear} + \beta_3 * \text{PctUnity}), \quad (4)$$

where $F(z)$ is the cumulative logistic distribution, $F(z) = e^z/(1 + e^z)$, "Crisisstat" is an indicator variable for a crisis-driven statute, "Voteyear" is the year of the vote, and "PctUnity" is the proportion of roll call votes that were party unity votes in the House that year.[140]

The financial crisis statute indicator is significantly positive (probability .050) whereas neither the year indicator nor the percentage party unity vote are significant. These results confirm that it is the crisis Congresses' political context and statutory content, and neither a time trend nor the overall level of party unity voting in a Congress, that best explains the partisan voting on important banking laws.

There is also no relation between party unity votes in the House and the LPPC index (correlation .2, significance .3581); indeed, if the correlation is computed solely for crisis-driven statutes, it is negative as well as insignificant (correlation -.2654, significance .49). This finding illustrates the contention that the political dynamic in the wake of a financial crisis can provide a majority with both the incentive and opportunity to steamroll the minority without its having a

[140] Statutes enacted as a title in omnibus legislation are excluded because there are no separate votes on the titles.

high LPPC. It thereby underscores Hurley and colleagues' important caveat that LPPC values are a measure of only potential control, because the index does not incorporate other factors that can affect whether specific policy initiatives are enacted, such as "presidential and congressional leadership" and issue salience.[141] The LPPC index provides valuable insight for predicting House members' behavior, but most certainly cannot explain all that is observed.

D. Explaining the S&L Crisis's Smaller Regulatory Impact

When in an earlier article I found that the S&L Crisis had a far lower regulatory impact than the two other financial crises, I noted that it had far less of an economic impact on the national economy than the other crises, using conventional economic indices: there was no stock market crash during the S&L Crisis compared to the other two crises,[142] and there was a far shorter recession (eight months) over the S&L Crisis's time span, compared to forty-three months and eighteen months, respectively, for the Great Depression and Global Financial Crisis.[143] However, I concluded that this explanation was insufficient to account for the

---

[141] Hurley, Brady & Cooper, supra note 114, at 390. A logit model was also estimated that regressed an indicator for a party unity vote in the House on the LPPC index rather than the percentage of unity votes in the Congress along with the statute's enactment year; the crisis-statute indicator was not included because all House party unity votes on banking laws were on crisis-driven ones. Both regressors were insignificant.

[142] Romano, supra note 1. Robert J. Barro & J.F. Ursúa, *Stock Market Crashes and Depressions*, 71 RES. IN ECON. 384 (2017) (providing stock market data and defining a crash as cumulative real returns of -25 percent or less)).There was a large stock market drop in October 1987, but it does not appear in Barro and Ursúa' list because, as they note, it was not "a decline for the full year." *Id.* at 386, n. 5.

[143] National Bureau of Economic Research, US Business Cycle Expansions and Contractions (2021) (data from official entity determining recessions), at: https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions (recession dates).

differential regulatory effect because not only did the S&L Crisis's lengthy duration result in a far greater number of bank failures and higher expenditure on their resolution than the Global Financial Crisis (for which comparable figures are available), but also, it produced a greater number of important banking laws than the other crises combined.[144]

In that article, I further considered whether differences in political economy might explain the disparate regulatory impact, such as divided government (the one, obvious characteristic observed), but rejected that explanation as well, noting that there were periods of unified government under Democrats in noncrisis times in which the enacted statutes did not increase regulation.[145] But data analyzed in this paper have led me to revisit that initial assessment. I am now of the view that a political economy explanation related to divided government contributed importantly to the S&L Crisis's much lower regulatory impact.

To hark back to the contention regarding the explanatory power of divided government – a different party controlling Congress from that of the president – for the finding, noted earlier, that statutes enacted during the S&L Crisis had far less of a regulatory impact than those of other crises (80 percent lower compound growth measured from crisis start through two years post-enactment of the last statute attributed to the crisis), all but the last of the six S&L Crisis-driven statutes were adopted in years of divided government. By contrast, the Banking Acts of 1933 and 1935 and Dodd-Frank, congressional responses to the Great Depression and Global Financial

---

[144] As reported in Romano, *supra* note 1, over 2,000 financial institutions failed during the S&L Crisis, at an estimated resolution cost of $87.9 billion, compared to fewer than 500 institutions' failure in the Global Financial Crisis, at an estimated resolution cost of $72.5 billion. If the costs were adjusted for inflation, the S&L loss would be considerably larger.

[145] *Id.*

Crisis respectively, were enacted in years of unified government under Democrats' control and were followed by extraordinarily large increases in regulation and complexity, visually observable in figures plotting growth in textual measures of regulation (restrictive words and complexity) from 1915-2015 in my earlier article.[146]

The LPPC values for the House during the S&L Crisis are below those of the chamber enacting statutes in the wake of the Great Depression but higher than those during the Global Financial Crisis years. This seemingly anomalous finding is consistent with Hurley and colleagues' observation that the "most obvious example" in which a high LPPC Congress does not achieve its potential to enact major initiatives is "the case where control of the presidency and the House is divided."[147] Divided government, as earlier mentioned, provides a congressional minority with leverage, requiring greater bipartisan cooperation than the S&L Congresses' LPPC index values alone would imply, as the majority has to craft statutes acceptable to a president of the other political party.

It is telling that, consistent with the characterization of the S&L Crisis's political dynamics as providing less capacity for legislation calling for expansive regulation, the intensity of media coverage of banking prior to statutes' enactment was markedly lower during that crisis than either the Great Depression or the Global Financial Crisis. As reported in online appendix table A17, the average newspaper reporting on banking matters, in total or on statutes' legislative progress, in the years before statutes were enacted in the wake of those two crises ranges between two to forty-eight times higher than the reporting before enactment of S&L Crisis statutes

---

[146] *Id.* (figures 1-3).

[147] Hurley, Brady & Cooper, *supra* note 114, at 390.

(depending on the newspaper and whether the tally is of front page items or editorials).

The far lower salience accorded banking during the S&L Crisis suggests that it did not produce an equivalent level of public anxiety, if not fear, as the other crises, and could have signaled to legislators that the public was not singularly focused on banking as an issue nor strongly desirous of robust government intervention in the operations of financial institutions. The distinctive conjunction in the S&L Crisis years of lower media reporting on both banking and the legislative progress of the important banking statutes with a political environment more conducive to cross-party compromise provides an explanation for less comprehensive regulatory initiatives following the enactment of S&L Crisis-driven statutes than other crises' statutes.

