
THE PRESIDENTIAL VETO

CHARLES M. CAMERON

The executive veto is one of the few puissant powers of the presidency embedded in the Constitution (Article I, Section 7).¹ America's constitutional design thus guarantees the president a place at the legislative bargaining table even when a majority of those around it are hostile to his aims. Using the veto or the threat of a veto, the president can kill legislation he opposes or, more frequently, wrest policy concessions from majorities loathe to relinquish them. In fact, some of the most important legislation of the past three-quarters of a century was killed, postponed, or substantially shaped through veto bargaining (Cameron 2000a, Table 8.1). Perhaps of even greater significance is the silent tempering of congressional legislation imposed by the mere existence of the veto power. The executive veto should therefore be seen as a foundation stone for America's distinctive system of inter-branch bargaining. Even after 200 years, that system remains a hallmark of American governance.

This essay reviews what political scientists have, and have not, learned about the use of vetoes, the effects of vetoes, and the significance of the veto power. As is often the case in institutional analysis, it is helpful to draw a distinction between "micro-politics" and "macro-politics." The micro-politics of the veto concerns the strategic logic of the veto as applied to individual pieces of legislation or bargaining episodes between the President and Congress. I take the macro-politics of the veto to concern: 1) the effect of structural features of the political environment (e.g., unified or divided party control of the government) on aggregate veto usage by the president; 2) the effect of veto usage on the popularity of the president, and 3) the overall effect of the president's veto power on bill content (including pork barrel legislation), the legislative productivity of Congress, and the stability of public policy.

Because vetoes are easy to count, modern political scientific studies of the veto focused first on the macro-politics of the veto, especially the covariates of aggregate veto use; Rohde and Simon 1985 stands out as perhaps the best of these studies. However, absent well-developed micro-theory or much of the needed data, examination of veto counts soon reached diminishing returns. In fact, most of the interesting macro-political questions remain open today. However, the main barrier to progress is no longer an absence of micro-theory; in addition, much new data is at hand, or soon will be. Rather, the main difficulty is a lack of institutional variation – we simply do not have any presidents without the veto power to study! I suggest below that progress in understanding the macro-politics of the veto may be possible but – somewhat paradoxically – probably awaits further theoretical development in areas *outside* the veto, especially theories of Congress and theories of the president's legislative program.

In contrast to the rather sparse achievements on the macro-political front, progress in understanding the micro-politics of the veto has been truly substantial. Indeed, it may not be too

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bold to claim this area as the most theoretically sophisticated and well-developed in the entire field of presidential studies. Progress in understanding the micro-politics of the veto was so rapid because analysts were able to leverage off existing models of take-it-or-leave-it bargaining in political economy (Romer and Rosenthal 1978). However, a set of rather distinctively “presidential” variants were soon developed. In addition, because on-point data were readily available or at least obtainable with effort, the theoretical models quickly received extensive empirical testing, generally with substantial success. While incremental refinements would no doubt be valuable, at this point it is not glaringly obvious that the micro-political side of the veto literature contains gaping lacunae. What is perhaps more intriguing are entirely new points of departure.

The essay is organized in the following way. The first section reviews the micro-politics of the veto. Here I am relatively terse despite the extensive literature, because of the availability of a recent, rather detailed survey of the theory and relevant empirics (Cameron and McCarty 2004). Instead I offer a non-technical over-view, highlighting areas that an interested reader may wish to pursue farther. The second section turns to the macro-politics of the veto. The section begins by pointing out the knotty problems that plague macro-political studies. I highlight three in particular: the “wheat from the chaff” problem, the “small- n ” problem, and the “no institutional variation” problem. The latter is particularly difficult. Nonetheless, much has been learned and more could be. Finally, in a speculative vein, the third section suggests some new points of departure. I point to the possibility of theoretically modeling, and empirically studying, integrated presidential strategy, including the veto. This section elaborates on themes in Cameron 2006.

1 THE MICRO-POLITICS OF THE VETO

The presidential veto has been the subject of more intense theoretical scrutiny than any other tool of presidential governance. Much of the theory has received empirical testing, generally with success.

1.1 BASIC THEORY

Political scientists have developed two approaches to modeling the veto. The first, and most thoroughly studied, portrays the veto as part of a one-shot take-it-or-leave-it (TILI) bargaining game played by Congress and the President. That is, Congress presents the President with a bill; he may “take it” and sign it into law; or, he may “leave it” by using the veto, affording himself (and Congress) the reversion policy or status quo. If the reversion policy is unattractive to the President he is apt to take the bill; but if the reversion policy is more attractive than the bill, he would like to veto the bill. A constraint on the President, however, is the veto over-ride: if both chambers of Congress vote by a two-thirds majority to over-turn the veto, the bill becomes law despite the president’s veto. The over-ride provision means that, when the President tends to favor the reversion policy (as might happen under divided party government), Congress must make sufficient concessions to the president so he favors the bill, or it must make the bill so broadly appealing that two-thirds of congressmen favor it over the reversion policy. In practice, this means that a President willing to use the veto can compel considerable concessions from Congress, so much so that a bill will appeal not only to members of one party but many members of the other as well. Of course, if the President is a supporter of the bill rather than the reversion policy (as might occur under unified party government), the veto is irrelevant.

The TILI approach to the veto is derived from the celebrated “monopoly agenda setter” of Romer and Rosenthal (1978). This simple and powerful model affords a crisp, sharp interpretation of TILI bargaining in a one-dimensional spatial setting (for a simple explication see Cameron 2006). In turn, the TILI approach to the veto has been incorporated into standard accounts of law-making under the separation of powers system (e.g., Krehbiel 1998, Brady and Volden 1998, Ferejohn and Shipan 1989).

