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# PRESIDENTIAL POWER

*Forging the Presidency for the Twenty-first Century*

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*EDITORS*



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## CHAPTER 5

### Bargaining and Presidential Power

*Charles M. Cameron*

“Presidential power” is a deceptive phrase. It suggests that the capacity to shape policy is an attribute of the *president*, and a single attribute at that. But power is not an attribute of an individual, like her height or weight. Instead, “power” describes something about the outcome of a strategic interaction (a “game”). In particular, a president has power in a game when its outcome resembles what the president wants and he causes the outcome to be that way.<sup>1</sup>

This way of thinking about power shifts attention from the attributes of presidents to the characteristics of the games they play. Among these many games are the Supreme Court nominations game, the veto game, the executive order game, the treaty ratification game, the legislative leadership game, the agency supervision and management game, the commander-in-chief game, the staffing game, the executive reorganization game, the opinion leadership game, and the impeachment game. *Understanding the presidency means understanding these games.* I am tempted to add, “and that is all it means,” but that would be too strong. Skill, personality, and charisma seem to matter, or so many people believe. But they always operate within the confines of specific games and strategic circumstances. Understanding the games presidents play is fundamental for understanding presidential power.

Presidents participate in so many games that it is hard to characterize them in a simple way. Broadly speaking, though, when presidents interact with Congress, they often play *coordination games* or *bargaining games*. Loosely speak-

ing, coordination games require many players to act in one of several possible ways if they are to benefit themselves. If they do not all act in the same way, they work at cross-purposes. The politics of such games involve selecting the “focal points” coordinating the players’ actions. A majority party setting its legislative agenda in Congress is a prime example of this situation, because many players—across committees in both houses and in the leadership—must focus on a few priorities if they are to accomplish much. Oft times, the selection of focal points involves loose norms and improvisation rather than formal procedures specified in law or the Constitution; this lies outside what Neustadt called the “literary theory of the Constitution,” though hardly outside the reach of social science.

In contrast, bargaining games require players to divide among themselves a “pie,” or set of benefits. The politics of bargaining involves gambits increasing one’s share of the pie. Examples include haggling over the content of laws, pulling and hauling to determine the direction and vigor of agency decisions, and bickering over the appointment of executive officials and judges. These activities all involve give-and-take across the branches of government. Many bargaining games in which the president participates are quite formal, with a structure specified by the Constitution, by law, or by norms of long-standing precedent.<sup>2</sup>

In an era of divided party government, bargaining games become central to the presidency. The reason is twofold. First, coordination games require a convergence of interests among the players; otherwise, the players have little incentive to coordinate their actions. During divided government, the president’s and Congress’s interests are frequently too disparate for them to play coordination games. Second, the entrenchment of bargaining games in formal sources of authority allows the president to exploit them regardless of his opponents’ wishes. However much Congress might want to disregard the president, it cannot—if his actions are grounded in an unassailable bargaining game. When it comes to the veto, for example, Congress has no escape clauses. At the end of the day, the veto pen awaits.

In this essay, I elaborate on these themes in several ways. In the first section, I explore the interaction of coordination games and bargaining games with unified and divided party government. The connection between bargaining games and divided party government is indeed a close one. In the second section, I review the empirical record on presidential bargaining games. I summarize findings from studies of appropriations, important legislation, bureaucratic activity, nominations, executive orders, and vetoes. I make a distinction between studies employing the “direct” method for studying presidential

power and those employing an “indirect” method. The direct method relates the preferences of the president and other actors to the outcomes of bargaining games, such as the composition of the regulatory boards or the content of important laws. The indirect method examines indicators thrown up during the process of bargaining, such as the number of vetoes. Results from the direct method are often easy to interpret in terms of power relationships, though frequently these studies are hard to carry out because measuring governmental outputs is so difficult. In contrast, as I will shortly explain, interpreting process measures is deeply problematic absent explicit models of bargaining. Thus, the essence of the indirect method is to combine process measures, which are often easy to collect, with explicit models of bargaining. To give a flavor of the indirect method, I review some recent studies of the veto, including studies of veto threats, sequential veto bargaining, and blame game vetoes. Interestingly, explicit models of presidential bargaining games rehabilitate some concepts from *Presidential Power*, such as “reputation,” which have largely fallen out of favor among contemporary students of the presidency. In the third section of the paper, I explore how the structure of bargaining games affects presidential power and helps to explain the varied patterns in the empirical evidence. In the final section, I turn to a provocative topic: does the advent of the bargaining presidency mean an end to presidential greatness?

### THE GAMES PRESIDENTS PLAY: COORDINATION VS. BARGAINING

Coordination games and bargaining games differ in important respects. In a coordination game, there are multiple equilibria (possible outcomes), for example, “drive on the left” or “drive on the right.” In order to do well in the game, players must jointly focus on one of these equilibria and act accordingly. For instance, you don’t want to be driving on the left when everyone else is driving on the right! Hence, the politics of coordination games turn on establishing common expectations—“focal points”—that coordinate the players’ actions.<sup>3</sup> Conversely, in a bargaining game players struggle to divide a “pie.” One should take an encompassing view of what constitutes the “pie” in political bargaining. It can include money or pork, but also the policy gains that may result from putting one person on a board rather than another. The structure of bargaining games often requires players to propose to one another splits of the pie. Sometimes only one player may propose the split, while the other can only accept or decline. Sometimes players alternate offers. Regardless of the

exact structure of the game, the essential problem for players is to come to a speedy, efficient division of the pie, if there is one.

The different characteristics of coordination and bargaining games interact with the strategic context in which they occur to determine their importance to the presidency. A key variable is unified versus divided party government.

#### COORDINATION GAMES AND UNIFIED PARTY GOVERNMENT

During unified party government, the president's co-partisans control Congress. This does not mean that the president, his party's congressional leaders, and the rank and file in the majority party agree perfectly on common objectives. For much of the twentieth century, the Democrats' congressional party was ideologically heterogeneous in both the House and Senate, as was the Republicans' congressional party in the Senate.<sup>4</sup> Nonetheless, despite the dispersion of members around the parties' ideological cores, during unified party government the president and his co-partisans usually share broadly similar ideological objectives.<sup>5</sup> They are members of a team. This has been especially true in recent years, during which time congressional parties have moved toward ideological homogeneity.

Even when a single ideological team controls the presidency and both houses of Congress, governance is not simple. The team can direct its energies toward many different ends, all of them potentially worthy. But if the team's members do not focus their efforts on a few goals, they will accomplish little collectively. This is a consequence of the complex organization of Congress, which requires enormous effort from many different people within each chamber, extraordinary coordination across both chambers, and cooperation from the president.

In an environment like this, there is an opportunity for a special kind of leader, described by Kenneth Shepsle as follows: "Leaders are specific kinds of agents. They are relied upon by followers to coordinate their activities, to provide rewards and punishments for group objectives, to secure allies and defeat opponents, and generally to grease the skids for things the followers want."<sup>6</sup>

Leaders of this kind—*coordinative leaders*—establish focal points guiding what participants will do. These shared expectations are essential for effective, coordinated action. For instance, a president who leads a unified government will use his speeches to focus public expectations on specific policy innovations; if he is successful, he also establishes his congressional party's legislative priorities. Then, given this focal point inside and outside Congress, committee

chairs in both chambers try to bring compatible proposals to the floor and to conference, to reap political credit from crafting and passing the legislation. Officials and experts from the executive branch may help them craft their proposals. Many case studies of lawmaking during unified government show this process at work.<sup>7</sup> As Shepsle's observation suggests, the leader may need to help matters along by allowing important actors to help select the focal points, by supplying useful information to participants, by punishing slackers and free riders, and by bribing holdouts with side payments, such as patronage or pork. There is no question that the process of selecting or creating focal points involves a deal of pulling and hauling, which scholars of the presidency often invoke by the phrase "bargaining." Nonetheless, the broad picture is one of coordinative leadership.<sup>8</sup>

Who will act as coordinative leader in the legislative leadership game? Because the Constitution fails to *confer* the role of governmental head on anyone, someone must *seize* that role if much is to happen. In modern times, the president has been in the best position to do that when government is unified. Most of the brilliant extraconstitutional improvisations of twentieth-century presidents—the "legislative program," the "executive budget," "going public" and the never-ending public relations circus, as well as the transformation of some constitutionally grounded activities, such as the State of the Union message—are vehicles by which the president can seize the role of intraparty (and thus interbranch) coordinator. Use of these devices is central to the "premier" model of the presidency forged by Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt—all unified government presidents.<sup>9</sup>

What does a president look like when he is operating as a coordinative leader? We need look no further than Neustadt's *Presidential Power*. Neustadt's beau ideal, FDR, was the coordinative leader par excellence, at least in his first two terms. "Presidential power is the power to persuade" is the perfect motto for a coordinative leader working to establish focal points. Matthew Dickenson notes that prior to World War II, FDR spent three to four hours meeting with Congressional leaders *each day* during the legislative season.<sup>10</sup> Something similar was surely true of Lyndon Johnson during the legislative surge of the Great Society. This allocation of effort is a mark of a coordinative leader at work.