Further helpful analytical insight into why the S&L Crisis had a considerably smaller regulatory impact than the other two crises is provided by a one-dimensional spatial model of legislators' preferences that Brady and Volden use to identify a "gridlock region," an area in which legislation does not move beyond the status quo.[148] The gridlock region falls between pivot veto points regarding legislation's enactment: the preference of the House and Senate member who is at 1/3 +1 (legislators whose decision can override a presidential veto), and the 41-st senator's preference (the senator whose vote upholds or ends a filibuster), referred to as the 2/5 pivot, in relation to the preference of the median legislator in the chamber. Elections can shift pivotal legislators and hence, alter the gridlock region. With preferences arrayed on a line, moving leftward, by convention, identifies more liberal legislators, and election outcomes that change pivotal members "release" areas of the gridlock region (i.e., widen the set of potential

[148] DAVID W. BRADY & CRAIG VOLDEN, REVOLVING GRIDLOCK, POLITICS AND POLICY FROM JIMMY CARTER TO GEORGE W. BUSH (2d ed. 2018).

legislative policy outcomes).[149]

The 1932 and 2008 elections during the Great Depression and Global Financial Crisis, respectively, flipped the party of both the president and the majority in Congress from Republican to Democrat, along with increasing the size of the chamber majorities, effecting a massive shift in the gridlock zone. By contrast, the elections during the extended S&L Crisis (1984-91) did not produce much of a shift in pivot points. The constellation of congressional and presidential preferences, hence gridlock region, did not move perceptibly from the pre-S&L crisis years of the early 1980s and first two years of the crisis, 1984-86, for there was a Republican president throughout, a Democrat House majority ranging between 59-61 percent and a Republican Senate. With the 1986 midterm election, Democrats regained control of the Senate, which shifted the Senate pivots and brought its median closer to that of the House, but not the president's location in the policy space. The 1988 presidential election maintained Republican control of the presidency and the size of the Democrats' majorities did not appreciably change from 1986-92, with the number of seats they controlled increasing only by 2 percent in the 1990 midterms.

While the protracted time span of the S&L Crisis, no doubt, contributed to legislators

---

[149] Brady and Volden provide an illustration of the impact of the 1980 election, which replaced Democrat President Jimmy Carter with Republican President Ronald Reagan, a Democrat majority Senate with a Republican one, and while retaining a Democrat majority in the House, the new majority was smaller in number and more conservative. Hence both chambers' median legislator's preferences moved rightward. The election changed the gridlock region under President Carter that was between the House veto pivot and Senate filibuster pivot to the filibuster pivot and the Senate veto pivot points, moving the gridlock region "dramatically to the right, releasing policies that formerly had been held in place by the preferences of a Democratic Congress and a Democratic President with veto powers," providing Republicans an opportunity to shift policies in their preferred direction. *Id.* at 85.

repeatedly returning to address it, given the era's election outcomes, the gridlock region made possible only relatively minor incremental change to the regulatory status quo. The limited shift in the gridlock region from elections throughout the S&L Crisis years compared to that of the other two crises therefore aids in explaining why that crisis era's Congresses did not advance legislation expanding the regulatory status quo as extensively as the other financial crises' Congresses, despite having enacted more statutes.

VI. Summing Up: Principal Components Analysis

The analysis thus far indicates that the politics of crisis- and noncrisis-driven important banking laws differ on numerous dimensions, such as media coverage, legislative procedures, and the composition of Congress. With numerous moving parts it is challenging to grasp fully the relation between all of the statutes and variables discussed. There is, however, a statistical technique, principal components analysis, that facilitates visualizing that relation.[150]

Principal components analysis reduces the dimensionality (i.e., number of variables) in a dataset into a smaller set of uncorrelated variables ("principal components") that are linear combinations of the variables that are most closely associated. It does this by grouping correlated variables into new variables (the "principal components" or "dimensions" of the data set), which are uncorrelated with each other. The variables' coefficients on the components, referred to as "loadings' or "weights," are combined to provide a "score" for each observation - each statute – in the dataset. The score is a combination of the values of the variables for a statute, multiplied

[150] I would like to thank Michael Troege, who suggested analyzing the data using principal components. He undertook such an analysis using the subset of the data that I had assembled at the time, as a discussant of an earlier draft of this paper at the 14th NYU-Law/Fin/SAFE-ESCP BS Law & Banking/Finance Conference, and generously provided me his software code, which I have used for the analysis of the full dataset.

by their coefficients on the component. The methodology makes possible visualization of relations among the numerous variables and the statutes.

I undertook a principal components analysis using forty-seven variables consisting of eighteen media variables (the newspaper variables in table 2), eighteen political environment and voting outcome variables (table 8), indicator variables for a legislative hearing and a restrictive rule, and nine textual variables measuring the regulatory content and complexity of the statutes and the increase in those variables in banking regulations over one and two years following a statute's enactment.[151] The analysis indicates that most of the variation in the data can be explained by two dimensions (i.e., there are two principal components).[152] The first two principal components, which are the linear combinations that have the largest sample variance, explain 59.9 percent of the variance.

The first dimension is best characterized as a "crisis exigency and regulatory response" factor, as the variables with the largest weights, hence contributions to the eigenvector, are the media salience, party unity votes and textual statute and regulatory impact variables.[153] The second dimension can be characterized as a measure of the political environment, as the

---

[151] Because the principal components methodology drops variables and observations with missing values, the following variables missing observations are excluded from this analysis: media variables whose series start after World War II (television news, public mood, and Gallup polls), State of the Union addresses (as there was no address in 1933); variables in table 6 on rule debates, and in online appendix table A7 on hearings characteristics. In addition, the two statutes enacted as titles in omnibus bills, which lack voting data, are omitted. Online appendix table A18 lists the forty-seven variables included in the analysis, along with their definitions.

[152] Online appendix figure A1 presents a scree plot of the eigenvectors that indicates their contributions to the variance in the data, and hence the number to include.

[153] Variable contributions are discussed in the online appendix and shown in online appendix figures A2-A5.

polarization, and strength of the majority party variables (e.g., both chambers' LPPC, majority margin, percent Democrats, majority voting cohesiveness) have the largest weights.

Figure 1 plots the statutes' position in the two principal component dimensions according to their association with the underlying variables (their scores), color-coded by group (red for crisis- and blue for noncrisis-driven statutes); the key following the figure indicates the statutes' identifying numbers. Statutes closer together have similar scores. The large dot and large triangle are the means of the two groups, and the ellipses are the standard deviations, indicating a 95 percent confidence interval around the mean (the central tendency or weight of the groups as associated with the variables in the space).