The second approach, the distributive politics veto, is quite different. Developed in McCarty 2000a and 2000b, this approach significantly extends the standard model of pork barrel politics, the Baron-Ferejohn model (1989). In the basic Baron-Ferejohn model, a congressional entrepreneur distributes benefits over congressmen so as to hold a majority coalition, given the likely counter-proposals that will follow a rejection of the entrepreneur’s allocation. Typically, a minimum-winning coalition receives benefits; those outside the coalition pay the bills. The distributive politics veto adds a presidential veto to the distributive politics framework. In the model, a veto leads to another attempt to build a coalition that will “stick.” So the entrepreneur must assemble a coalition that will hold not only in the legislature; it must pass muster with the president to boot, given what is likely to ensue given a veto. Although McCarty 2000a considers universalistic presidents, it also considers – arguably more realistically – presidents with their own geographic constituency. Such presidents will use the veto as a shield differentially protecting their own constituents. In fact, McCarty’s theoretical analysis shows the veto may decrease pork modestly but is even more likely to shift its allocation. However, as discussed in Section 2.4.1, this prediction has yet to receive an empirical test.

1.2 VARIETIES OF VETO POLITICS

The distinctions drawn in the theoretical literature are extremely useful in understanding actual veto politics. In particular, it is worth distinguishing simple vetoes and over-ride politics; sequential veto bargaining; veto threats; blame-game vetoes; and vetoes and agency policy making.

1.2.1 SIMPLE VETOES AND OVER-RIDES

The theoretical literature draws a sharp distinction between the *veto power* and actual *vetoes*, a distinction with important empirical implications. The veto power arises from the president’s constitutional ability to veto legislation. Because of the veto power, Congress may modify legislation to head off or avoid vetoes. So, the veto power may influence the content of legislation even absent any vetoes (I return to this point in Section 2.4). Actual vetoes occur when Congress somewhat miscalculates what the President will accept, or both President and Congress play into a gamble over an over-ride attempt. Thus, actual vetoes require both a policy disagreement between President and Congress, and some “incomplete information.” Typically, the incomplete information concerns uncertainty by Congress about the preferences of the President, but it could involve uncertainty by both or either about the preferences or identity of the veto over-ride player. In the case of the “blame game” model considered momentarily, the incomplete information concerns voters’ knowledge about the preferences of the President. Because Congress’s or the voter’s beliefs about the President involve his policy “reputation” TILI models of vetoes explicitly address presidential reputation, including strategic reputation building and (in the case of the blame game) reputation breaking (Cameron 200b).

Table 2.12 in Cameron 2000a summarizes empirical patterns in the 434 post-war vetoes from 1945-1992. Overall, vetoes were rare events – only about 2% of all enactments were vetoed. However, among very important enactments during divided party government, the veto rate was as high as 20%. Overall, Congress attempted to over-ride about half of the post-war regular vetoes. (Recall that the Constitution allows the president to “pocket veto” legislation passed in the closing days of a Congress; pocket-vetoes cannot be over-ridden. So-called “regular” vetoes (non-pocket vetoes) can be over-ridden by a two-thirds majority vote in both chambers of Congress.) Notably, Congress attempted to over-ride about 80% of regular vetoes of consequential legislation during divided party government. The success rate on over-ride attempts was about 45%.

Krehbiel 1998 presents an innovative analysis of how congressmen’s votes shift between the passage vote and the over-ride attempt. He shows that “marginal” congressmen are the most likely switchers – congressmen near the veto pivot whose ideology makes them nearly indifferent between voting one way or the other (see also Wilkins and Young 2002). This is exactly the pattern predicted by models of “bribe” targeting (Groseclose and Snyder 1996). Such data, if combined with micro-level data on presidential lobbying, affords an opportunity to test and explore these models. Such a study would have larger implications about presidential-legislative interactions and lobbying strategies more generally.

1.2.2 SEQUENTIAL VETO BARGAINING

Law-making does not always involve one-shot take-it-or-leave-it offers. If the President vetoes a bill, Congress can modify its content, re-pass it, and present it to him again. Cameron 2000a shows that this process of “sequential veto bargaining” has occurred many times, though it is generally restricted to the most consequential legislation. For less consequential legislation, a veto is generally a fatal event. Cameron suggests this fact reflects the steep opportunity costs involved in securing floor time (see Cox 2006 on “plenary time”).

Sequential veto bargaining involves an active process of congressional learning about what the President is willing to accept (Cameron and Elmes 1994). Vetoes force Congress to revise its estimate and consequently offer concessions. Sequential veto bargaining can also involve a degree of bluffing by the President: he may veto a bill he would actually be willing to accept, in order to extract concessions in the successor bill. It is risky strategy, however, in that bargaining may break down and no bill be enacted.

Cameron 2000a presents data on sequential veto bargaining as well as case studies of prominent examples, including the passage of welfare reform in the Clinton Administration.

1.2.3 VETO THREATS

If Congress is somewhat unsure about what the President will actually accept, a veto threat – or conversely silence – can be somewhat informative about his preferences. In essence, silence implies consent. But a veto threat may well be a bluff, in that the president might actually be willing to accept a bill and uses the threat to angle for concessions. In fact, during divided party government, veto threats occur with extraordinary frequency and appear remarkably efficacious in extracting concessions (Cameron 2000a; Kernell 2006). For highly consequential legislation drafted during divided party government, it is hardly an exaggeration to say the president keeps up a veritable

drum-beat of veto threats. Veto threats appear a powerful tool of presidential-legislative relations, one that is relatively under-studied given their frequent use and apparent effectiveness.

The theory of veto threats is laid out in Matthews 1989; a simple explication may be found in Cameron and McCarty 2004.

