VETO BARGAINING

PRESIDENTS AND THE
POLITICS OF NEGATIVE POWER

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Divided Government and Interbranch Bargaining

American political scientists have rediscovered what the foremost histo-rian of the Founding Era calls "the major justification for all the consti-tutional reforms the Republicans proposed" in 1789, the principle "ex-panded and exalted by the Americans to the foremost position in their constitutionalism," in fact "the dominant principle of the American po-litical system" (Wood 1969:449, 604). That principle is the separation of powers.

The impetus for the rediscovery is no mystery: the continuing reality of split party control of Congress and the presidency, "divided govern-ment." In the half century since the end of World War II, from 1945 to 1994, the Republican and Democratic parties simultaneously controlled different parts of the American federal government in twenty-eight years, 56% of the time. By the late 1980s the pattern had become the norm, and political scientists could no longer dismiss divided government as anomalous. The resulting intellectual shock was neatly captured by the title of James Sundquist's influential 1988 article: "Needed: A Political Theory for the New Era of Coalition Government in the United States."

How could political scientists need a theory of divided government in 1988, when the American federal government had shown such a persist-ent tendency toward split party control – 40% of the time in the century and a half since the full emergence of the party system in the 1830s? The answer lies in the theory of American government forged around the turn of the century by the founders of modern political science in the United States. For key members of this generation, the separation of powers was not the genius of the American system; it was the problem with the system. In their view, separation of powers led to gridlock, incoherent policy, and corruption. Typical was Woodrow Wilson's heartfelt cry, "no government can be successfully conducted upon so mechanical a theory [as that of checks and balances] . . . you cannot compound a successful government out of antagonisms" (1908:54, 60).

Studying such a system on its own terms was beside the point. It needed to be fixed or junked, replaced with a Westminster parliamentary system.

The intellectual foundations for Wilson's view had been supplied by another of the great figures of early political science, the now neglected Henry Jones Ford. In his tour de force, *The Rise and Growth of American Politics*, published in 1898, Ford documented the self-interest that led the Founders to devise an impossibly fragmented government. Then he exposed the flaws of the resulting system, its incoherence and corruption. Finally, he proposed an extraconstitutional solution to the botched work of the Founders: strong, disciplined political parties. A strong party led by the president and controlling both houses of Congress could join together what the Founders had set asunder. Unified party government under strong presidential leadership was the formula for compounding successful government from the system's misguided antagonisms.

Ford's remarkable analysis – resoundingly vindicated for later generations by Franklin Roosevelt's first term – is easily traced through the 1940s and 1950s in V. O. Key's *Politics, Parties, and Pressure Groups*, E. E. Schattschneider's *Party Government*, and the American Political Science Association's 1950 recommendations on "responsible party government." There were dissenting voices, especially that of the great public law scholar Edward S. Corwin. But by the late 1950s Corwin was "substantively and methodologically at odds" with the bulk of a profession that had accepted the Ford-Wilson credo (Bessette and Tulis 1981). The main currents of thought about American political institutions in the 1960s and 1970s – represented by (among others) Robert Dahl's blistering attack on the political theory of James Madison, James Sundquist's elaborate tracing of party realignments, Samuel Huntington's assault on an antiquated Congress, and Richard Neustadt's analysis of presidential power – continued along the lines first mapped by Ford (Dahl 1956; Sundquist 1973; Huntington 1965; Neustadt 1960). In sum, the reason why political scientists in the late 1980s needed a theory of divided government was that most of the theory they knew attacked the system of separated powers rather than analyzed it.

No longer. A burst of creative new work is changing our understanding of this most fundamental of American political institutions. In a pathbreaking book, David Mayhew has argued that surges and slumps in the enactment of significant legislation do not correspond in any simple way with unified and divided government (Mayhew 1991). Mainstream presidential scholars, notably Mark Peterson, Charles Jones, and Jon Bond and Richard Fleisher, have removed the president from the center of the political universe (Peterson 1990; Jones 1994; Bond and Fleisher 1990). This "tandem institutions" view treats the presidency as a coordinate body in a constellation of institutions sharing power. On

the electoral side, Morris Fiorina, along with Alberto Alesina and Howard Rosenthal, argues that divided government is no accident (Fiorina 1996; Alesina and Rosenthal 1995). Instead, voters (or at least some of them) may deliberately choose divided government in an attempt to counterbalance one overly extreme party with another.