I have described one equilibrium of the legislative leadership game, a "president-dominant" equilibrium, where the president seizes the role of leader and his party chieftains in the House and Senate fall into line. But a second equilibrium is possible whereby a congressional leader (probably the Speaker of the House) seizes the lead. In the "Congress-dominant" equilib-

rium, the congressional leader establishes the focal points, the leadership in the other chamber tracks along, and the president must respond to their initiatives. We have not seen the Congress-dominant equilibrium during unified government since early in the twentieth century. But during divided party government, the president-dominant equilibrium is often unsustainable, at least much of the time.<sup>11</sup> The reason is the divergence in policy goals between the president and Congress. Given the divergence, the majority party in Congress will ignore the president's preferred focal points and establish its own, if it can. Thus, in 1994, when the Republicans gained control of Congress, Speaker Newt Gingrich used the "Contract with America" to create focal points inside and outside Congress that would coordinate action within the House and between the House and the Senate. Needless to say, Democratic presidential leadership of the rambunctious, conservative Republicans of 1994 was never an option. President Bill Clinton had to respond to congressional initiatives.

In a Congress-dominant equilibrium in the legislative leadership game, the president's extraconstitutional bag of tricks means little. His budget is "dead on arrival." His legislative program is a bootless prayer. His State of the Union message receives polite applause, but everyone knows its initiatives (if they are truly the president's) are bound for the waste basket rather than the statute books. Rather noticeably, the president does *not* spend four hours daily with the opposition party's congressional leaders, helping them maneuver their proposals through Congress. But the failure to establish a president-dominated equilibrium in the legislative leadership game during divided party government does not render the president powerless in other games—not by a long shot.<sup>12</sup>

#### BARGAINING GAMES AND DIVIDED PARTY GOVERNMENT

Given a Congress-dominated equilibrium in the legislative leadership game, a divided party president will be driven back to constitutionally entrenched processes that Congress can neither alter nor ignore. Examples include the veto and appointment processes, in which the president is a potent actor whether Congress likes it or not. These processes partially determine the *content of legislation*, the *control of administrative agencies*, and the *composition of the courts*, all prizes worth fighting for.

Strikingly, many of these constitutionally entrenched processes are bargaining games. They involve a division of a policy "pie," with offers for dividing the pie coming from Congress and the president. Consider Supreme Court nomi-

nations. The president selects a nominee, in essence making Congress an offer about the composition of the Court. Congress may accept or reject the offer (the nominee) but cannot modify it; if it rejects, the president can make another offer (i.e., send up another nominee); and so on, until the vacancy is filled or the president leaves office.<sup>13</sup> Similarly, the veto game begins when Congress presents the president with a bill, in essence a policy offer. The president may accept or veto it, but cannot modify the bill. If he vetoes it and Congress fails to override, Congress may re-pass the bill in modified form, in essence making another offer. This process may continue until either the president accepts the offer, Congress overrides the veto, Congress desists from making further offers on that subject, or the president leaves office.

There are important bargaining games not grounded in the Constitution but nonetheless so well established that Congress cannot easily modify them and ignore the president, however much it wants to. In particular, the Administrative Procedures Act (APA) has a kind of quasi-constitutional status since it establishes ground rules for the federal bureaucracy's operations. Much of agency policymaking under the APA involves intensive interbranch bargaining.<sup>14</sup> This bargaining shapes the actions of bureaus and agencies during divided party government.

In short, when it comes to presidential bargaining games during divided government, Congress (like famed boxer Joe Louis's opponent) can run but it can't hide. It must deal with the president. Ultimately, Congress must present a bill, however cherished, to the president to sign or veto. Despite its fervent desire otherwise, Congress cannot choose a Supreme Court nominee. Only the president can do that. However much Congress would like to treat administrative agencies as appendages of its committees, it is unable to. They are part of the Executive Branch and the president will have his say about what they do.

#### THE IMPORTANCE OF BARGAINING GAMES FOR THE CONTEMPORARY PRESIDENCY

Neustadt had relatively little to say about specific bargaining games in *Presidential Power*, at least as I have defined bargaining games. The reason is not hard to find—he wrote near the end of a uniquely extended period of unified party government. Most of the divided party government with which he was familiar, during the Eisenhower Administration, was relatively nonconflictual (at least until after the 1958 election), because in those days the two congressional parties shared a great deal of common ground.<sup>15</sup> So one reading of *Pres-*

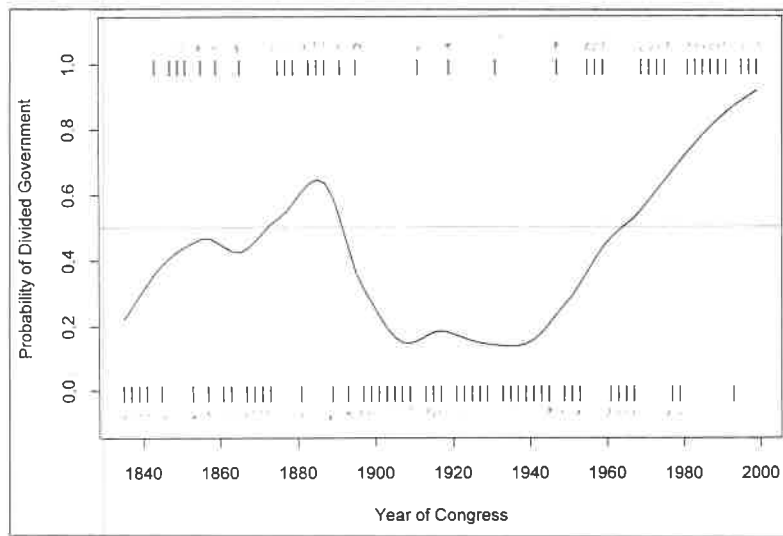


FIGURE 5.1. Divided Government, 1835-2000

*idential Power* is that it is largely (though not exclusively) about rational presidential strategy in what I have called coordination games.

But things changed. To see how much, consider figure 5.1, showing the occurrence of divided party government from the 24th to 104th Congresses (1835 to 2000). In the figure, the hashmarks or “rug” at 0.0 indicate each Congress where unified government prevailed. The hashmarks at 1.0 show each Congress where divided party government occurred. The undulating line is the fit from a non-parametric, locally weighted regression model of the data.<sup>16</sup> Much the same effect would result from a running average of the 0–1 values but the local regression has superior statistical properties and is as easy to interpret. Given the scoring of the data, the line indicates the estimated probability that government will be divided at each point in time. For example, the model estimates as 50 percent the probability of divided government at the time of the 1871–72 Congress.

The data reveal three eras of unified and divided party control of the federal government since the emergence of the party system. First, there was a period stretching from the late 1840s to the election of 1896 in which the probability of divided government fluctuated around 50 percent or a little lower. (The dip just after 1860 results from the South’s expulsion from Congress during and immediately after the Civil War.) This period was characterized by vigorous policy differences between the parties, first over slavery and civil rights, and

later, as a rural agrarian nation struggled to transform itself into an urban, industrialized one, over labor laws, tariffs, and monetary policy.