1.2.4 BLAME GAME VETOES

On occasion, it will be more valuable for the party opposing the President to have a live issue rather than a done deal. In particular, by offering the President a piece of high-profile “veto bait,” the opposition party can highlight for voters the president’s stubborn insistence on an extreme and unpopular policy position. In this case, veto bargaining becomes a game played before spectators, with victory tied as much to their perceptions as the enactment or failure of legislation. In the blame game, whatever action the President takes will be costly to him: either accept a bill with an unattractive policy, or veto it and pay a price in popularity. Blame game vetoes are characteristic of periods of high inter-party ideological polarization, combined with divided party government.

Identifying blame game vetoes is somewhat tricky as ideally one would like to know the intention of Congress in proffering a bill to the President. However, likely signatures of the blame game include a high profile bill offered immediately prior to a presidential election during divided party government; passed by a narrow majority along party lines so that a veto over-ride is hopeless; and no veto over-ride is attempted or an over-ride fails by a wide margin. The Family Medical Leave Act vetoed by George H.W. Bush is usually taken as an archetypal blame game veto. More recently, President Bush’s veto of a child health care bill in the 110th Congress may have been a blame game veto – upon passage in the House, the bill lacked some two dozen votes for a successful over ride. The second stem cell research bill vetoed by Bush (in 2007) also displays the signatures of a blame game veto. Cameron 2000b provides a list of some likely blame game vetoes in the post-war era.

A question that has received little attention is the interaction between the veto and the filibuster, especially in the context of the blame game. One usually thinks of the filibuster as a tool of the Senate minority, facing a majority party and its President (Wawro and Schickler 2006). But in the last George Bush congress (the 110th), the Republican minority filibustered many bills that, presumably, President Bush would have vetoed. Why didn’t the Republicans allow those bills to go forward and die from the veto? An interesting possibility is that the Republicans acted to protect their already damaged president from further blows to his popularity. But it may also have been true that very extreme Republicans were happy to bear the cost of filibustering (at present quite low, due to the use of “holds”) in order to claim credit for defeating Democratic bills. For these senators, filibustering brought more benefits than costs. And, the extreme polarization of the Senate made the policy compromises necessary to beat the filibuster and veto very unattractive to Democrats, who saw the hope of immanently winning the White House anyway. Though a relatively small point, the filibuster-veto interaction in the 110th Congress illustrates the somewhat surprising turns veto politics can take.

The theory of blame game vetoes is due to Groseclose and McCarty 2001, though somewhat similar albeit informal arguments can be found in Gilmour 1985. Cameron and McCarty 2004 provides a simple explication of the theory. I return to blame game vetoes in Section 2.3, where I discuss the effects of vetoes on presidential popularity.

1.2.5 VETOES AND AGENCY POLICY MAKING

In an era of a vast administrative state, agencies can often undertake policy initiatives unilaterally, at the President's direction. Congress may attempt to reverse these actions, by passing legislation. However, the President can use the veto to protect the new "status quo" established at his direction. The combination of agency discretion and presidential veto implies a shift in power from Congress to the President, particularly if the courts (the other venue for reversing agency actions) are friendly to the President, perhaps because he has packed them with loyal co-partisans.

A recent dramatic example concerns "water boarding," a practice widely viewed as a form of torture, employed by the CIA against terrorism suspects at the direction of the President. In 2008, Congress enacted a bill prohibiting agencies from using the controversial practice and certain other extreme forms of interrogation. President Bush then vetoed the bill, which failed of an over-ride. Consequently, extreme interrogation practices remained available to government agencies, who could continue under the effective protection of the presidential veto.

This example highlights uses of the veto that would never have occurred to the founders, and points to the potential value of models of integrated presidential strategy. The theory of vetoes and agency policy making is elaborated in detail in Ferejohn and Shipan 1989; see also Howell 2003.

2 THE MACRO-POLITICS OF THE VETO

The macro-politics of political institutions concerns big-picture questions about institutional performance. Macro-political studies are particularly helpful in reaching empirically grounded, normative evaluations of political institutions. Unfortunately, from a normative point of view the literature on the macro-politics of the veto is weakest exactly where one would wish it strongest: the effects of the president's veto power on the overall content of legislation and the aggregate legislative performance of Congress. Does the president's veto power force ideologically extreme congresses to moderate the content of legislation to avoid the veto, thereby benefiting moderate citizens? Does the president's veto power restrain Congress's frantic urge to pork-barrel? Or does it merely garner the president's co-partisans a bigger slice of the spoils? Does the veto stabilize policy in specific domains? These remain open questions.

Before turning to these and related subjects, it is important to highlight three methodological problems that plague macro-political studies of the veto – or indeed macro-political studies of the other instruments of presidential power, such as public rhetoric, the legislative program, appointments, or executive orders.

2.1 METHODOLOGICAL ISSUES

Three methodological problems bedevil studies of the macro-politics of the veto. Analysts have found ways to address the first two; the third remains difficult.

The "Wheat-from-the-Chaff" Problem. One of the outstanding empirical realities of the veto is that not all vetoes are created alike. To illustrate, consider two pieces of legislation vetoed by President Harry Truman in the 80th Congress:

H.R. 723. For the relief of the legal guardian of Hunter A. Hoagland, a minor. Vetoed June 27, 1947. The veto message was laid before the House, referred to the Committee on Judiciary, and printed as H.R. Doc. No. 368. (93 Cong. Rec. 7822, 7823). Veto unchallenged.