Of particular importance for this book is the work of what are sometimes called the new, analytical, or rational choice institutionalists. During the 1980s, this group of scholars revolutionized how political scientists think about Congress.[1] Then, during the late 1980s and early 1990s, they turned their attention to how other branches interact with Congress. Examples include Calvert, Moran, and Weingast's study of executive, legislature, and agency interactions (1989); McCubbins, Noll, and Weingast's analysis of congressional control of the bureaucracy (1987); Eskridge's investigation of battles between Congress and court over statutory interpretation (1991); Ferejohn and Shipan's model of Congress, presidents, courts, and agencies sequentially acting to create bureaucratic policy (1990); and Krehbiel's theory of gridlock (1996, 1998). To this group might be added Moe's study of the evolution of the office of the presidency (Moe and Wilson 1994, inter alia).

Much separates the distinct strands of this new work, but a theme knitting them together is *interbranch bargaining*. The separation-of-powers system was explicitly predicated on the notion of internal balance and dynamic tension among the three branches. What passes for governance in the American system is often the product of pulling and hauling, haggling and bargaining among the three branches. Though this cliché can be found in any textbook on American government, it is only with the recent work on divided government that political scientists have placed interbranch bargaining at the center of theories of American politics.

In this book I study a particular kind of interbranch bargaining, one in which the president looms large: veto bargaining. I study which bills get vetoed, what happens to bills after they are vetoed, how presidents use vetoes and veto threats to wrest policy concessions from Congress, and their success and failure in doing so. I also study the depressing effect of the veto power on Congress's legislative productivity. In other words, I study the president and the politics of "negative power" – the consequences of an institutionalized ability to say no. The research I report is often the first systematic empirical evidence on these matters. Moreover, the *way* I approach the research is also distinctive. As an analytical institutionalist, I use "rational choice theory" to study the presidency. In fact, this is the first book-length study of the presidency

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[1] An outstanding review can be found in Krehbiel 1991, chaps. 2 and 3.

to adopt an explicit, formal, and sustained rational choice perspective. But unlike many works in the rational choice tradition, this one neither begins nor ends with theory. It opens with systematic evidence and empirical puzzles; it uses theory to think through the data and solve the puzzles; then it returns to the data afresh and uses the theory to find additional insights. The investigation takes us deep into the operation of the Founders' system of separated powers, a system we must live with, for better or for worse.

VETOES IN THE SEPARATION-OF-POWERS SYSTEM

The range of veto politics runs from the critical to the mundane, and sometimes from the sublime to the ridiculous. Two cases illustrate this remarkable diversity.

A Tale of Two Vetoes

Case 1: Carter Kills a "Special Interest Bill." In 1977 Representative Keith Sebelius (R-Kansas) had what he thought was a good idea, one concerning rabbit meat. Under the 1946 Agricultural Marketing Act, the federal government inspects "minor species" meat like that of rabbits. The program is voluntary and paid for by the meat processors themselves, who have an obvious interest in building public confidence in offbeat products. At least in the case of rabbit meat, the bulk of the costs have always fallen on a few large producers in what is a very small industry – only about $10 million in 1977. In fact, rabbit meat has never caught on with American consumers. Moreover, domestic producers face steep competition from imported rabbit meat. Thus Representative Sebelius's bright idea: make the inspection program mandatory for large processors and financed by tax dollars, and require imported rabbit meat to be processed under U.S. government standards. This would have the twin effect of lowering the price of domestic rabbit meat and effectively excluding most foreign producers. Sebelius's gift to the rabbit producers passed Congress in late October 1977 – only to run into a brutal check from the executive. President Jimmy Carter vetoed the bill, declaring it special-interest legislation (*CQ Almanac* 1977:444–45, 64-E).

The tale of this veto seems quite straightforward. Sebelius had good reason to believe the executive branch was not kindly disposed to his bill, since the Agriculture Department had opposed it. But he hoped the president would not weigh in on such a minor matter. Too late to change the bill's content, he found he was wrong. The results were fatal for the bill.

