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From *Veto Bargaining: Presidents and the Politics of Negative Power*

The president is the executive of the national government, but he has a key legislative power that allows him to influence Congress: the veto. Cameron shows how presidents can use the veto effectively to shape legislation. The threat of a presidential veto can be enough; Congress will often write legislation specifically to avoid a veto.

“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.¹

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 speaking, 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.²

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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 [it] 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

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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.³ 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.⁴

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."⁵ 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.⁶



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.⁷ Then he adds an explicit "Factor X"—congressional uncertainty about the president'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.⁸

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).⁹ 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 (e.g., 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.

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, CT: 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. Peter Bachrach and Morton Baratz, "The Two Faces of Power," *American Political Science Review* (1962) 56: 947–52.

4. 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, NJ: Prentice-Hall, 1970), and Jack Nagal, *The Descriptive Analysis of Power* (New Haven, CT: 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.

5. 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.

6. 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.

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

8. 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).

9. 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* (Winter 2000).