H.R. 3020 Labor-Management Relations Act, 1947 (Taft-Hartley). Vetoed June 20, 1947. The veto message was laid before the House and printed as H.R. Doc. No 334 (93 Cong. Rec. 7485-7488). The House overrode the veto on June 20, 1947 by a vote of 331 yeas to 83 nays (93 Cong. Rec. 7489). The Senate overrode the veto on June 23, 1947 by a vote of 68 yeas to 25 nays. (93 Cong. Rec. 7539). Veto overridden. (61 Stat. 136; Public Law 80-101). (Senate Library 1992 (Senate Publication 102-12))

The first concerns a bill of absolutely zero public policy importance, indeed of no interest to anyone other than Master Hoagland's guardian, the congressman who served as his errand boy, and an anonymous drone in the executive branch who wished to protect the public fisc from a bad precedent. The second concerns one of the most important pieces of legislation of the 20th century, one with substantial import for workplace relations in the United States and, arguably, for the political development of the country in the post-war years. The first veto is trivial to the point of inconsequentiality; the second of tremendous significance despite its failure (of course, Truman's veto of the Taft-Hartley Act played an important role in the presidential election of 1948).

The vast majority of vetoes are of the first kind, not the second. For example, most of Grover Cleveland's 304 first-term vetoes struck down bills extending veterans benefits to individuals who did not qualify for them (Berdahl 1937). This form of "waste, fraud, and abuse" largely benefited Republicans and therefore presented an attractive target for the first (elected) Democratic president since the Civil War. Yet even taken as a whole and considering their value as symbolic politics, Cleveland's vetoes of private bills did not really amount to much. In modern times, most of President Truman's vetoes were also directed at private bills like the Hoagland give-away, inflating Truman's count to 180 regular vetoes and 70 pocket vetoes. A similar inflation occurred with President Eisenhower's vetoes. By Kennedy, however, passage of private bills had become less frequent; eventually, their enactment became rare.

A similar issue arises with pocket vetoes, which only rarely are of any policy significance. The relative inconsequentiality of most pocket-vetoed legislation reflects the legislative strategies of authors of more consequential legislation: the author of an even modestly consequential but clearly controversial bill typically schedules its floor passage earlier in the congressional session, so that a veto over-ride attempt remains possible. Only relatively inconsequential bills are left at the end of the session to be pocket-vetoed (a few of President Gerald Ford's pocket-vetoes offer a modest exception to this general rule).

The way in which trivial vetoes swamp important ones is a challenge for macro-political analyses of vetoes: how can one sort the wheat from the chaff? This problem is hardly unique to the study of the veto; rather, it is pervasive in the president's use of all his instruments of governance: public speeches, executive orders, legislative proposals, and so on.

At least in the case of vetoes, analysts have responded in two ways (aside from ignoring the problem). The first is to define the universe of vetoes as regular vetoes of non-private bills. This is a step in the right direction (which I pursue shortly), but it still mixes quite minor vetoes with extraordinary ones. A more ambitious effort, taking inspiration from Mayhew 1991, sorts vetoes into “significance categories” ranging from high to low. This effort was initiated by Wooley 1991 and Watson 1993, but pursued most aggressively in Cameron 2000a, which not only classified vetoed bills but also all enacted legislation from 1945-1994 into comparable importance categories. Consequently, this study could examine not only counts of vetoes but veto rates for enactments by importance category. This move turns out to be vital for understanding the macro-politics of the veto, because many minor pieces of legislation have been vetoed but the veto *rate* for such enactments is very low; conversely, far fewer pieces of important legislation have been vetoed but the veto *rate* for such legislation is amazingly high, at least under specific circumstances.

The sorting method employed in Cameron 2000a combined newspaper coverage (as in Mayhew 1991) with coverage in *Congressional Quarterly Almanac*; consequently, the analysis was restricted to the post-War years. Recent advances in item-response scaling have allowed analysts much greater flexibility and power in using other sources with much longer data availability (see Clinton and Lapinski 2006). To a large degree, the item-response methods have solved the wheat-from-the-chaff problem. However, as noted in the following paragraphs, this methodological breakthrough has yet to be fully exploited in new studies of the veto.

The “Small-n” Problem. The second problem is intrinsic to macro-political analysis: the unit of analysis is typically a congress or a president, and there have been relatively few of these. For example, at the time I write there have been only 32 post-war congresses and 11 post-war presidents. Consequently, it is very difficult to discern reliable empirical patterns, except of the grossest variety (King 1993).

Analysts have responded to the small-*n* problem in two ways. The first is to abandon macro-politics in favor of micro-politics, where data can be abundant. For example, rather than studying the number of vetoes per congress (so one has 32 observations in the post-war era), one can study the probability of a veto per class of enactment or even individual enactment, so one has thousands observations. Of course, this approach requires data on specific enactments beyond structural features per congress; otherwise, the proliferation of observations is largely illusory. New data on legislation afford new opportunities in this area, for example, the Congressional Bills Project (see www.congressionalbills.org). The second approach to the small-*n* problem has been to acquire more macro-political data by extending modern data sets backward in time. Again, the outstanding example is Clinton and Lapinski 2006, which neatly extends the measurement of legislative significance backward to 1877. When these data are publically released, it will be possible to calculate veto rates by legislative significance and re-examine the macro-politics of the veto over a much more extended time period. This is a potentially exciting development.

The “No Institutional Variation” Problem. The typical way to explore causal effects is through co-variation: vary an exogenous variable and document the resulting response of the critical endogenous variable. This procedure works well for studying *vetoes*, but it faces a severe problem in studying the effects of the president’s *veto power*: there have been no presidents without the veto power. The no-variation problem is, as scholars of Comparative Politics often point out, intrinsic to studying American national institutions non-comparatively (Huber and Gamm 2002).

One response to the no-variation problem is to be more comparative. Unfortunately, most cross-national comparisons seem too coarse or too distant to be apposite – one must compare not just apples and oranges but apples and elephants. Comparisons across the American states, however, can sometimes be illuminating, as shown perhaps most notably in Besley and Case 2003 and Huber and Shipan 2002. Although there are some notable exceptions – for example, Holtz-Eakin 1988 on the effects of the line-item veto – this is not a route that students of the veto have pursued with as much vigor as one might expect.