The dramatic separation of the two categories of statutes, crisis- and noncrisis-driven, in the two-dimensional space encapsulates the findings in the numerous means-comparison tests and regressions throughout the paper and in my earlier article examining their regulatory impact.[154] The visual representation of the relations between the statutes and variables in the figure provides what can be said to be a proof of concept, compelling evidence that the political dynamics of crisis- and noncrisis- driven important banking statutes are analytically quite distinct, and related to their differential regulatory content and impact.

VII. Conclusion

Crisis- and noncrisis-driven important banking laws, which have starkly different

[154] The results are similar if the nine textual variables measuring statutes' regulatory content and impact are omitted and only the thirty-eight variables from this paper (media salience, legislative procedures, congressional characteristics and voting outcomes) are included. The two categories of statutes are equally distinct visually and the variables with the greatest weights on the first two dimensions, which explain 61.7 percent of the variance, are the same as those in the analysis including the textual measures.

regulatory consequences, are enacted in sharply distinct political environments. Moreover, there is an upside down relation between deliberation and consequential U.S. financial legislation: the greater the regulatory impact of statutes, the less informed and deliberative the legislative process. Bills enacting important financial laws that by far increase regulation the most, crisis-driven statutes, are less often subject to a legislative hearing and are significantly more likely to be considered in the House under a restrictive rule limiting amendments, than noncrisis-driven ones.

Bills without legislative hearings are less well-vetted, resulting in legislators being less able to identify and address potential pitfalls and possible unintended consequences in a bill that might have been caught in a hearing. The possibilities of legislation containing problematic provisions that might have been ferreted out in a legislative hearing are further compounded by limits placed on floor deliberation on crisis-driven statutes' bills due to restrictions on amendments.

The trade-off generated by the restrictive procedure by which crisis-driven statutes are enacted, though understandable given the exigent circumstances of crises, lowers the quality of legislative decisionmaking by eliminating procedures that from the perspective of a conventional understanding of legislative practices, foster more informed deliberation and a higher quality legislative product. It also can result in less democratic decisionmaking, by restricting consideration of alternative policy options that a chamber majority might potentially support. Moreover, strictures on committee and floor deliberation exacerbate the challenge presented by the already sparse-information environment in which crisis-driven legislation is enacted, with a poorly informed understanding of causes contributing to a crisis, let alone what is an apposite

response. In short, the short-circuited legislative procedures typically used for crisis-driven statutes compared to noncrisis-driven ones may amplify the informational and hence, deliberative deficit generated by the operation of the iron law of financial regulation in financial crises.

The distinctive political environment in which crisis-driven, compared to noncrisis-driven, financial legislation is enacted contributes importantly to those laws' far greater regulatory content and complexity, as well as their being followed by large increases in regulation and regulatory complexity. Namely, the heightened media salience of banking matters and congressional activity in the runup to crisis-driven statutes' enactment when compared to noncrisis ones, along with a public mood more supportive of government solutions in times of financial crises, incentivize majority party legislators to enact laws that facilitate the ratcheting up of regulation.

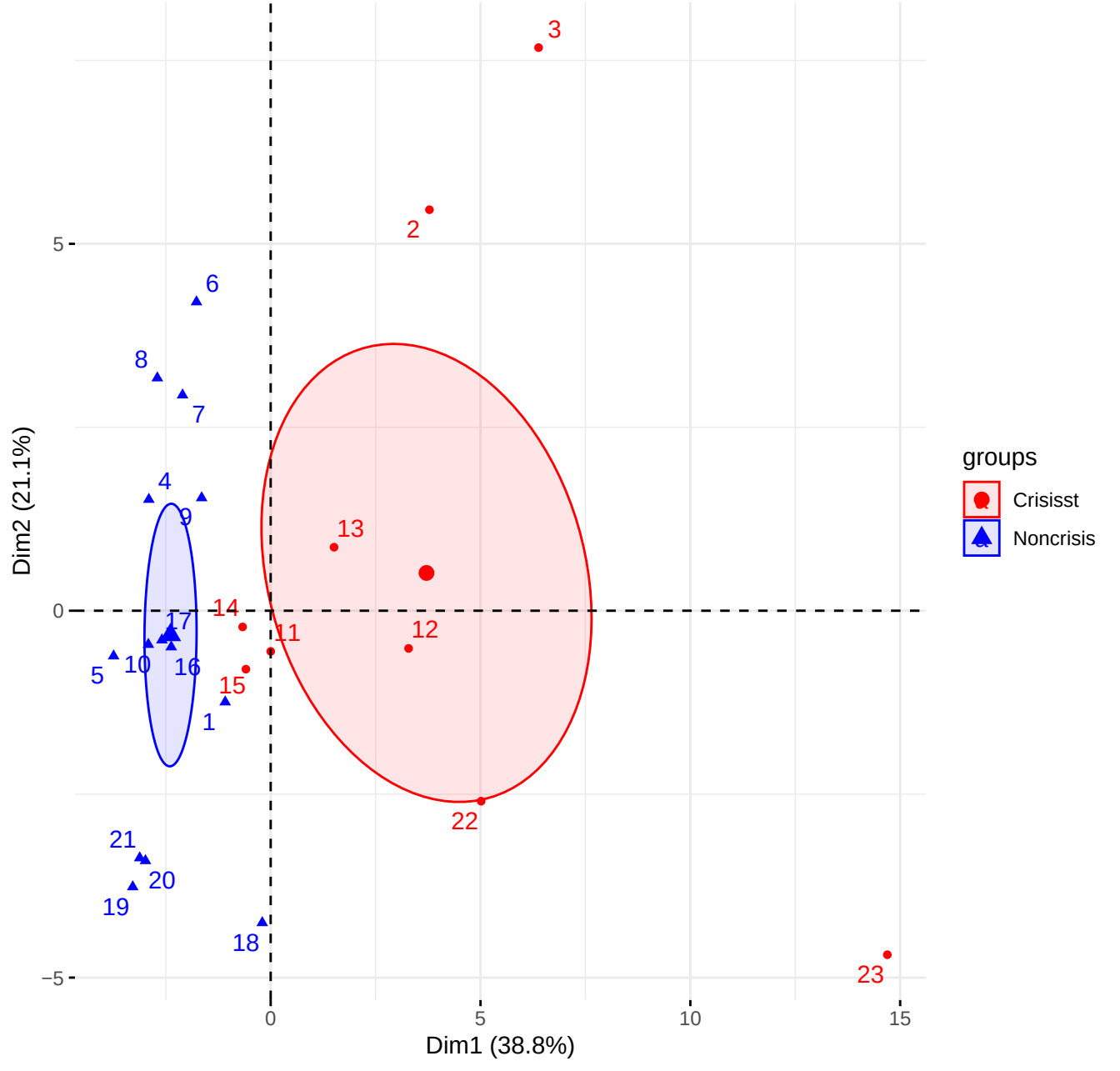
Crisis-driven laws tend to be enacted in years of unified government under Democrats, the political party with greater confidence in government solutions, with more liberal median legislators than Congresses in noncrisis times, and with House majorities having a greater capacity to undertake major policy change without requiring bipartisan support, given the majorities' size and cohesiveness as a voting bloc. Combined with the use of restrictive rules, the constellation of the House's characteristics in crises reduces, if not eliminates, the scope for cross-party cooperation in lawmaking. The fallout is that the minority is often steamrolled, as evidenced by far more crisis-driven statutes being enacted by party unity votes than noncrisis ones.