The realigning election of 1896 ended the first era and ushered in the second—one of unified party government. Of course, the Republican Party held the government during most of the first part of this period, while the Democratic party dominated politics in the second half, following the New Deal realignment of 1932–36. Partisan and policy change was thus abundant during this period. What was rare was divided party government, whose probability the model estimates at less than 20 percent. In fact divided government occurred only three or perhaps four times, depending on how one dates the end of the era. The three clearcut cases are Taft and the Democratic House in 1911–12, Wilson and the Republican 66th Congress in 1919–20, and Hoover and the Democratic House in 1931–32. The remaining case is Truman and the Republican 80th Congress in 1947–48.

The regression model indicates that the great era of unified government drew to a close in the mid-1950s, shortly before Neustadt set pen to paper. By the early 1960s the probability of divided government passed the 50 percent mark. At this writing, April 1999, the probability of divided government is above 80 percent. The distribution of hashmarks at 1.0 strikingly shows that the latter part of the twentieth century constitutes the most concentrated such period since the 1880s and 1890s.

These data have profound implications for presidential politics. Perhaps the clearest is the greater importance of bargaining games for the contemporary presidency.

## PRESIDENTIAL BARGAINING GAMES: WHAT DO WE KNOW?

Given the importance of bargaining games for the contemporary presidency, an obvious question is: What does the empirical record tell us about presidential bargaining games? This seems like it should be an easy question to answer, but unfortunately it is not. The problem is that data on the *process* of bargaining—the number of vetoes, of nominees rejected by Congress, the number of oversight hearings, the number of policy proposals in State of the Union messages, the number of bills introduced in Congress, the number of executive orders reversed by Congress, and so on—are relatively easy to collect but hard to interpret (I’ll explain why shortly). Conversely, data on the *outputs* from bargaining games—for example, the number and content of important laws, executive orders, and treaties, the intensity and import of bureaucratic action, the

ideological tenor and meaning of court decisions—are very hard to collect but much easier to interpret.

Why are process measures so much harder to interpret compared to output measures? The problem is that power in bargaining games often operates through *anticipation*. Congress anticipates a veto if it goes too far; in order to avoid the veto, it trims back a policy initiative. No veto occurs, but the president's preferences have altered what Congress would have done if could have operated without constraint. In other words, the game's structure allows the president to exercise power over the outcome, even absent a veto. As a second example, suppose the president anticipates a torrent of opposition if he nominates a controversial activist to head a regulatory agency. Accordingly, he eschews the controversial nominee in favor of a more moderate one, though he would prefer to put the activist in charge if he could do so without cost. The nomination then flies through Congress. In this case, the structure of the game allows Congress to exercise some power over the nominee's ideology even with no direct evidence of this in the public record.

Situations like this involve the "second face of power," power operating through anticipated response.<sup>17</sup> These situations are notoriously difficult to study using process measures since participants maneuver to avoid the most easily measured consequences of disagreement.

How can one find the traces of power when the second face of power is at work? There are two methods: the first direct, the second indirect. The direct method involves measuring policy outputs and relating them to the actors' preferences. If the president actually exercises power over the output, even without taking visible action, then a switch from a liberal president to a conservative one should result in a change in policy, *ceteris paribus*. If one collects data on policy outputs and proxies for preference changes (e.g., partisan affiliation of the president and key congressional actors), and the policy outputs change in a clear and simple way in response to changes in the preference proxies, then one has strong circumstantial evidence of power being exercised. Obviously, one needs to control for confounding influences, but the principle is clear enough.<sup>18</sup>

The indirect approach is more convoluted. It begins with process data, such as vetoes, rejected nominees, reversed executive orders, and blocked agency initiatives. The problem is interpreting such data. In order for events like vetoes to occur, there must be policy disagreement between the actors. But this is only a *necessary* condition. It is certainly not a *sufficient* condition, as arguments about the second face of power indicate. Instead, a process marker like a veto, a

rejected nominee or treaty, or a reversed executive order, represents the impact of policy disagreement, *plus something else beyond mere disagreement*. Let us call this additional element "Factor X."<sup>19</sup> The essence of the indirect approach is to build an explicit model of bargaining *incorporating Factor X*. Using this model, one can interpret the process measures and even draw conclusions about presidential power. Absent such a model, all that can be concluded from process measures like counts of vetoes is that policy disagreement occurred—a very weak conclusion since policy disagreement may not trigger a veto without Factor X.<sup>20</sup>

In the next section, I review several studies employing the direct method to study presidential power, or that allow for interpretations of this kind. Then, I illustrate the indirect approach using recent studies of veto bargaining.

#### THE DIRECT APPROACH TO MEASURING PRESIDENTIAL BARGAINING POWER

Several recent studies attempt to measure policy outputs from presidential bargaining games. In almost all these studies, the measurement of the dependent variable—the output to be explained—is a critical issue because governmental outputs are so elusive. The strength of the conclusions depend critically on the validity of output measures but I will say little about this and other methodological issues. I group the studies by the policy-related dependent variable that they explain.

##### *Appropriations*

In a classic study, Kiewiet and McCubbins measure the impact the president has on appropriations.<sup>21</sup> The dependent variable is money actually appropriated by Congress to agencies, not money requested by the president. Kiewiet and McCubbins make inferences about where various presidents sought increases and cuts. Their statistical tests uncover an important maxim of veto bargaining, "you can't push on a string." Given a low "reversion point" (i.e., the default value for appropriations absent a new appropriations bill), presidents can use the veto to block large increases in small budget. Less frequently are they able to block cuts in large programs because this requires a high reversion point (e.g., a continuation at last year's appropriation). Only rarely can the veto force Congress to increase a small budget or cut a large budget more than it wants to. These require unusually favorable reversion points that are unlikely to arise. Taking into account the normal reversion points in the appropriations game, Kiewiet and McCubbins argue that that the veto gives the president

strong power when he wants to cut budgets and much less power when he wants to increase them—you can't push on a string. Their statistical analysis of appropriations data supports their argument.

#### *Enactment of Important Laws*

One type of policy output is "important" laws. In an innovative study, David Mayhew devises two measures of "legislative importance," the first based on elite perceptions of the legislation at the time of its passage, the second based on retrospective judgments by policy experts.<sup>22</sup> Mayhew's statistical analysis suggests divided government does not decrease the production of important laws very much, if at all, a finding contradicting the conventional wisdom prevailing among many political scientists and journalists. His finding sparked considerable controversy about method and data.

Interpreting the Mayhew data from the perspective of presidential power may be problematic. Nonetheless, a reasonable intuition is that, for any given Congress, there may be policies that would be altered under unified government but remain in place during divided government because the president would use the veto power to protect them.<sup>23</sup> If so, a decrease in the production of important legislation during divided government may reflect the impact of the veto power. Howell et al. reconsider Mayhew's data, focusing on the contemporary perceptions series, and shows, using time series techniques, that production of important legislation decreases about 30 percent during divided government.<sup>24</sup> The effect is small enough to confirm Mayhew's skepticism regarding the conventional wisdom about "gridlock" but large enough to suggest—perhaps!—the traces of presidential power.

#### *Policy Liberalism of Important Laws*

A stronger test of presidential power comes when we shift attention from the number of important laws enacted to their policy content. Erikson et al. examine Mayhew's contemporary perceptions data, coding each law as "liberal," "conservative," or "neither."<sup>25</sup> They sum over each congress's production of important laws to yield a net liberalism/conservatism score for each Congress. They show that this score is related to public mood and the partisan composition of government. That is, unified Democratic governments produce liberal legislation, on balance; unified Republican governments produce conservative legislation, on balance; and divided governments produce a legislative record that on balance falls between the two extremes. This finding suggests that Republican presidents check the tendency of Democratic congresses to produce liberal legislation, while Democratic presidents check the tendency of Republican congresses to produce conservative legislation. The finding is

hardly surprising. But it is important to know that simple, systematic evidence supports seemingly reasonable intuitions about presidential power and the content of legislation.