There is an alternative, however, that allows one to address American national institutions: use stronger theory to substitute for institutional variation. Sometimes this route allows one to interpret the behavioral variation one sees despite fixed American federal institutions, and at least place bounds on the size of possible effects. I return to this idea in Section 2.4.

2.2 WHEN DO PRESIDENTS USE THE VETO? THE “HIGH VETO” CONFIGURATION

Little attention has been paid to the macro-politics of the veto of late, so let us quickly review the data. The top row in Figure 1 shows the number of regular vetoes of non-private bills per congress from 1945 to 2008, the 79th to 110th congresses. As discussed above, excluding pocket vetoes and private-bill vetoes enhances comparability over time and allows us to focus on vetoes with at least some policy consequence.

// Insert Figure 1 about here //

The number of vetoes per congress ranged from zero to 32. If these numbers seem relatively modest, it should be remembered that at any given time, most of the policy action in Congress revolves around a very small number of bills. If a congress enacts as many a dozen important pieces of legislation, it is generally accounted extraordinarily productive (Mayhew 1991). Especially during divided party government, it is these consequential bills that disproportionately draw vetoes .

Several patterns immediately stand out. The first is *variation by presidency*. Here, the most notable pattern is Gerald Ford’s heavy reliance on vetoes. Ford faced huge opposition majorities in Congress following the Democratic sweep in the 1974 election, a consequence of the Watergate scandal and the impeachment and resignation of President Nixon. In these incredibly inauspicious circumstances, Ford necessarily fell back on the veto as one of the few presidential governing tools expressly granted by the Constitution. Ford can be seen as the model of a president whose resources devolve down to the veto. Somewhat similar figures from earlier periods include Andrew Johnson and John Tyler.

Even in the relatively brief time span shown in the figure, one can discern other presidents who relied heavily on the veto. Eisenhower, for example, confronted a large activist Democratic opposition after the 1958 election. He too turned to the veto to force compromise. After the 1994 election, President Clinton faced a Congress controlled by the highly militant Gingrich Republicans. He wielded the veto skillfully to check their moves and compel them to moderate, however reluctantly.

President George W. Bush’s first congress or two (the 107th and 108th) also stand out as unusual. But they appear anomalous for their infrequent vetoes. No doubt the rarity of vetoes reflected the

impact of the 9/11 terrorist attacks, which brought “war-time” legislation to the fore and made congressional Democrats quite deferential to the President. Arguably anomalous were the large number of unified party vetoes by President Truman in the 79th and 81st Congresses. However, most of the vetoed bills in those congresses were of relatively modest consequence so the apparent anomaly probably amounts to little.

The second notable pattern is *variation by unified and divided party control*. In the figure, unified party congresses are shown with open circles, divided party ones by black circles. Clearly, divided government typically brings forth vetoes; unified government does so to a much lesser degree. For instance, the mean number of regular, non-private bill vetoes per congress since 1950 was about 3.5 during unified party government but somewhat over 12 during divided party government, about three and one-half times greater. In fact, as shown in the figure, almost every divided party congress had more than six vetoes; almost every unified party congress had fewer than seven.

How can one explain the obvious variation in veto counts? Scholars who cut their teeth on spatial models of legislative politics (e.g., Krehbiel 1998, Brady and Volden 1998, Cox and McCubbins 2004), are likely to see the key explanatory variable as the spatial distance between the president and the median congressman or, perhaps, that between the president and the median member of the opposition party. (One can easily calculate the relevant distances using Poole and Rosenthal’s NOMINATE scores; but note the logical problems discussed in Clinton 2007.) The basic idea is: when this distance is small, the president is likely to view the proposed change in the status quo favorably. But when the distance is large, he is less likely to do so unless the bill is finely calibrated to his preferences or those of the veto pivot. So, a small error in placement will provoke a veto. Although the published empirical literature on the macro-politics of the veto does not contain models of this kind, in fact they perform very poorly in explaining veto counts (analysis not shown).

An earlier generation of political scientists would have taken the key explanatory variable to be the percentage of seats held by the president’s opposition, especially in the House. And in fact, a simple three variable model of this kind – where the variables are “divided party government,” “percentage of House seats held by the opposition,” and the interaction between the two – captures a considerable amount of the variation in veto counts. (Once one includes in the regression the percentage of opposition seats in the House, adding those in the Senate contributes nothing.) In the model, the interaction does most of the work.

The top panel in Figure 1 shows the fit from such a model. The fit is from a quasi-maximum likelihood Poisson regression which accounts for the over-dispersion in the data, but substantively almost identical results obtained in OLS, Poisson, or negative binomial models. It will be seen that the model tracks the modern experience rather well. The bottom panel in the figure examines the key relationship. Four patterns stand out. First, if the president’s party controls the House, vetoes are relatively rare (about 5-6 per congress). And, under those circumstances, vetoes are insensitive to the exact size of the president’s majority. However, at about the 50% mark, there is a discontinuity, an apparent jump as party control changes. Then, after crossing the 50% mark, there is a regime change: as the percentage of House seats controlled by an opposition majority increases, the number of vetoes increases. As shown, the number of vetoes increases from a base of about 7.5 vetoes at 50%, at a rate of about one veto per percent point above 50%. The model thus appears to identify a “high veto configuration” in American politics: divided party government and a large opposition to the President in the House.