It is noteworthy that nearly all of the statutes enacted during the financial crisis that had the least regulatory impact (the S&L Crisis) were adopted in a sharply different political

constellation from that of all but one other crisis-driven statute, and particularly from those with the greatest regulatory impact: the Banking Acts of 1933 and 1935 and Dodd-Frank. The S&L Crisis statutes were enacted following far lower media salience and all but one (the 1993 RTC Completion Act) were enacted in years of divided government, which compelled the congressional majority to compromise with the minority. In contrast to the elections preceding the enactment of the Banking Acts of 1933 and 1935 and Dodd-Frank, elections throughout the S&L Crisis years did not alter the status quo appreciably as they maintained the president's party (until two years after the end date of the crisis with the 1992 election) and brought about only minor change in the size of congressional majorities, with the result that only incremental policy change was in the realm of the possible.

The data suggest that the iron law's thesis of a far greater regulatory impact of legislation enacted in the wake of a financial crisis, compared to noncrisis times, is best characterized as generated not solely from a generic dynamic of lawmaking in the wake of a crisis but rather, more specifically from the interaction of a crisis with a distinctive political context of a sizable, cohesively-voting, congressional majority, operating under unified government. A fallout from such a political dynamic is a majority powerfully incentivized to restrict deliberation in an already opaque informational environment for lawmaking and to enact legislation that, given the built-in institutional checks and balances rendering legislating in the United States arduous, will remain on the books for an extended period of time, despite having been enacted under circumstances tending to lower the quality of decisionmaking.

Figure 1. Principal Components Analysis



Key to Figure

1 = McFadden Act of 1927
2 = Banking Act of 1933
3 = Banking Act of 1935
4 = Federal Deposit Insurance Act of 1950
5 = Bank Holding Company Act of 1956
6 = Financial Institutions Supervisory Act of 1966
7 = Financial Institutions Regulatory and Interest Rate Control Act of 1978
8 = International Banking Act of 1978
9 = Depository Institutions Deregulation and Monetary Control Act of 1980
10 = Garn-St. Germain Depository Institutions Act of 1982
11 = Competitive Banking Act of 1987 (CEBA)
12 = Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)
13 = Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA)
14 = Housing and Community Development Act of 1992
15 = RTC Completion Act
16 = Riegle Community Development and Regulatory Improvement Act of 1994
17 = Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994
18 = Gramm-Leach-Bliley Act of 1999
19 = Check Clearing for the 21st Century Act
20 = Federal Deposit Insurance Conforming Amendments Act of 2005
21 = Financial Services Regulatory Relief Act of 2006
22 = Emergency Economic Stabilization Act of 2008
23 = Dodd-Frank Wall Street Reform and Consumer Protection Act

Table 1. US Banking Crises and Important Banking Legislation after the Organization of the Federal Reserve System.

Years*	Important Banking Laws^
1927	Act to Amend the National Banking Laws and the Federal Reserve Act (also known as the McFadden Act of 1927) (Pub. L. No. 69-639)
Great Depression 1929-33	***Banking Act of 1933 (Pub. L. No. 73-066)*** ***Banking Act of 1935 (Pub. L. No. 74-205)***
1950-66	Federal Deposit Insurance Act of 1950 (Pub. L. No. 81-797) Bank Holding Company Act of 1956 (Pub. L. No. 84-511) Financial Institutions Supervisory Act of 1966 (Pub. L. No. 89-695)
1978-82	International Banking Act of 1978 (Pub. L. No. 95-369) Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. No. 95-630) Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221) Garn-St. Germain Depository Institutions Act of 1982 (Pub. L. No. 97-320)
Savings & Loan Crisis 1984-91	***Competitive Banking Act of 1987 (CEBA) (Pub. L. No. 100-86)*** ***Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101-73)*** ***Crime Control Act of 1990 (Title XXV, Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990) (Pub. L. No. 101-647)*** ***Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. No. 102-242)*** ***Housing and Community Development Act of 1992 (Pub. L. No. 102-550)*** ***RTC Completion Act (Pub. L. No. 103-204, enacted in 1993)***
1994-99	Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103-325) Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. No. 103-328) Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. No. 104-208) Gramm-Leach-Bliley Act of 1999 (Pub. L. No. 106-102)

2001-06	Check Clearing for the 21st Century Act (Pub. L. No. 108-100, enacted in 2003) Federal Deposit Insurance Reform Act of 2005 and Federal Deposit Insurance Conforming Amendments Act of 2005 (Pub. L. Nos. 109-171 and 109-173, both enacted in 2006) Financial Services Regulatory Relief Act of 2006 (Pub. L. No. 109-351)
Global Financial Crisis 2007-10	***Emergency Economic Stabilization Act of 2008 (Pub. L. No. 110-343)*** ***Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. No. 111-203, enacted in 2010)***

* This table is reproduced from Roberta Romano, *Are There Empirical Foundations for the Iron Law of Financial Regulation*, AM. L. & ECON. REV. (forthcoming 2024) (abbreviation for 2010 statute, "Dodd Frank" added). Years in bold italics are years in which the United States experienced a financial crisis since the establishment of the Federal Reserve System, as identified in the economics literature, which is reviewed in the online appendix to Romano, *supra*. ^ Statutes are identified from a list of important banking laws constructed by the Federal Deposit Insurance Corporation, and that are directed at the regulation of financial institutions, as explained in the online appendix to Romano, *supra*. Statutes classified as crisis-driven are in bold italics.