#### *Statutory Delegation to Executive Agencies*

Political scientists David Epstein and Sharyn O'Halloran engage in an even more ambitious attempt to study the effect of divided government on the content of legislation.<sup>26</sup> Again they study the laws identified in Mayhew's data as important. They undertake a content analysis of legislative histories, studying the extent to which Congress delegated discretionary authority to the executive. Their data show a pronounced divided government effect: Congress delegates more authority to a president of the same party. The results for presidential power are not entirely clear, since divided government presidents may be more aggressive in their use of their more limited discretion.<sup>27</sup> Nonetheless, the finding shows very clearly how equilibria in bargaining games can be very different under unified and divided government (see also the essay by Epstein and O'Halloran, chapter 15 in this volume).

#### *Bureaucratic Activity*

Two classic articles examine bureaucratic activity and the preferences of Congress and president. These studies largely created the "direct" method for studying presidential power. Weingast and Moran examine the activities of the Federal Trade Commission, and show that the activities of the agency seemed to reflect preferences within key congressional committees.<sup>28</sup> Moe reexamines this evidence and finds that presidential preferences also play an important role in the agency's output decisions.<sup>29</sup> Although these studies predate the new attention directed at divided government, taken in tandem they may suggest the importance of both actors' preferences in determining bureaucratic conduct.

#### *Ideology of Supreme Court Justices*

The identities of Supreme Court justices, and hence the ideological composition of the Supreme Court, are determined by the Supreme Court nominations game. The best quantitative study of presidential choices in this game provides evidence that presidents are strongly advantaged by the nominations process. Moraski and Shipan study presidential selection of nominees, focusing on their ideology.<sup>30</sup> The principal variable of interest to the authors is whether the nominee would be the "swing vote" on the Court, but they also study the impact of presidential and senatorial preferences on the president's choice. What they find is that Senate ideology has little effect on presidential choice of nominees. In other words, a president tends to nominate a person of the same ideological



stripe whether the government is unified or divided government. An earlier study using less sophisticated models and weaker data comes to a similar conclusion, and historical evidence from case studies tends to confirm Moraski and Shipan's systematic analysis.<sup>31</sup> The structure of this particular bargaining game seems strongly to favor the president.

#### *Number of Important Executive Orders*

Moe and Howell's study of the effect of divided government on the number of important executive orders resembles Mayhew's analysis but measures a key output from the executive rather than legislative branch.<sup>32</sup> Like Mayhew, the authors uncover some counterintuitive results: the number of important executive orders appears to decrease during divided government, by about 20%–30%. In contrast, many analysts have suggested that the number of important executive orders might increase during divided government, as a substitute for the president's legislative proposals that have no prospect of success. The Howell and Moe results may suggest that divided government imposes constraints on the president even when he takes ostensibly "unilateral" action. An analysis of the net liberalism/conservatism of important executive orders, along the lines of Erikson et al.'s analysis of the Mayhew data, would be very interesting. It would be surprising if divided government did not operate as a moderating influence on the net liberalism/conservatism of presidential executive orders.

#### *THE INDIRECT APPROACH: STUDYING VETO BARGAINING*

Absent a model of vetoes (actual vetoes, not just veto power), any number of vetoes is equally compatible with little, some, or a great deal of presidential power over legislative outputs. No vetoes may mean that Congress has capitulated to the president, or the president has capitulated to Congress; or that Congress has made some compromises before submitting the bill to the president, who compromises somewhat by accepting it. Many vetoes are equally ambiguous. The lesson is a general one—data on process measures simply do not speak for themselves. The idea of the indirect approach is to combine process measures with explicit models of bargaining, in the hope the data will speak more distinctly.

#### *Veto Threats*

Matthews provides an elegant model of veto threats, beginning with a standard model of one-shot, take-it-or-leave-it bargaining over political issues.<sup>33</sup> Then he adds an explicit "Factor X"—congressional uncertainty about the presi-

dent's policy preferences. In other words, Matthews assumes the president has a policy reputation, but the reputation is not so precise that Congress can predict with pinpoint accuracy the response of the president to every conceivable bill. Disagreement between the president and Congress, *plus* congressional uncertainty about how far it can push the president before triggering a veto, allows vetoes to occur within the model—they occur when the president turns out to be somewhat tougher (that is, more extreme) than Congress anticipated. Finally, Matthews allows the president to issue a veto threat before Congress writes a bill. Using quite sophisticated game theory, Matthews works out predictions about the behavior of Congress and president.

Within the confines of the model, one can evaluate the impact of the "institution" of the veto threat on presidential power. Broadly speaking, veto threats often enhance presidential power (relative to a world without veto threats), because they help the president and Congress strike bargains that they might not otherwise forge, for want of congressional concessions. Moreover, the concessions induced by threats often work to the advantage of the president.<sup>34</sup>

In our own research, my collaborators and I present systematic data on veto threats, congressional concessions after threats, and vetoes after threats, and use Matthews's model to interpret the data (and, to some extent, use the data to test the model).<sup>35</sup> The universe for the study consists of the 2,284 "nonminor" bills presented to the president between 1945 and 1992. We collected data on a random sample of 281 nonvetoed bills from the universe, stratified across three levels of "legislative significance" derived from an approach similar to Mayhew's. We also collected data on all vetoed bills in the universe, some 162 bills, for a total of 443 bills in all. We compiled data on threats and concessions from legislative histories of the bills, the public papers of the presidents, and newspaper accounts.

Statistical analysis of the data revealed the following patterns:

1. During unified government, veto threats rarely occur regardless of the significance of the legislation.
2. During divided government, veto threats occur frequently and increase in frequency with legislative significance. The frequency of veto threats for important legislation during divided government is surprisingly high: 34 percent of such bills received veto threats.
3. If a bill is not threatened, a veto is unlikely though not impossible.
4. If a bill is threatened, the probability of a veto increases dramatically, especially during divided government and at higher levels of legislative significance. But vetoes are not certain even after a threat.

5. Veto threats usually bring concessions.
6. Concessions deter vetoes. The bigger the concession the less likely a threatened bill is to be vetoed.

Although some of these findings lie outside the scope of Matthews's model (for example, the importance of legislative significance), for the most part these findings strongly resemble what the model predicts. Thus, the model "explains" the data, in the sense that it provides a detailed causal mechanism for the process. If one combines the import of the model—veto threats often enhance presidential power—with the data on the actual frequency of threats, one obtains a picture in which veto threats assume considerable importance in the armamentarium of presidents serving in periods of divided party government.

#### *Sequential Veto Bargaining*

Cameron and Elmes consider an extension of Matthews's model.<sup>36</sup> In this version of the model, the president does not issue a veto threat; however, Congress may pass multiple versions of a bill and the president may repeatedly veto it. The central question in this model of sequential veto bargaining is the ability of vetoes to extract policy concessions from Congress. As in Matthews's model, presidential policy reputation plays a key role. The president begins the game with a given reputation, and Congress makes an appropriate offer. But in response to a veto, Congress updates its beliefs and makes subsequent offers. The game has considerable strategic complexity, because the president may deliberately veto a bill in order to build a favorable reputation and extract concessions—and Congress knows the president may do this! Nonetheless, the model predicts that vetoes will usually bring concessions in re-passed bills. In addition, the model makes many other predictions about veto bargaining, some rather subtle. For example, the model predicts that vetoes are more likely for important bills than for less important ones, but that concessions will be smaller for important re-passed bills than in unimportant re-passed bills.

Cameron reviews extensive data on veto bargaining in the postwar period and uses it to test the model. Among the many empirical findings are the following:

1. The probability a bill was vetoed was fairly high (about 20%) when the legislation was important and government was divided.
2. Given a veto, sequential veto bargaining was quite rare for unimportant legislation but quite common for important legislation.