Case 2: Clinton "Ends Welfare as We Know It."   The stunning victory of the Republicans in the 1994 midterm elections propelled welfare reform to the top of the legislative agenda in the 104th Congress.[2] Also critical for the Republicans was their plan to balance the budget. These priorities impelled welfare reform down two legislative tracks, the first leading toward a freestanding reform bill (H.R. 4), the second toward the budget reconciliation bill (H.R. 2491). The latter was the vehicle for balancing the budget. Huge savings in federal programs would be needed if a balanced budget was to be combined with simultaneous tax cuts, also a Republican goal.

The House moved rapidly down the first track. In March 1995 it passed an exceedingly tough welfare reform bill, H.R. 4, by a relatively narrow and extremely partisan vote, 234–199 (only 9 Democrats voted in favor of the Republican plan). As the Republicans' Contract with America had promised, the reform proposal turned most federal welfare programs into block grants to be administered by the states and imposed time limits on welfare benefits. The proposal thus ended a sixty-year guarantee of federal benefits for the poor. It also made deep budget cuts. According to the Congressional Budget Office, the cuts amounted to $102 billion over seven years, over 10% of federal expenditures on social services exclusive of Medicaid. Yet the narrowness of the bill's support meant it was vulnerable to a veto, if the president had the stomach to oppose the Republicans. In fact, he issued a veto threat directed at the House bill. But he denounced only the plan's severe cuts in child welfare services. Tellingly, he made no objection to the block grants or time limits on benefits.

In the Senate, the minority-party Democrats could filibuster a bill with narrow support. Majority Leader Robert Dole needed to fashion a bill that retained the core of the House reforms but nonetheless mustered 60 or more votes in the Senate, to invoke cloture. Dole deftly positioned the Senate bill to achieve the needed support, plus some. He retained the block grant approach and ended the federal guarantee of welfare but softened some of the harsher parts of the House plan and substantially reduced the budget cuts, to about $66 billion over seven years, some $36 billion less than the House bill. The Senate passed Dole's bill in September 1995 by a vote of 87–12: 52 Repub-

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[2] This account draws on various issues of *Congressional Quarterly (CQ) Weekly Report* (1995: March 25:872–75, September 23:2908–11, October 28:3290–91, November 4:3381, November 11:3459–60, November 18:3541–45, November 25: 3613–16, December 2:3662, December 9:3745, December 23:3889–91; and 1996: January 6:37–38, January 13:95, 103, February 3:304–5, February 17:394–5, March 2:558–60, April 20:1023–29, May 25:1465–7, June 8:1597–99, June 15:1684–86, June 22:1761–2, June 29:1877–8, July 13:1969–70, July 20:2048–51, July 27:2115–19, August 3:2190–6, 2216–18, 2232).

licans and 35 Democrats voted for the bill; only 11 Democrats and 1 Republican voted against it. President Clinton pointedly did not threaten the bill, which may have been veto-proof in any case. The bill then went to conference.

Unfortunately for the Republicans, the Senate bill simply did not make cuts deep enough to achieve all the Republicans' goals. Accordingly, the Republicans turned to the second track, the Budget Reconciliation Bill. Because such bills cannot be filibustered, the Republicans could attach proposals that were too controversial to pass the Senate in a freestanding bill, so long as the proposals were related to deficit reduction (the so-called Byrd Rule could be used to remove other policy changes). Without the hindrance of a filibuster, the Republicans could ram the bill through the Senate using only their partisan base. The Republican conferees on H.R. 4 had worked out an agreement that essentially split the difference between the House and Senate versions of the bill. The Republican leaders simply grafted the conferees' recommendations onto the Reconciliation Bill. After doing so, the Reconciliation Bill cut about $81 billion dollars from welfare over a seven-year period. The Byrd Rule knocked out some of the policy changes that House members desired, but many others remained.

The Reconciliation Bill passed the House and Senate in bitterly partisan votes, much as the Democrats had passed a tax increase in the 103rd Congress. The Senate vote on the conference report on the final reconciliation bill was 52–47. Not a single Democrat voted for the bill, and only one Republican voted against it. In the House, the equivalent vote was 237–189; only five Democrats and one Republican crossed party lines.

The president vetoed the Reconciliation Bill the first week in December 1995. His veto message highlighted his opposition to cuts in Medicare and Medicaid, not welfare. The welfare provisions in the bill were cited as objectionable principally because of their excessive cuts. To highlight his willingness to balance the budget, the president released his own plan the day after the veto. It included $46 billion in welfare cuts but less stringent limits than those in the Reconciliation Bill.