These patterns would probably have struck earlier generations of political scientists as “common sense.” Nonetheless, they constitute something of a puzzle in light of contemporary, spatially-oriented theories of Congress and the presidency. In those theories, there is no direct role for “percentage of seats held by the opposition.” So how can we reconcile the macro-evidence and contemporary micro-theories? An obvious point is that the political process that generates veto counts involves more than an executive-legislative interaction over a given bill, as analyzed in veto micro-theory. Rather, the data generating process involves all aspects of Congress including committee power, positive and negative agenda control, manipulation of floor rules, various possible party effects, and the pre-existing distribution of status quo policies (Cox 2004, Krehbiel 2004). Together, these features determine which and how many pre-existing or new policies receive attention and the content of the resulting legislation. Presumably, some of these features explain the close connection between veto counts and the percentage of House seats held by the opposition during divided party government. But what those features may be is unclear at present.

Whatever the causal mechanism underlying the “high veto configuration,” it is worth examining the frequency with which the high-veto configuration occurs. How frequently do presidents find themselves in a structural position that leads to many vetoes?

// Insert Figure 2 about here //

Figure 2 provides some insight. It displays the percent of seats in the House held by the president’s opposition, from 1850 to 2010. It also distinguishes unified party government (open circles) from divided party government (black circles). As shown, the “high veto configuration” was quite common in the latter half of the 19th century. It was relatively rare in the first half of the 20th century, because of the infrequency of divided party government. But in the second half of the 20th century, the high veto configuration became common again. In fact, the recent experience mirrors that of the late 19th century, though seat swings in the House are now more moderate (presumably due to better control of the macro-economy). Overall, the figure confirms Stokes and Iverson’s famous conjecture that one party rarely dominates American politics for long (1962). Absent an extraordinary implosion by either the Republican or Democratic Parties, the high veto configuration will re-appear regularly. When it does, the stage is set for vetoes.

2.3 PRESIDENTIAL POPULARITY AND THE ELECTORAL CYCLE

The empirical literature on the macro-politics of the veto noted the possible impact of presidential popularity and the electoral cycle on veto frequency (Rohde and Simon 1985, Wooley 1991). Underlying this conjecture was a Neustadtian “bank-balance” view of the presidency: popularity puts money in the president’s bank account (as it were) so that popular presidents are “strong” presidents. And (in this view) Congress hesitates to “challenge” a strong president. Thus, the bank-balance view suggests, a popular president vetoes little because Congress lies supine at his feet, while an unpopular lame-duck president vetoes more because Congress is resurgent and assertive.

Contemporary theories of Congress and the presidency have not adopted the bank-balance view of the presidency. In fact, some contemporary theories turn the bank-balance logic on its head.

Consider Groseclose and McCarty’s model of blame-game vetoes (see Section 1.2.4 above). In this model, President and Congress bargain before an audience of voters. And, Congress – especially a divided party congress shortly before a presidential election – deliberately constructs its legislative

offers to draw a veto and cast the President in as unfavorable a light as possible. When the “veto bait” provokes the intended presidential response, voters form an unfavorable impression of the president’s policy views. As a result, his popularity declines. In other words, unpopularity does not cause vetoes; rather, vetoes cause unpopularity. Groseclose and McCarty test this prediction with data on presidential approval from 1956-1992. They find that major vetoes during divided party government indeed reduce presidential approval; minor vetoes and unified party vetoes do not.

In a rather different model, McCarty 1997 examines presidential incentives to build a policy reputation over the electoral cycle. Early in the cycle, the President has an incentive to veto bills in order to build a more extreme reputation and thereby extract concessions in subsequent, related legislation. Appreciating these incentives Congress, early in the presidential term, forbears from presenting the President with bills he will veto. Thus, a kind of early-term “veto honey-moon” emerges endogenously. The logic is not that Congress “challenges” a weak, lame-duck president; rather, Congress shrinks before an early-term, reputation-hungry President. McCarty examines data on the timing of vetoes and finds support for a veto honey-moon.

These studies, though employing essentially macro-political data, have strong roots in micro-theory. They offer a novel take on vetoes and presidential power. Somewhat strangely, their empirics have not been updated with longer time series or expanded with data from state governments. This is an obvious research opportunity.

2.4 ANTICIPATION EFFECTS: BILL CONTENT, LEGISLATIVE PRODUCTIVITY, AND POLICY STABILITY

The *possibility* of a veto is likely to insinuate itself into many calculations of congressmen. For example: In light of the president’s veto power, is it worth enacting this legislation? Or is it better to work on other matters? If we do go forward, how should we adjust the legislation’s content to head off a veto? Call these “anticipation effects” of the veto power.

In gauging the size of anticipation effects, evidence from actual vetoes can be helpful. But anticipation effects may be considerable even absent any vetoes. Of course, if some presidents had the veto power and others did not, we might be able to estimate the size of anticipation effects directly. But since all presidents have the veto power, the “no institutional variation” problem bites hard. One might despair, but sometimes it is possible to use well-elaborated theory to detect anticipation effects – at least in principle. Such efforts can be worthwhile, as they allow us to address silent but pervasive consequences of America’s constitutional design.

2.4.1 PORK AND DISTRIBUTIVE LEGISLATION

Will the president use the veto to restrain Congress’s relentless urge to pork-barrel? This has been a recurrent hope of efficiency-minded students of the American political economy. The underlying logic is seemingly intuitive: congressmen are loyal primarily to their small district and quite insensitive to the externalities their re-election efforts impose on the citizenry more broadly. But the Chief Executive (supposedly) has a more universal constituency and may interpose presidential power as a shield between citizens and Congress’s worst urges.

In light of these expectations, it would be helpful to know the effect of actual vetoes on pork-barrel legislation (e.g., spending on bridges, roads, dams or – seemingly – homeland security). How much

pork have vetoes killed? During sequential veto bargaining over pork-barrel legislation, do subsequent versions of vetoed bills contain changes in the allocation of benefits and costs? To the best of my knowledge, these questions have yet to receive systematic attention.

Again, however, the main effect of the veto is probably an anticipation effect: Congress is likely to shift or forgo pork in order to head off a veto.