3. Vetoes almost always extract concessions in re-passed versions of the legislation.<sup>37</sup>

This is exactly the picture one would expect if the model captures important parts of interbranch bargaining. These findings are just a few of many that are explored in this book-length study of veto bargaining. Overall, the picture that emerges is one of intense bargaining, with the president using threats and actual vetoes to extract concessions from Congress. This process appears central to the legislative presidency in periods of divided party government.

#### *Blame Game Vetoes*

Groseclose and McCarty present an ingenious model of what they call "blame game" vetoes.<sup>38</sup> In these instances, Congress deliberately sends up legislation designed to provoke a veto. By carefully constructing the bill, Congress can force the president to act as if he were more extreme (more liberal or more conservative) than he actually is. The appearance of extremism alienates moderate voters, who judge the president's ideology by his actions. So again, incomplete information and policy reputation within the electorate are central to the model. However, the model focuses on the president's reputation within the electorate rather than in the Washington community.

The historical record shows that extremists in the congressional parties noisily advocate blame game vetoes during periods of divided party government. Also, there are notable examples of the strategy in action, most famously involving the congressional Democrats, President Bush, and the Family and Medical Leave Act of 1992.<sup>39</sup> The budget crisis and governmental shutdown of 1995 may well have been blame game vetoes at work.

Outstanding candidates for blame game vetoes are those that occurred in election years during divided party government, were relatively important (so that voters would take note), and that were hopeless cases for a veto override (i.e., the bills' authors probably knew their legislation had little chance of enactment). Table 5.1 displays all vetoes from 1945 to 1996 meeting these characteristics, seventeen vetoes in all.<sup>40</sup> This very conservative list, along with case studies, suggests that blame game vetoes may be an occasional and important partisan phenomenon during divided party government. Confirmation of this requires more systematic proof—which Groseclose and McCarty go on to supply.

A striking prediction of Groseclose and McCarty's model is that presidents will suffer a loss of popularity following vetoes of *important* legislation, *but only during periods of divided party government*. The hypothesis is very natural once one understands the model. They test the hypothesis with quarterly data

TABLE 5.1. Potential "Blame Game Vetoes," 1945–1996

Bill	Year	Override Votes	Description
H.R. 12	1956	202–211 (74)	Agricultural Act of 1956
S. 722	1960	45–39 (11)	Area Redevelopment Act
H.R. 3610	1960	249–157 (22)	Sewage treatment plant grants
H.R. 15417	1972	203–171 (47)	Labor, HEW appropriations
S.J. Res 121	1976	37–51 (22)	Milk price supports
H.R. 8617	1976	243–160 (26)	Hatch Act Revisions
H.R. 12384	1976	51–42 (11)	Military Construction
H.R. 13655	1976	41–35 (10)	Advanced Car Research
H.R. 1154	1988	272–152 (11)	Textile Apparel and Footware Trade Act
S. 3	1992	57–42 (9)	Campaign Finance and Electoral Reform Act
H.R. 2507	1992	271–156 (14)	Fetal Tissue Research
S. 5	1992	258–169 (27)	Family Leave
S. 323	1992	266–148 (10)	Family Planning
H.R. 1530	1996	240–156 (24)	Defense Authorization
H.R. 2076	1996	240–159 (26)	Commerce, Justice, State appropriation
H.R. 1561	1996	234–188 (48)	Foreign Aid and State Dept. authorization
H.R. 1833	1996	57–41 (9)	Late term abortions

on presidential popularity from 1953–1996 and discover exactly the predicted phenomenon. Moreover, it is surprisingly large in magnitude, exceeding the impact on popularity of macroeconomic variables like inflation and growth.

#### SUMMARY

The evidence in the preceding studies may seem dismayingly variable. In some games, like the Supreme Court nominations game, the president appears remarkably powerful despite divided party government. In others, like the statutory delegation game, the president seems quite vulnerable. In the veto game, perhaps the most intensively studied of all presidential bargaining games, presidential power depends on many different factors, including intangibles like the president's policy reputation inside and outside Washington. Why are the results so variegated? How can we make sense of them? I take up this subject in the next section.

## PRESIDENTIAL POWER AND THE STRUCTURE OF BARGAINING GAMES

Over the last twenty years or so, social scientists have learned a great deal about bargaining. Game theorists have devised interesting models; experimentalists have examined bargaining under controlled circumstances; and empirical researchers have studied data from field settings.<sup>41</sup> There is a solid base of knowledge to draw on when trying to understand presidential bargaining game. That is the good news.

Unfortunately, there is some bad news as well. An important finding from bargaining theory is the following: When the bargainers do not disagree very much about how to divide the pie, then (not surprisingly) the fine structure of the bargaining game probably will not influence the outcome of the bargaining very much. Just about any sensible procedure will yield about the same outcome, absent a breakdown in the bargaining. But if the players have different preferences about the division of the pie, then *the fine structure of the bargaining procedure makes an enormous difference for outcomes*. Change the rules, even in subtle ways, and you may change the outcomes—and change them a lot.

The sensitivity of outcomes to the bargaining protocol is one reason why bargaining is so important to a president when government is divided. If the president has a favorable structure to work with, he can shape outcomes in the bargaining game regardless of Congress's desires. But the sensitivity of outcomes to procedural detail creates a problem for political scientists. There are not going to be many easy generalizations that hold over *all* the bargaining games that divided government presidents play. Political scientists will need to think hard about each one—almost as hard as presidents do. Presidential power resides in the details.

#### SOME CONSIDERATIONS IN ANALYZING PRESIDENTIAL BARGAINING GAMES

What details in bargaining games make a big difference to presidential power? The following rather tentative list of considerations provides a starting point.

##### *Proposal Power vs. Veto Power*

In many presidential bargaining games, one side (the "proposer") makes the other (the "chooser") a take-it-or-leave-it offer. The ability to do so often confers great power on the proposer, especially if the "leave it" option is unattractive for the chooser.<sup>42</sup> Of course, in some games, the president is the proposer

and has the advantage; in others, he is the chooser and thus operates at a relative disadvantage. This simple observation goes a considerable way toward explaining the variation observed in empirical studies.

Here are some examples. In the legislation game, Congress has the proposal advantage. By carefully exploiting his veto power, the president can force Congress to compromise, perhaps quite a lot. But in general, proposal power gives Congress the edge. Thus, in the 80th Congress, President Truman opposed the Republican majority on tax cuts and labor policy. By repeatedly vetoing bills, Truman forced the Republicans to compromise to the point that they had veto-proof bills. Yet in the end, Congress cut the income tax and passed the Taft-Hartley Act. The latter dramatically reshaped labor policy in this country. Similarly, President Clinton extracted huge concessions from Congress in the battle over welfare reform (how large is often forgotten). But in the end, Congress reshaped welfare policy much more on its terms than the president's.

In the nomination game, the president has the proposal advantage. While Congress has sometimes rejected a president's nominee for the Supreme Court, the president has usually gone on to fill the seat with someone of comparable ideological stripe. For instance, Congress rejected two of President Nixon's nominees, Clement Haynsworth and G. Harrold Carswell. Nixon returned with Harry Blackmun, a jurist of similar ideology but with less inflammatory background. Blackmun successfully ascended to the seat.<sup>43</sup> The proposal power (and perhaps other features of this game) tends to create presidential power.