Table 2. Media Salience of Banking Matters before the Enactment of Important Financial Legislation

A. Means-comparison tests

Salience Measure	All Statutes (number of statutes)	Statutes enacted in wake of a financial crisis (number of statutes)	Statutes enacted in noncrisis times (number of statutes)	t-statistic for difference in means (probability)
NYT front page	17.1 (25)	39.6 (10)	2.1 (15)	-3.8958** (.0018)
NYT front page on legislation	1.3 (25)	3.0 (10)	0.2 (15)	-2.1718* (.0281)
NYT editorials	9.0 (25)	18.5 (10)	2.6 (15)	-3.3464** (.0040)
NYT editorials on legislation	3.0 (25)	6.3 (10)	0.7 (15)	-2.1530* (.0289)
WP front page	12.3 (25)	28.4 (10)	1.6 (15)	-4.4200** (.0008)
WP front page on legislation	2.3 (25)	5.5 (10)	0.1 (15)	-2.4781* (.0174)
WP editorials	10.8 (25)	22.8 (10)	2.8 (15)	-5.5776** (.0001)
WP editorials on legislation	2.9 (25)	6.4 (10)	0.6 (15)	-3.2219** (.0044)
WSJ front page	15.2 (25)	31.4 (10)	4.3 (15)	-2.8310** (.0097)
WSJ front page on legislation	3.3 (25)	7.5 (10)	0.5 (15)	-2.1634* (.0291)
WSJ editorials	8.9 (25)	17.9 (10)	2.9 (15)	-2.9035** (.0083)
WSJ editorials on legislation	2.6 (25)	5.8 (10)	0.4 (15)	-1.5958+ (.0723)
TV Broadcast News	7.0 (19)	15.1 (8)	1.1 (11)	-2.1756* (.0319)
TV Broadcast News on legislation	0.4 (19)	1 (8)	0 (11)	-1.3229 (.1137)

Public mood	61.4 (19)	64.0 (8)	59.5 (11)	-2.5560* (.0117)
Public mood year before	61.6 (19)	64.4 (8)	59.5 (11)	-3.0505** (.0040)
Regulation mood	40.2 (19)	43.5 (8)	37.9 (11)	-3.4981** (.0014)
Regulation mood year before	39.9 (19)	42.8 (8)	37.8 (11)	-2.3938* (.0142)
Gallup poll banking proportion	.0038 (20)	.0044 (8)	.0033 (12)	-0.3223 (.3755)
State of the Union banking quasi-statements	1.9 (22)	4.4 (9)	.15 (13)	-1.4900+ (.0872)
Percentage quasi-statements	.005 (22)	.013 (9)	.0005 (13)	-1.6481+ (.0689)

B. Chi-square and Fisher Exact Tests

	NYT front page article after final vote	No NYTFP after final vote	Total
Crisis-driven statute	7	3	10
Noncrisis-driven statute	1	14	15
Total	8	17	25

Pearson chi2 (1 d.f.) = 11.0600; probability = .001**
Fischer's exact test (1-sided) = .002**

	NYT editorial after final vote	No NYT editorial page after final vote	Total
Crisis-driven statute	6	4	10
Noncrisis-driven statute	1	14	15
Total	7	18	25

Pearson chi2 (1 d.f.) = 8.4656; probability = .004**
Fischer's exact test (1-sided) = .007**

	WP front page article after final vote	No WP front page article after final vote	Total
Crisis-driven statute	4	6	10
Noncrisis-driven statute	2	13	15
Total	6	19	25

Pearson chi2 (1 d.f.) = 2.3392; probability = .126
Fischer's exact test (1-sided) = .147

	WP editorial after final vote	No WP editorial after final vote	Total
Crisis-driven statute	3	7	10
Noncrisis-driven statute	1	14	15
Total	4	21	25

Pearson chi2 (1 d.f.) = 2.4306; probability = .119
Fischer's exact test (1-sided) = .159

	WSJ front page article after final vote	No WSJ front page article after final vote	Total
Crisis-driven statute	6	4	10
Noncrisis-driven statute	1	14	15
Total	7	18	25

Pearson chi2 (1 d.f.) = 8.4656; probability = .004**
Fischer's exact test (1-sided) = .007**

	WSJ editorial after final vote	No WSJ editorial after final vote	Total
Crisis-driven statute	4	6	10
Noncrisis-driven statute	2	13	15

Total	6	19	25

Pearson chi2 (1 d.f.) = 2.3392; probability = .126
Fischer's exact test (1-sided) = .147

	Gallup poll has banking response	Gallup poll does not have banking response	Total
Crisis-driven statute	3	5	8
Noncrisis-driven statute	4	8	12
Total	7	13	20

Pearson chi2 (1 d.f.) = 0.0366; probability = .848
Fischer's exact test (1-sided) = .608

This table presents in panel A, mean values for measures of the media salience of banking matters tabulated over the year before the date of the final chamber vote approving enactment of the important banking statutes identified in table 1 for the newspaper and television news entries; for the year of enactment for State of the Union address entries and Gallup poll responses; and public mood entries for the year of enactment and the year before enactment. Panel B is count data for whether there were newspaper entries on a statute's enactment published after the final vote or a Gallup poll banking response in the year of enactment. The number of statutes included in the comparisons varies because some sources are available only for years after the enactment of some statutes, as discussed in the online appendix. "NYT" = New York Times, "WP" = Washington Post, "WSJ" = Wall Street Journal; "front page" is the number of banking-related stories appearing on the newspaper's front page, excluding items on congressional investigations of banking during crises; "front page on legislation" is the subset of the number of articles on the front page that refer to an important banking law's legislative progress; "editorials" is the number of a newspaper's banking-related editorials; "editorials on legislation" is the subset of those editorials on an important banking law's legislative progress; "after final vote" indicates the presence of a front page article or editorial on a statute's enactment. In 1926-27, WSJ editorials were on the front page, and those items are included in both front page and editorial counts for the McFadden statute. Mean newspaper counts are rounded to one decimal place. "TV Broadcast News" is the number of banking-related stories on nightly broadcast news programs' "TV Broadcast News on legislation" is the subset of stories on an important banking law's legislative process. As there was only one news program on a statute after a final vote (a crisis-driven law), the "after final vote" comparison is not reported for TV broadcasts. "Public mood" and "Public mood year before", measure the extent to which public sentiment, as indicated in survey responses, supports increasing government action in economic and social matters in the year of a statute's enactment and the year before enactment, respectively, with higher values indicating greater support, as constructed by Stimson, https://stimson.web.und.edu/data. "Regulation mood"