The development of a carefully articulated theory of vetoes in distributive politics offers the hope of gauging the magnitude of these anticipation effects (McCarty 2000a, see Section 1.1 above). In particular, the key variable in McCarty's model of pork-barrel vetoes is the size of the President's constituency (party) in Congress. Obviously, this variable changes dramatically over time (see Figure 2). In addition, there is considerable variation in the geographic distributions of support for Republican and Democratic presidents (Gelman 2008). By utilizing these two sources of variation and matching them with the geographic distribution of pork, it may well be possible to identify the magnitude of the anticipation effect in distributive politics. This appears to be a fruitful, and largely un-pursued, line of inquiry.

2.4.2 IDEOLOGICAL LEGISLATION

Most legislation is not pork barrel legislation, at least not nominally. Rather, the legislation has an ideological tenor that translates into a left-right ideological position (Poole and Rosenthal 2007). How do vetoes affect the ideological positioning of enactments?

Cameron 2000a presents evidence about bill positioning over sequences of vetoed and re-passed bills. Because the status quo policy remains fixed over such a sequence, one can compare the content of bills in a sequence by examining the movement in the cut-point between yeas and nays in an ideological space, like Poole and Rosenthal's first dimension NOMINATE space. That is, if the cut-point on the roll call on the re-passed bill moves toward the president's ideal policy, the re-passed bill's content has presumably shifted toward the president. Cameron shows that this sort of re-positioning in bill content is common and apparently substantial during sequential veto bargaining (which itself is rather common for highly consequential bills passed during divided party government). Somewhat similarly, Cameron presents evidence from content analysis of bills threatened with vetoes, and shows that congressional compromise is common after a veto threat (also see Kernell 2006).

This evidence indicates a powerful impact from actual vetoes. But one would like to go beyond these estimates to gauge the anticipation effect in bill positioning in non-vetoed enactments. Unfortunately, two problems present themselves. First, there is no generally accepted way to measure the ideological content of bills directly (if there were, it would be of immense value in testing theories of legislating).

Suppose, however, one *did* have a reasonable method for determining the ideological position of bills or groups of bills. It would be tempting to attribute the variation in bill positioning between unified and divided party government to the veto power, at least if one controlled for obvious attributes of Congress such as the preferences of the median voter or median majority member. But such an inference would be problematic because much else changes with the switch between unified and divided party government. In particular, the president's legislative program is apt to be very different and have different impacts on Congress (see e.g., Larocca 2006). Suppose, for example, unified party presidents can shift bills toward their preferred position by drafting

proposed legislation and presenting it to Congress, as suggested in Cameron and Park 2007. Then a Democratic president facing a Democratic Congress may be able to shift bills somewhat to the left. Conversely, bills from the same Congress facing a Republican president might shift to the right, due to the anticipation effect from the veto power. Attributing to the veto power all the measured change in bill locations between the first and second scenarios would over-state the impact of the veto power.

Can these problems be solved? Clearly, they are tough nuts to crack. But progress in measuring bill content and further progress in understanding the analytic foundations of the president's legislative program might open a new research frontier.

2.4.3 CONGRESSIONAL PRODUCTIVITY, GRIDLOCK, AND POLICY STABILITY

Mayhew 1991 stimulated considerable interest in surges and slumps in congressional legislative productivity. Mayhew found little difference in the number of very important laws enacted by Congress between unified and divided party government. Some recent studies modify this conclusion to a degree; for example, Howell et al find about a 28% reduction in the production of important legislation with the switch from unified to divided party government, and about a 39% increase with the converse switch (2000). These findings somewhat allay fears that the veto power allows the president to gridlock American politics across the board, when Congress and the executive have different policy preferences. Yet they still hint at a stabilizing impact from American constitutional design: policies are not likely to vary wildly with small shifts in majorities (Hammond and Miller 1987).

An obvious question is, what explains the differential productivity that seems to exist? How much is due to vetoes and the veto power when Congress and President are at loggerheads, and how much (if any) is attributable to presidential leadership when Congress and the executive have similar preferences? The analytical difficulties are the same as those discussed in the previous section: no institutional variation in the veto power and inadequately developed theories of the presidential legislative program. Here there is a major opportunity for theorists: better developed theory might identify sources of variation that would allow a parsing of the different mechanisms.

A related area of inquiry concerns stability and change in policy domains. In other words, when are there surges in congressional production of, say, health policy legislation, energy legislation, environmental legislation, banking legislation, telecommunications legislation, and so on? What role does the veto play here (and, one might add, the presidential program)? Although there are many policy histories, relatively little systematic attention has been devoted to legislative change and stability in policy domains.

3 TOWARD INTEGRATED PRESIDENTIAL STRATEGY

Because the micro-politics of the presidential veto has been the subject of such extensive theoretical and empirical investigation, this area of presidential studies appears, if not "over-tilled" (to use Arnold's phrase), at least adequately tilled. If one expands one's definition of veto strategy, however, research opportunities abound.

Over the last decade presidential scholars have dramatically extended the theoretical and quantitative analysis of presidential governance tools. Perhaps most notably, Howell 2003 studies executive orders; Canes-Wrone 2006 studies “going public”; Edwards and Barrett 2000, Rudalevige 2002, Larocca 2006, Cameron and Park 2007, and Cohen 2008 study the president’s legislative program; and Lewis 2008 studies presidential appointments. Cameron 2006 summarizes much of this work and notes that underlying all these tools of presidential power are three (and apparently only three) causal mechanisms: *veto power*, *proposal power*, and what he terms “*strategic pre-action*.” In the latter, the president first changes a state variable affecting his or other’s behavior, and then plays a game involving veto power or proposal power. The agency policy making game discussed in Section 1.2.5 is an example of strategic pre-action, in that agency action creates a new status quo at the President’s direction, then the President and Congress play a standard legislative game in which the veto power is critical.