Not all presidential games have a simple ultimatum structure. For example, in the executive order game, the president can issue an order that becomes the new status quo. Congress can act to overturn the new status quo, by issuing its own policy bid (i.e., pass a bill). However, the president can protect the new status quo by vetoing the bill. So this game allows both sides some proposal power and some veto power. Working out the consequence of this structure demands an explicit model, such as those considered by Ferejohn and Shipan and by Howell.<sup>44</sup>

#### *Regime Effects*

A second structural element involves what might be called "regime effects." In the take-it-or-leave-it bargaining models I have discussed, the relative power of the president and Congress changes radically depending on where the status quo lies with respect to the favored policies of the two bargainers. This is the basis for the "can't push on a string" maxim in appropriations politics. Thus, even within a game with the same sequence of play and the same players, the

president's power may vary dramatically given favorable and unfavorable status quos or reversion points, relative to the two bargainers' positions. This principle has been well understood by theorists<sup>45</sup> but has not always been appreciated by empirical researchers trying to make sense of field data from bargaining games. Some recent work, such as Moraski and Shipan's study, in which regime effects are central, points the way to a better treatment of a fundamental consideration in political bargaining.<sup>46</sup>

#### *Uncertainty and Reputation*

When the president is the chooser, his policy reputation can be an asset when dealing with a proposer. If the proposer is risk averse, its uncertainty about what the president will accept and reject may lead it to make a better offer than if it were certain what he would do. Under these circumstances, there is apt to be considerable strategizing around the president's policy reputation itself. The president may attempt to build a favorable reputation through his words and deeds, and his opponents may exert considerable effort to reduce their uncertainty.

The veto models demonstrate how policy reputation can make an important difference in presidential power when the president acts as chooser. In the threat model, congressional uncertainty about the president's policy preferences tends to advantage the president relative to a complete information world. In the sequential bargaining model, the president deliberately manipulates his reputation to extract better offers from Congress. But in the blame game model, Congress uses veto bait to damage the president's reputation with voters.

When the president is genuinely the proposer, as in the nomination or treaty games, his policy reputation may not buy him much. Only if the proposal is a signal about the president's future actions will it interact with reputational dynamics. But in many bargaining games, once the president's proposal is on the table, his most significant action in the game is over. In this case, reputational dynamics simply do not arise.

Two exceptions are worth mentioning. The first involves policy arenas that are linked or correlated. In this case, the president's action in one arena (e.g., health policy) offers a clue about his preferences in another (e.g., welfare policy).<sup>47</sup> The second exception involves third party observers, like the blame game configuration. In this situation, a third party—mostly importantly, voters—watches the bargaining between president and another player (e.g., Congress) and tries to deduce the president's policy preferences from his actions. Here, the president may be able to craft his proposals—for instance, treaties,

nominees, agency policies, executive orders, and presidential discretionary actions in foreign policy—to cultivate a favorable reputation with voters.

The asymmetry in reputational dynamics associated with choosing and proposing is an elementary point that seems to have been overlooked. One source of confusion is the temptation to treat the president's legislative proposals as if they were genuine proposals. It is important to remember that the president's legislative proposals are not, from a formal viewpoint, proposals in a direct, legislative bargaining game. Instead, as I argued earlier, they are probably better thought of as bids to establish focal points in a subsequent coordination game. Unfortunately, from a theoretical viewpoint, the presidential-congressional focal point game remains largely *terra incognita*.

#### *Repetition*

Some presidential bargaining games approximate an ultimatum game. But in others, once a player makes an offer, another accepts or rejects it. If the offer is rejected, another offer is made and so on, possibly *ad infinitum* (in principle). In other words, the bargaining may extend through many rounds of play.

In bargaining games like this, the fine structure of the game is very important. To see this, note that it is easy to construct bargaining games of this form where all the power lies with the proposer, who always achieves his or her ideal policy.<sup>48</sup> It is also easy to construct games of this form where the power lies with chooser, who achieves his or her ideal policy.<sup>49</sup> It is also possible to construct games of this sort in which repetition has no effect; that is, the outcome with multiple rounds is no different than if there had been only one round of play.<sup>50</sup> It all depends, then, but on what? Despite much recent work on this type of game, the general principles remain elusive. At present, as these examples suggest, the devil is in the details. When repeated offers are part of a presidential bargaining game (at least potentially), analysts probably need to specify the game carefully and think hard about the opportunities for advantage implicit in the structure. This advice is not very helpful but at least it sends up a warning signal.

#### THE END OF PRESIDENTIAL GREATNESS?

Up to this point, I've stressed the details of presidential bargaining games because in an age of divided government, presidential power often resides in those details. But what does the advent of divided government and the rise of the bargaining presidency mean for the state of the institution, broadly conceived? I'll attempt one, provocative, answer.

There is a venerable tradition among historians of ranking presidents according to their "greatness." The source of this parlor game is a 1948 article by the distinguished historian Arthur M. Schlesinger. For his study, Schlesinger polled prominent historians and asked them to classify presidents as "great," "near great," "above average," "average," "below average," and "failures." Although the survey has been revisited several times, most presidents maintain fairly stable rankings in this system, especially those at the high and low ends of the scales. Recently, Arthur M. Schlesinger Jr. duplicated his father's survey, querying 32 noted scholars of the presidency.<sup>51</sup>

What do the ratings measure? Surely they tell us as much about the historians as the presidents. Scrutiny of the results suggests that the rankings reflect an ideal president, one with vision, boldness, and expansionary, activist achievement, not just in war but in peace. This is of course a modern ideal and one that some twentieth-century presidents—e.g., Taft, Coolidge, Harding—would have rejected. But it is also an ideal that is widely shared among contemporary Americans. The friends of the presidency often celebrate Lincoln, FDR, and Wilson when they contemplate the office's positive capabilities, and worry about Nixon, Grant, Harding, and Andrew Johnson when they reflect on its perils.

If we read the rankings this way—not as objective indicators of genuine "greatness" (whatever that might be) but as subjective reflections of one vision of what the office can be—then it might make sense to ask: what is the impact of divided party government and the bargaining presidency on this conception of presidential greatness?

As a first estimate at answering this question, I use the 1996 Schlesinger rankings, grouping presidents into "above average" (great, near great, and above average), "average," and "below average" (below average and failure). Then, I categorize the presidents by their partisan relationship with Congress. If a president served exclusively during unified party government, I classify him as "in the majority." If he served when his partisan opponents consistently held Congress, I classify him as "in the minority." All the other cases (i.e., unified government for a portion of a presidency, divided for the remainder, or one chamber held by co-partisans and one by opponents) I classify as "mixed." Table 5.2 shows the results. I focus only on presidents since the emergence of the party system in 1835, and of necessity I exclude a few presidents whose brief tenures defy ranking (e.g., William Henry Harrison).

The table reveals several patterns. First, the rankings distinguish activist, visionary, and bold presidents from less activist or disgraced ones. Perhaps the glaring exception is the "average" rating afforded Ronald Reagan, which has

TABLE 5.2 Partisan Status and Presidential Greatness

	Above Average	Average	Below Average	
In Majority	Lincoln, McKinley, TR, FDR, JFK, LBJ 6	Van Buren, Carter 2	Harding, Coolidge, Hoover 3	11
Mixed	Polk, Wilson, Truman, Eisenhower 4	Arthur, Cleveland, Harrison, Taft, Reagan, Clinton 6	Tyler Pierce Buchanan Grant 4	14
In Minority	0	Hayes, Ford, Bush 3	Taylor, Fillmore, A. Johnson, Nixon 4	7
	10	11	11	32

drawn adverse comment from conservatives.<sup>52</sup> It would be surprising if Reagan's score does not rise over time, as did Eisenhower's.

Second, there seems to be a relationship between the ranking and the partisan relationship of Congress and the president. Of the 11 presidents who served in the majority, more than half score as "above average." Of the 14 presidents who had mixed partisan status, a plurality cluster as "average" presidents. Of the 7 presidents who served in the minority, almost 60 percent scored as "below average," and none were "above average." A simple but very strict rule, "majority = above average, mixed = average, minority = below average," predicts 50 percent of the scores correctly. A slightly more permissive rule, "majority = above average or average, mixed = average, and minority = below average or average," predicts 66 percent of the scores correctly.

The first cut at the data is sufficiently intriguing to warrant a closer look. Figure 5.2 presents the data as a scatter plot, along with the predictions from a linear regression model relating partisan relationship to presidential ranking.<sup>53</sup> The 95 percent confidence intervals, shown as dotted lines, should be taken with a grain of salt since the variables are ordinal. But they help show the location of most of the observations. In the figure, the values of the observations are slightly jittered to make each point distinctly visible.