and “Regulation mood year before” measure public sentiment using a subset of the survey responses used to construct Stimson’s mood measure that relate to support for the regulation of business, measured in a statute’s enactment year and year before enactment, respectively, https://laits.utexas.edu/policymoods. “Gallup Poll banking proportion” is the proportion of responses to Gallup’s open-ended question asking respondents to indicate the “most important problem facing the country” that included banking determined by polls with responses with Policy Agendas Project (PAP) major topic code 15 for banking, finance or domestic currency matters, in the year of enactment. “Gallup Poll has (has not)” in panel B is whether there was a banking code (was no banking code) response to that question. “State of the Union banking quasi-statement” is the number of bank-related quasi-statements in the State of the Union address in the year of the final chamber vote, where a quasi-statement is an item of text in between punctuation, such as a period or semi-colon. “Percentage quasi-statements” is the percentage of total quasi-statements that are related to banking in the State of the Union address in the year of the final chamber vote. Data sources and PAP codes are described in online appendix table A1. The counts of newspaper articles, editorials and TV broadcasts for each statute are provided in online appendix table A2. Means-comparison tests for continuous variables in panel A are computed in Stata; variances are tested for equality and where the variances are unequal, Welch’s formula is used for the means-comparison test. Means comparison statistics are for one-tailed tests because the iron law hypothesis is directional; + = significant at 10 percent; * = significant at 5 percent; and ** = significant at 1 percent. Panel B reports chi-square and fisher’s exact tests, computed in Stata for the categorical variables..

Table 3. Legislative Hearing Frequency by Statute Type

	Noncrisis-driven Statute	Crisis-driven Statute	Total
Legislative Hearing	11	4	15
No Legislative Hearing	4	6	10
Total	15	10	25

Pearson chi2 (1 d.f.) = 2.7778, probability = .096+
Fischer's exact test (1-sided) = .106

+ = significant at 10 percent; * = significant at 5 percent; and ** = significant at 1 percent.

Table 4. Rules Governing House Debate on Bills for Important Banking Laws

Statute	Financial Crisis Statute	Rule*	Time Allotted for Debate	Amendment Restrictions
McFadden Act of 1927	No	Calendar Wednesday	Entire day	
Banking Act of 1933	Yes	Open	4 hours	
Banking Act of 1935	Yes	Open	15 hours	
Federal Deposit Insurance Act of 1950	No	Special+	2 hours	
Bank Holding Company Act of 1956	No	(Restricted only for tax provisions)	4 hours	Yes (tax provisions only)
Financial Institutions Supervisory Act of 1966	No	Open	2 hours	
International Banking Act of 1978	No	Open	1 hours	
Financial Institutions Regulatory and Interest Rate Control Act of 1978	No	Unanimous consent	none	
Depository Institutions Deregulation and Monetary Control Act of 1980	No	Suspension	40 minutes	
Garn-St Germain Depository Institutions Act of 1982	No	Open	1 hour	
CEBA	Yes	Modified open	1 hour	Yes (Title 1 only)
FIRREA	Yes	Modified open	2 hour	Yes
Crime Control Act of 1990	Yes	Suspension	40 minutes	
FDICIA	Yes	Closed	1 hour	Yes
Housing and Community Development Act of 1992	Yes	Modified open	1 hour	Yes
RTC Completion Act	Yes	Closed	1 hour	Yes

Riegle Community Development and Regulatory Improvement Act of 1994	No	Suspension	40 minutes	
Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994	No	Suspension	40 minutes	
Economic Growth and Regulatory Paperwork Reduction Act of 1996	No	Unanimous consent (Note: banking provisions added in Conference report)	1 hour	Yes (amendments not in order for consideration of conference report)
Gramm-Leach-Bliley Act of 1999	No	Structured	1.5 hours	Yes
Check Clearing for the 21st Century Act	No	Open	1 hour	
Federal Deposit Insurance Reform Act of 2005 and Federal Deposit Insurance Conforming Amendments Act of 2005	No	Open; unanimous consent	1 hour; none	
Financial Services Regulatory Relief Act of 2006	No	Suspension	40 minutes	
Emergency Economic Stabilization Act of 2008	Yes	Closed	1.5 hours	Yes
Dodd-Frank	Yes	Structured	3 hours	Yes

* Explanation of House Rules: "Rule" is the category used by Rules Committee members introducing the rule, with the exception of the Emergency Economic Stabilization Act of 2008 (EESA), which was not specifically categorized by members. I categorize the EESA rule as "closed" because it permitted only a vote on the committee Chairman's motion to concur in the Senate amendments. 154 Cong. Rec. 23891-92 (Oct. 3, 2008). Calendar Wednesday rule: sets aside Wednesdays as a day on which committees can call up a reported unprivileged bill (i.e., a bill that has not been granted a special rule) for consideration; it limits debate to two hours. By unanimous consent, the 1972 statute's rule was not subject to the Calendar Wednesday two hour limit and it was considered for the full day. 67 Cong. Rec. 2826 (Jan. 27, 1926). As there were no amendment limits, it is equivalent to consideration under an open rule. Unanimous consent is used for noncontroversial measures that are enacted without debate but it can be used for immediate consideration with amendments structuring debate. Suspension is used to expedite noncontroversial measures, requires a 2/3 vote, limits debate to 40 minutes and waives all rules

and points of order. Special rules are used for most major and controversial measures and allow the House to immediately take up a measure; they are defined by the extent to which they restrict amendments. Open rules permit all amendments that comply with House rules; Modified open rules permit amendments but impose a time limit on consideration of amendments or require them to be preprinted; Structured rules permit only specified amendments; Closed rules prohibit all amendments except committee amendments. +The 1950 statute's "special" rule had no amendment limitations. Sources: Committee on Rules, *Special Rule Types*, https://rules.house.gov/about/special-rule-types; CONGRESSIONAL RESEARCH SERVICE, THE LEGISLATIVE PROCESS ON THE HOUSE FLOOR: AN INTRODUCTION (Updated Dec. 14, 2022); Government Printing Office, *Calendar Wednesday*, in HOUSE PRACTICE 217, https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-112/pdf/GPO-HPRACTICE-112-9.pdf . The standard time for debate in the House is one hour.