If this claim is true, an opportunity arises to study *integrated presidential strategy*. By combining models of veto power, proposal power, and strategic pre-action, one might be able to consider simultaneously and inter-connectedly how the president constructs a legislative program; mobilizes public attention through rhetoric; shapes congressional action with veto threats; forces concessions with vetoes; uses bribes to switch votes during over-rides; employs executive orders to take unilateral action; pursues strategic appointments to effectuate agency policy-making; oversees agency action; and protects it with the veto and judicial appointments.

Steps have already been made toward models of integrated presidential strategy. Examples include the models of executive orders and agency policy making, in which the President takes a direct step, then protects his initiative with the veto (Ferejohn and Shipan 1990, Howell 2003). But I am suggesting far more ambitious efforts, for example, by adding an appointment game onto the front of the agency policy making game and including the trade-offs between responsiveness and competence studied in Lewis 2008. Or incorporating a “going public” game (Canes-Wrone 2006) into models of the presidential legislative program (Larocca 2006, Cameron and Park 2007). Detailed empirical case studies of integrated strategy would be extremely helpful, particularly case studies informed by the theoretical advances of the last decade.

Models of integrated presidential strategy knitting together veto power, proposal power, and strategic pre-action would constitute a new vision of presidential governance, a vision reflecting the rise of the modern administrative state, polarized politics, the plebiscitary presidency, and the continuing reality of inter-branch bargaining.

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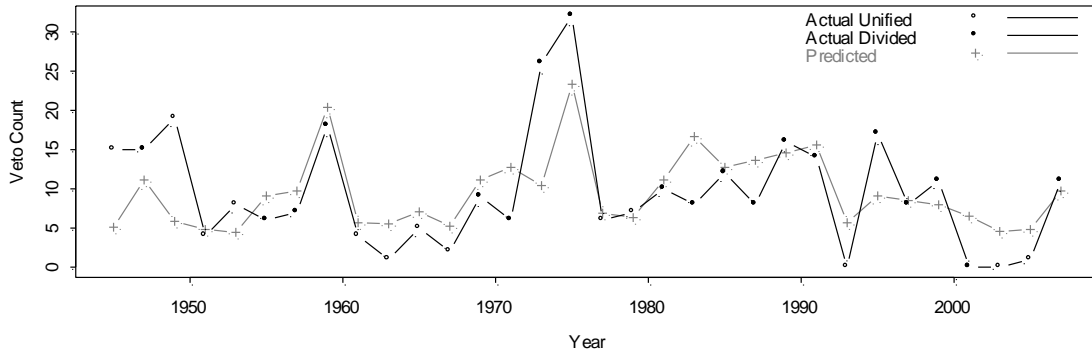
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Regular Vetoes of Non-Private Bills, 1945-2008



Vetoes and House Seats

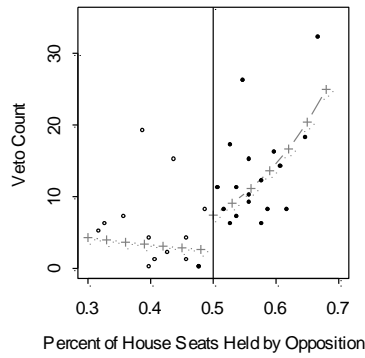


Figure 1. Regular Vetoes of Non-Private Bills Since 1945.

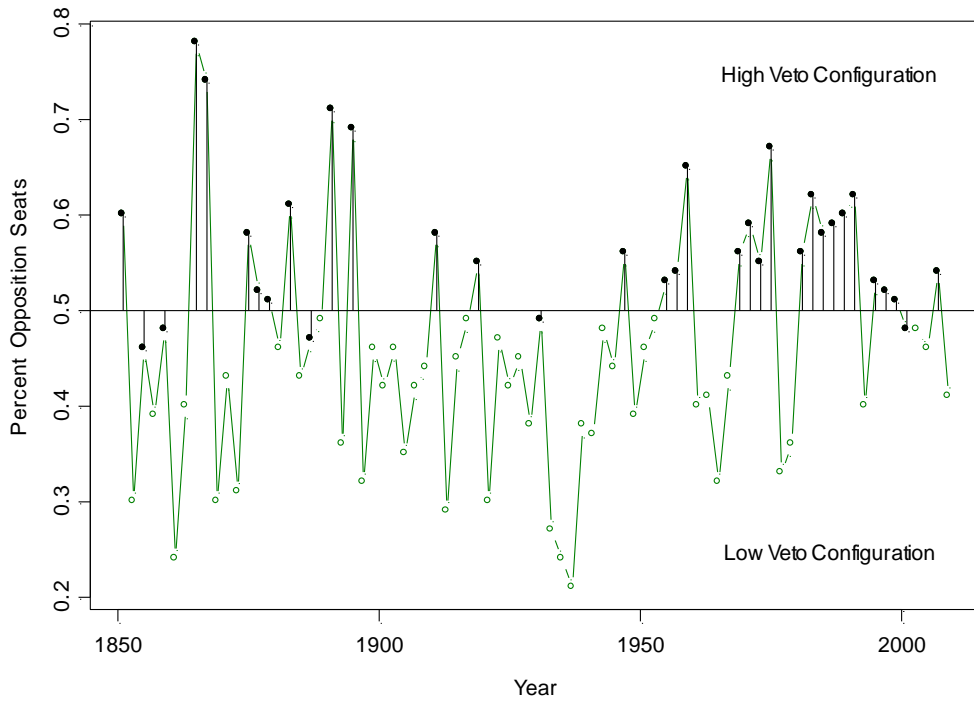


Figure 2. The Frequency of the High Veto and Low Veto Configurations, 1851-2010.