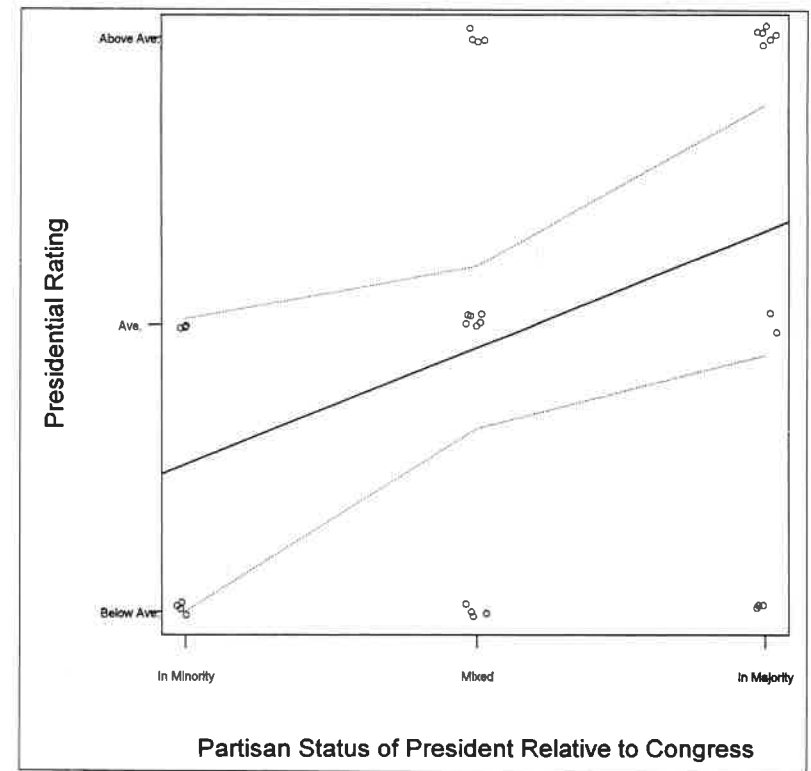


FIGURE 5.2. Presidential Ratings and Divided Party Government

The statistical model confirms that, on average, moving from minority status, to mixed status, to majority status substantially increases a president's ranking. The effect is both statistically significant and substantively important.

The principle lesson is quite clear: *an age of divided party government is unlikely to produce presidencies of the kind celebrated by historians as "great."* Of the 20 presidents who served in other than the majority, only 4, or 20 percent, beat the odds and scored "above average." All of these were "mixed" status presidents. For these four—Eisenhower, Truman, Wilson, and Polk—the legacy that so appeals to historians turns primarily or substantially on foreign affairs, and (excepting Eisenhower) much of it was achieved during intervals of unified party government. Of course, it may not be *impossible* for a minority status president to achieve the sort of presidency the historians celebrate as "above average." But the fact remains that no president in 165 years has pulled it off.

Why does divided party government so often sound the death knell for activist, visionary, pathbreaking presidencies? The first part of this essay suggests an answer. When the president enjoys majority status, he can shape the tide of events through coordinative leadership. By establishing focal points inside and outside Congress, he can move policy and the nation, sometimes breathtakingly. This sort of ostentatious achievement is crucial for the historian's preferred style of presidency. When the president is in the minority, he fights trench warfare, not the blitzkrieg. His achievements are measured in hard-fought inches. They depend on the clever use of bargaining games, playing each twist for advantage. In fairness we should probably accord bargaining presidents their own kind of greatness; but if we do, it will be rather different from the conception enshrined in Schlesinger's rankings.

David Mayhew has shown clearly that divided party government does not equal gridlock.<sup>54</sup> Even in its moments of partisan division, the separation of powers system can produce great legislation. It also produces presidents who exercise power through bargaining, a different mode than the coordinative leadership of unified government presidents. What the system does not produce during divided party government is great presidents—or only rarely, when the opportunities are unusually favorable. In fact, the absence of great presidents during divided party government may be the reason why so many political scientists and journalists mistakenly associate it with gridlock. If divided party government persists, as seems likely, then we must bid adieu to the office of Abraham Lincoln, Teddy Roosevelt, FDR, and Lyndon Johnson and welcome again the office of Chester Arthur, Grover Cleveland, Gerald Ford—and perhaps, Richard Nixon.

## NOTES

1. This conclusion follows from the canonical definition of power: "power is a causal relationship between preferences and outcomes." For a thorough discussion, see Jack Nagal, *The Descriptive Analysis of Power* (New Haven: Yale University Press, 1975).

2. The distinction I am drawing between coordination and bargaining is rooted more in presidential politics than abstract game theory. For example, there are bargaining games in which coordination is critical (e.g., Nash bargaining games, with a multitude of equilibria). So I am not drawing a logical or mathematical distinction but instead pointing to the character of different activities.

3. Thomas Schelling, *The Strategy of Conflict* (Cambridge: Harvard University Press, 1960).

4. Keith T Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997), especially pp. 82–84.

5. Using a method closely related to that of Poole and Rosenthal, Poole and McCarty shows that modern presidents tend to hold ideologies near the median of their congressional party (see Nolan M. McCarty and Keith T. Poole, "Veto Power and Legislation: An Empirical Analysis of Executive and Legislative Bargaining from 1961 to 1986," *The Journal of Law, Economic, & Organization*, Volume 11 (2): 282–312).

6. Kenneth A Shepsle and Mark S. Bonchek, *Analyzing Politics: Rationality, Behavior, and Institutions* (New York: Norton, 1997), p. 383.

7. See, for example, James L. Sundquist, *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years*. (Washington, D.C.: Brookings Institution, 1968); or Theodore R. Marmor, *The Politics of Medicare* (New York, Aldine, 1973).

8. Studies of coordinative leadership include see Gary J. Miller, "Formal Theory and the Presidency," pp. 289–336 in George C. Edwards, John Kessel and Bert Rockman, eds., *Researching the Presidency: Vital Questions, New Approaches* (Pittsburgh: University of Pittsburgh Press, 1993), and Morris Fiorina and Kenneth Shepsle, "Formal Theories of Leadership: Agents, Agenda Setters, and Entrepreneurs," in Bryan Jones, ed., *Leadership and Politics* (Lawrence: University of Kansas Press, 1989).

9. Except Wilson in his fourth congress, the 66th Congress of 1919–1920, when his presidency unraveled. Of course, just because it is possible for unified government presidents to act as coordinative leaders, it does not mean it is easy for them to do so or that they will always be successful in their attempts.

10. Matthew Dickenson, *Bitter Harvest: FDR, Presidential Power and the Growth of the presidential Branch* (Cambridge: Cambridge University Press, 1997), p. 81. Dickenson relies on Arthur M. Schlesinger's *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959).

11. I paint this picture with overly broad strokes, to show the main points clearly. There are occasions during divided party government when the president's and the congressional leadership's interests are close enough to sustain a president-dominated equilibrium. An example is foreign policy during the 80th Congress. Congress followed Truman's lead on the Marshall Plan and other initiatives—a very different picture from the brawl that was domestic policymaking on labor and tax policy.

12. Again, I paint in bold strokes for emphasis. Many caveats are necessary. For instance, the dynamic I describe is somewhat muted when congressional parties are not especially polarized, for example during the middle Eisenhower congresses. It is more evident when the parties are highly polarized, as in the late-nineteenth-century congresses or the contemporary one. Even then, a divided government

president sometimes can use the “bully pulpit” to put an item on congressional agendas, and steer the outcome somewhat via veto threats. Still, the difference between this and coordinative leadership should be clear.

13. Congress may also abolish the vacancy by manipulating the number of Supreme Court justices, as it did several times in the nineteenth century.

14. John Ferejohn and Charles Shipan “Congressional Influence on the Bureaucracy,” *Journal of Law, Economics, and Organization* 6 (1990) (Special Issue) 1–20 and Martin M. Shapiro, *Who Guards the Guardians? : Judicial Control of Administration* (Athens : University of Georgia Press, 1988).