Table 5. Restrictive Rules by Statute Type

	Crisis-driven statute	Noncrisis-driven statute	Total
Restrictive rule	7	1	8
Open rule	2	8	10
Total	9	9	18

Pearson chi2(1d.f.) = 8.1000, probability = 0.004**
Fisher's exact test (1-sided) = .008**

+ = significant at 10 percent; * = significant at 5 percent; and ** = significant at 1 percent.

Note: Statutes enacted as part of an omnibus statute are excluded.

Table 6. Senate Mechanism Commencing Consideration of Important Banking Laws

Statute	Financial Crisis Statute	Unam. consent request	Called up from Calendar order	Motion to proceed	Motion to lay before the Senate	Motion under previous order	Cloture motion filed
McFadden Act of 1927	No	1					
Banking Act of 1933	Yes			1*			
Banking Act of 1935	Yes			1			
Federal Deposit Insurance Act of 1950	No	1					
Bank Holding Company Act of 1956	No	1					
Financial Institutions Supervisory Act of 1966+	No	1					
International Banking Act of 1978	No		1				
Financial Institutions Regulatory and Interest Rate Control Act of 1978++	No	1					
Depository Institutions Deregulation and Monetary Control Act of 1980	No	1					
Garn-St Germain Depository Institutions Act of 1982++	No				1		
CEBA (1987)+	Yes					1	
FIRREA (1989)+++	Yes			1			
Crime Control Act of 1990	Yes	-		-	-	-	-
FDICIA (1991)	Yes	1**		1**			1**

Housing and Community Development Act of 1992	Yes	1					
RTC Completion Act (1993)++++	Yes		1				
Riegle Community Development and Regulatory Improvement Act of 1994+++++	No			1			
Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994	No			1			
Economic Growth and Regulatory Paperwork Reduction Act of 1996	No	-		-	-	-	-
Gramm-Leach-Bliley Act of 1999++++++	No			1			
Check Clearing for the 21st Century Act (2003)	No	1					
Federal Deposit Insurance Reform Act of 2005	No	-		-	-	-	-
Federal Deposit Insurance Conforming Amendments Act of 2005	No	1					
Financial Services Regulatory Relief Act of 2006	No	1					
Emergency Economic Stabilization Act of 2008+	Yes					1	
Dodd-Frank (2010)+++++++	Yes	1***					1***

- Statute enacted as a title in an omnibus bill or by conference, where the procedure by which it is brought up refers to the entire bill and not the specific banking provisions, and hence is not included in

statistical analyses. + Bill considered under Unanimous Consent Agreement (UCA) that contains time limit and amendment restrictions; ++ Bill considered under time limitation agreement; +++ Bill subject to evolving UCA restricting amendments with time limits (deliberation on Senate's bill that was substituted for House bill that is identified as enacted bill); ++++ UCA on start of bill's consideration: +++++ Senate bill substituted for House bill that is identified as enacted bill considered under UCA designating a specific amendment to another amendment be considered first the following day (although that proved not to be the case); ++++++ Bill considered under UCA that restricted amendments without time limits; +++++++ Senate bill substituted for House bill that is identified as enacted bill considered under initial UCA on division of debate time and waiver of quorum requirement for third cloture motion on bill; thereafter evolving UCAs specifying amendments to be considered, sometimes with time limits and sometimes with restrictions on first, second and third degree amendments to the specified amendments.

* Motion to proceed (May 15, 1933) delayed by minority leader's objection, due to his conference on bill scheduled for following day, and next day on need to consult absent Senator Glass, majority party sponsor of the bill, along with schedule for conducting an ongoing impeachment trial and the bill's consideration; majority leader postponed vote on motion and the next day, minority leader had consulted with Senator Glass and an agreement was reached regarding the timing of the trial and consideration of the bill, motion to proceed agreed (May 17) and consideration (of rule) starts after trial on May 19.

** When majority leader moved to proceed, he asked the minority leader if he was prepared to proceed and he was not, and the majority leader then withdrew the motion and filed a cloture motion (Nov. 1, 1991); four days later (when the cloture vote was to occur), the majority leader withdrew the cloture motion by unanimous consent; two days later the majority leader moved to proceed, was informed by the minority leader that he was not prepared, and filed a cloture motion for a vote on Nov. 13; on that date, the cloture vote passed with support of a majority of members of both parties (including the leadership of the minority party), and opposition by members of both parties (approximately equally split numerically, with 9 majority party, and 10 minority party "nays"); the motion to proceed was thereupon adopted by unanimous consent (Nov.13).

*** Motion to proceed failed a number of times over a week, as did three accompanying cloture motions. When the first motion to proceed (April 22, 2010) was raised, the ranking member opposed it because the majority was putting up the bill before a bipartisan agreement on its content had been reached, CONG. REC. - SENATE, 156 Pt. 5 (2010). Consideration of the bill finally commenced on April 29, following a final failed cloture vote and debate, with the motion to proceed agreed upon (April 28).

Table 7. Frequency of Unanimous Consent in Senate to Consider Important Banking Bills

	Unanimous Consent	Other Mechanism	Total
Noncrisis-driven statute	8	5	13
Crisis-driven statute	1	8	9
Total	9	13	22

Pearson chi2(1 d.f.) = 5.5944, probability = .018*
Fisher's exact test (1-sided) = .025*

+ = significant at 10 percent; * = significant at 5 percent; and ** = significant at 1 percent.

Note: Statutes enacted as part of an omnibus statute are excluded.

Table 8. Political Environment at Important Banking Laws' Enactment

A. Means-comparison tests

Variable	All statutes (nobs)	Crisis-driven statutes (nobs)	Noncrisis-driven statutes (nobs)	t-statistic for difference in means (probability)
House LPPC	1736.30 (23)	2333.66 (10)	1276.78 (13)	-2.7636* (.0116)
House median ideology	-.0462 (23)	-.1565 (9)	.0248 (14)	3.4540** (.0041)
House majority ideology heterogeneity	.1611 (24)	.1578 (9)	.1631 (15)	0.7778 (.4447)
House percent Democrat	.58 (24)	.62 (9)	.55 (15)	-2.0390+ (.0536)
House majority margin	81 (23)	104 (9)	66 (14)	-1.7973+ (.0867)
House Polarization	.32 (19)	.35 (7)	.31 (12)	-0.6010 (.5558)
Percent House majority party members voting with majority of their Party	.85 (19)	.89 (8)	.83 (11)	-2.0185+ (.0596)
House percent party unity roll call votes	.53 (20)	.59 (8)	.49 (12)	-2.6454* (.0164)
Difference in chamber medians	.0035 (23)	-.0168 (9)	.0165 (14)	1.0418 (.3094)
Difference in Dem majority party chamber medians	.19 (18)	.16 (9)	.22 (9)	1.2534 (.2367)