15. The only extended discussion of the veto in *Presidential Power* concerns Ike’s vetoes after the 1958 election. This part of *Presidential Power* is remarkably prescient about the experience of later divided government presidencies, as the parties polarized in the late twentieth century.

16. The data are taken from CQ Inc., *Members of Congress Since 1789*, pp. 182–183, and Table 1–18 in *Vital Statistics on Congress*. In technical terms, the model shown was fit as a general additive model in the statistical language S-plus, employing the loess function  $lo(\text{span} = .4, \text{degree} = 2, \text{family} = \text{binomial})$ .

17. Peter Bachrach and Morton Baratz, “The Two Faces of Power,” *American Political Science Review* (1962) 56: 947–952.

18. This method of studying power is laid out in the classics of the power literature, see Robert A. Dahl, *Modern Political Analysis*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1970), and Jack Nagal, *The Descriptive Analysis of Power* (New Haven: Yale University Press, 1975). It was first applied to studying presidential power in Terry Moe, “An Assessment of the Positive Theory of ‘Congressional Dominance’ of Bureaucracy,” *Legislative Studies Quarterly* (1987) 12: 475 and Barry R. Weingast, and Mark J. Moran. “Bureaucracy Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission.” *Journal of Political Economy* (1983) 91: 765–800.

19. For those who don’t like suspense: “Factor X” often turns out to be some type of uncertainty, including uncertainty about what others will do (e.g., in the form of mixed strategies) or what they want (e.g., incomplete information about actors’ preferences) and thus what they will do.

20. One cannot even conclude that vetoes are evidence of the most important or most intense disagreements. Drawing that conclusion requires a model of vetoes in which the statement is true; absent the model, it is not a valid inference.

21. D. Roderick Kiewiet and Mathew D. McCubbins, “Presidential Influence on Congressional Appropriations Decisions,” *American Journal of Political Science* 32 (1988): 713–736.

22. David Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations 1946–1990* (New Haven: Yale University Press, 1991).

23. Using some simple game theoretic models, Keith Krehbiel shows that even this simple intuition is subject to important caveats (see Keith Krehbiel, *Pivotal Politics: A Theory of U.S. Lawmaking* (Chicago: University of Chicago Press, 1998).

24. William Howell, E. Scott Adler, Charles Cameron, and Charles Riemann, “Measuring the Institutional Performance of Congress in the Post-war Era: Surges and Slumps in the Production of Legislation, 1945–1994,” *Legislative Studies Quarterly* (forthcoming).

25. Robert S. Erikson., Michael B. MacKuen, and James A. Stimson, *The Macro Polity* (Cambridge: Cambridge University Press, forthcoming).

26. David Epstein and Sharyn O’Halloran, *Delegating Powers: A Transaction Cost Politics Approach to Policy Making Under Separate Powers* (New York: Cambridge University Press, 1999).

27. Epstein and O’Halloran supply several formal models for studying delegation. Thus, they offer both direct and indirect studies of presidential power.

28. Barry R. Weingast, and Mark J. Moran, “Bureaucracy Discretion or Congressional Control?”

29. Terry Moe, “An Assessment of the Positive Theory of ‘Congressional Dominance’ of Bureaucracy,”

30. Bryon Moraski and Charles R. Shipan, “The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices,” *American Journal of Political Science* 43 (4) (1999): 1069–1095.

31. Charles M. Cameron, Albert Cover and Jeffrey A. Segal, “Supreme Court Nominations and the Rational Presidency,” paper prepared for the 1990 Annual Meetings of the American Political Science Association (San Francisco).

32. Terry Moe and William Howell, “The Presidential Power of Unilateral Action.” Forthcoming, *Journal of Law, Economics, and Organization*.

33. Steven Matthews, “Veto Threats: Rhetoric in a Bargaining Game,” *Quarterly Journal of Economics* (1989) 103: 347–69.

34. They don’t always do so, for sometimes the concessions are inadequate to head off a veto. In this case, concessions don’t actually advantage the president (neglecting veto overrides).

35. Charles M. Cameron, *Veto Bargaining: Presidents and the Politics of Negative Power* (New York: Cambridge University Press, 2000) and Charles Cameron, John S. Lapinski, and Charles Riemann. “Testing Formal Theories of Political Rhetoric.” *Journal of Politics* (Forthcoming Winter 2000).

36. Charles Cameron and Susan Elves, “A Theory of Sequential Veto Bargaining,” manuscript Department of Political Science and Economics, Columbia University, 1995. The model is presented in simplified form in Cameron, *Veto Bargaining* (see note 35).

37. Cameron, *Veto Bargaining: Presidents and the Politics of Negative Power*.



38. Tim Groseclose and Nolan McCarty, "Presidential Vetoes: Bargaining, Blame Game, and Gridlock," manuscript, Department of Political Science, Ohio State University, 1996.
39. Ronald D Elving, *Conflict and Compromise: How Congress Makes the Law* (New York: Simon & Schuster, 1995).
40. I count override attempts that failed by 10 or more votes as hopeless attempts. I include two others that failed by nine votes since they both seem reasonably clear instances of blame game vetoes.
41. For some review articles, see inter alia, John Sutton, "Non-Cooperative Bargaining Theory: An Introduction." *Review of Economic Studies* 53 (1986): 709-724. and Alvin E. Roth, "Bargaining Experiments," pp. 253-348 in *The Handbook of Experimental Economics*. John Kagel and Alvin Roth, eds. (Princeton: Princeton University Press, 1995).
42. For details, see the discussion of ultimatum games in Roth, "Bargaining Experiments." The basic reference in political settings is Thomas Romer and Howard Rosenthal, "Political Resource Allocation, Controlled Agendas, and the Status Quo," *Public Choice* (1978) 33: 27-44.
43. For an attempt to measure the ideology of Supreme Court nominees, see Jeffrey Segal, Charles M. Cameron, and Albert D. Cover, "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents, and Interest Groups," *American Journal of Political Science* 36 (1992): 96. They estimate a perceived liberalism score of .16 for Haynsworth, .04 for Carswell, and .12 for Blackmun.
44. Ferejohn and Shipan, "Congressional Influence on the Bureaucracy," 1990 and William Howell, *Unilateral Lawmaking: The Presidential Advantage*. Ph.D. dissertation manuscript, in progress, Department of Political Science, Stanford University (1999).
45. Krehbiel, *Pivotal Politics*, 1998.
46. Moraski and Shipan, "The Politics of Supreme Court Nominations," 1997.
47. McCarty proposes a veto model along these lines. In this model, the president's veto of a bill in arena  $x$  signals about his likely preferences in arena  $y$  (see Nolan McCarty, "Presidential Reputation and the Veto." *Economics and Politics* (1997) 9(1): 1-26. Thus, early establishment of a favorable reputation can extract better proposals from Congress in related policy arenas.
48. Examples of this kind are easy to construct if, for example, the chooser faces a per period cost from refusing offers.
49. Examples of this kind can be constructed if the chooser receives a per period benefit from delay while the proposer receives a per period cost from refusals.

50. Examples of this kind can be constructed, for example, when neither player faces per period costs or benefits but both discount the payoffs from the benefit received at the end of the game.
51. Arthur M. Schlesinger, Jr., "Rating the Presidents: Washington to Clinton," *Political Science Quarterly* (1996) 112(2): 179-191.
52. Alvin S. Felzenberg, "There You Go Again: Liberal Historians and the *New York Times* Deny Ronald Reagan His Due," *Policy Review*, March-April 1997.
53. Other techniques that take into account the ordinal nature of the variables (e.g., ordered probit) might be more attractive but OLS has the virtue of simplicity and robustness. I scored majority, mixed, minority as 1, 0, -1 respectively, and the same scores for above average, average, and below average. The resulting model was predicted ranking =  $-.08 + .41$  status, with standard errors of .14 ( $t = -.6, p = .56$ ) and .19 ( $t = 2.2, p = .04$ ) respectively,  $R^2 = .14$  on 30 degree of freedom.
54. Mayhew, *Divided We Govern*, 1991.