Senate LPPC	1244.86 (20)	1507.77 (8)	1069.59 (12)	-1.3398 (.1970)
Senate median ideology	-.0504 (20)	-.1379 (8)	.008 (12)	2.9563** (.0098)
Senate majority ideology heterogeneity	.1386 (22)	.1149 (10)	.1584 (12)	2.9777** (.0074)
Senate percent Democrat	.54 (20)	.59 (8)	.52 (12)	-2.0644+ (.0537)
Senate majority margin	14 (20)	17 (8)	12 (12)	-0.9407 (.3593)
Senate Polarization	.31 (19)	.34 (7)	.29 (12)	-0.7562 (.4599)
Percent Senate majority party members voting with majority of their party	.83 (20)	.84 (8)	.82 (12	-0.5381 (.5971)
Senate percent party unity roll call votes	.55 (20)	.57 (8)	.54 (12)	-0.5981 (.5572)

Panel B: Chi-square and Fisher's Exact Tests

	LPPC> 2068	LPPC<2068	Total
Crisis-driven statute	6	4	13
Noncrisis-driven statute	3	10	10
Total	9	14	23

Pearson chi2 (1 d.f.) = 3.2352; probability = .072+
Fisher's exact (1-sided) = .086+

	Divided government	Unified government	Total
Crisis-driven statute	6	4	10

Noncrisis-driven statute	4	11	15
Total	10	15	25

Pearson chi2 (1 d.f.) =2.7778; probability = .096+
Fisher's exact (1-sided) = .106

	All Party unity votes	All Non-party unity votes	Total
Crisis-driven statute	5	4	9
Noncrisis-driven statute	1	13	14
Total	6	17	23

Pearson chi2 (1 d.f.) =6.6591; probability = .010**
Fisher's exact (1-sided) = .018*

	House party unity votes	House non-party unity votes	Total
Crisis-driven statute	5	4	9
Noncrisis-driven statute	0	14	14
Total	5	18	23

Pearson chi2 (1 d.f.) =9.9383; probability = .002**
Fisher's exact (1-sided) = .004**

	Senate party unity votes	Senate non-party unity votes	Total
Crisis-driven statute	2	7	9
Noncrisis-driven statute	1	13	14
Total	3	20	23

Pearson chi2 (1 d.f.) =1.0983; probability = .295

Fisher's exact (1-sided) = .332

This table presents mean values for characteristics of the enacting Congresses, along with voting data, of the important banking laws in table 1, measured at the time the bills were approved in each chamber. Numbers in parentheses in the entries in panel A for All, statutes, Crisis-driven statutes and Noncrisis-driven statues are the numbers of observations (i.e., number of statutes included in the comparisons). Where the values of Senate or House variables do not vary for statutes enacted in the same Congress, only one observation is included for such variables in Congresses in which two statutes were enacted (1978, 1990, 1992, 1993 1994, and 2006). The number of excluded statutes varies because in several Congresses, the composition of a chamber differed across its two sessions due to vacancies and/or replacements by members of the other party. Voting outcomes exclude statutes enacted as titles in omnibus statutes (1990 and 1996, along with the Federal Deposit Insurance Reform Act of 2005), as there were no separate votes on the banking provisions. If a statute did not go to conference or a chamber did not need to vote on an amendment when reconciliation was by concurring amendment, it is excluded from the comparisons for votes on conference reports. "LPPC" is a chamber's legislative potential for policy change, which is derived from the size and cohesiveness of a majority's coalition and that of the minority, as noted in the text and detailed in the online appendix, adapted from Patricia Hurley, David Brady & Joseph Cooper, *Measuring Legislative Potential for Policy Change*, 2 LEG. STUD. Q. 385 (1977); a higher value indicates a majority's greater capacity to enact legislation without minority support. The House variable series combines Hurley and colleagues' calculated values with values using Congressional Quarterly party unity vote data; the Senate series uses Voteview party unity vote data.. "LPPC > 2068 is an indicator variable for an LPPC value above the minimum critical value calculated by Hurley and colleagues for the majority to be able to initiate major legislation. "Median ideology" is the nominate score of the median legislator in a chamber, a measure widely-used in the political science literature and constructed by Keith Poole and Howard Rosenthal from roll call votes, where negative values indicate more liberal preferences, obtained from Jeffrey B. Lewis, et al., *Voteview: Congressional Roll-Call Votes Database* (2024), https://voteview.com/data.. "Majority ideology heterogeneity" is the standard deviation of the nominate scores of the members of the majority party, where small values indicate more homogeneous (less heterogeneity) preferences among party members. "Percent Democrat" is the percentage of members in a chamber who are Democrats. "Majority margin" is the difference between the number of seats held by the majority party and those held by others in a chamber. "Polarization" is a measure of partisanship, and uses the calculation in SARAH BINDER, STALEMATE (2003), which divides the number of party members who are ideological moderates (defined as members whose nominate scores are closer to the chamber median score than to their party median) divided by the distance between the two party medians' nominate scores. "Difference in chamber medians" is the absolute value of the difference in nominate scores of the median legislator across the two chambers. "Difference in Dem majority party chamber medians" is the difference in nominate scores of the median Democrat across the two chambers when the Democrats are in the majority in both chambers. As the Republicans were only a majority in both chambers in noncrisis times, their analogous data is excluded. ""Percent majority party members voting with majority of their Party" is the proportion of

members of a party voting with the majority of their party, and "percent party unity roll call votes" is the percentage of party unity roll call votes, defined as "at least 50% of one Party vs. 50% of the opposite Party) of all roll call votes in a chamber in a Congress, obtained from the legacy voteview database of party unity votes, *Party Unity Scores* (2015), https://legacy.voteview.com/Party_Unity.htm "Divided government" is a dummy variable equal to one if the party of the President is not the same as the party controlling both chambers. "(Chamber) Party unity votes" is a dummy variable equal to one if a majority of one party voted for, and a majority of the other party voted against, either a bill or a conference report for a statute in the chamber. "Any party unity vote" is a dummy variable equal to one if there was a party unity vote for a statute's bill or conference report in either chamber. Means-comparison tests for continuous variables in panel A are computed in Stata; variances are tested for equality and where the variances are unequal, Welch's formula is used for the means-comparison test. + = significant at 10 percent; * = significant at 5 percent; and ** = significant at 1 percent. Panel B reports chi-square and fisher's exact tests, computed in Stata for the categorical variables