Despite the veto, the Republicans did not give up. The conferees brought out H.R. 4, making some changes from the original agreement fashioned before the veto of the Reconciliation Bill. The actual conference report carried a slightly lower savings tag than even the original Senate bill – about $64 billion over seven years[3] – but tougher provisions, more along the lines of the House bill. For example, Medicaid eligibility was tightened and payments to mothers of children born out

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[3] Early estimates put the savings at about $58 billion; the CBO put the savings at $64.1 billion (*CQ Weekly Report*, February 17, 1996:395).

of wedlock were curtailed. Thus, the conference report bore a strong resemblance to the Reconciliation Bill, except it's cuts were less deep. The House adopted the conference report December 21 by a vote of 245–178. The Senate followed suit a day later, with an overwhelmingly partisan vote of 52–47. Only one Democratic senator, Max Baucus of Montana, voted for the bill. Since overriding a veto was clearly hopeless even in the House, the bill's only chance of enactment was presidential acceptance. On January 9, 1996, Clinton vetoed H.R. 4 – but two weeks later in his State of the Union Address urged Congress to send him a bipartisan bill, promising he would "sign it immediately."

Still the Republicans persisted. As their legislative vehicle, the Republicans used H.R. 3734, designating the new welfare reform bill as a reconciliation bill to head off filibusters in the Senate. The bill saved about $61 billion but maintained many provisions the administration objected to. H.R. 3734 passed the House 256–170 in mid-July, a margin far short of the approximately 290 votes needed to beat a veto. The Senate passed its version of the bill a few days later, 74–25. The Senate version softened some of the more draconian features of the House bill. For example, opponents used the Byrd Rule to remove the so-called family cap, which would have prohibited federal welfare funds for children born to welfare recipients. Medicaid eligibility requirements remained unchanged; the food stamp program escaped conversion to a block grant; states remained free to use funds from the social services block grant to support children whose parents had exceeded the time limits on benefits. The Senate bill's savings were estimated at about $55 billion.

In conference, the Republicans included the Democrats in deliberations for the first time. The conference report largely followed the lines of the Senate bill, softening some of the more extreme provisions in the House bill. When the report emerged from conference, House members used procedural measures to delay consideration of the conference report until the president announced his intentions. On July 31, after a meeting with his top advisors, the president indicated his willingness to sign the bill. The House immediately passed it 328–101, with the Democrats splitting 98–98. The bill breezed through the Senate 78–21, with the Democrats splitting 25–21. President Bill Clinton signed H.R. 3734 shortly thereafter. A landmark bill was law.

These cases illustrate the range of veto politics. Are these politics worth understanding?

Are Vetoes Worth Studying?

Time and again, vetoes have bounded onto center stage in the drama of American politics. In the hands of President Andrew Jackson "the veto developed a terrible power. His twelve vetoes descended upon Congress like the blows of an iron flail" (Ford 1898:180). Tyler used the veto to put at defiance a Congress controlled by his own party, provoking an impeachment vote (Spitzer 1988:39–53; Watson 1993:16; Jackson 1967: 56–74). Buchanan's veto of the Homestead Bill so alienated northern workingmen and farmers that it materially aided the election of Abraham Lincoln in 1860 (Ford 1919; Jackson 1967). Johnson's obstinate vetoes of Reconstruction legislation sparked a genuine constitutional crisis. His impeachment remains one of the most dramatic moments in the history of the presidency. Grover Cleveland, in one of the more spectacular examples of presidential "knight-errantry" used the veto to wage a personal war against corruption in veterans' pensions (Ford 1919: chap. 6, esp. 116ff.). His vetoes killed literally hundreds of private bills and became an important issue in the following presidential campaign. Harding's, Coolidge's, and Hoover's vetoes of veterans' "bonus" legislation assured a continuing buildup of tension during the 1920s and early 1930s, a tension that exploded into riots during the so-called Bonus Expeditionary Force of 1932. Franklin Roosevelt used the veto as an opportunity for grand political theater, on one occasion vetoing a bonus bill before a joint assembly of Congress broadcast over radio to the nation. Vetoes flew fast and furious during Truman's confrontation with a Republican Congress he branded "the worst ever." President Bush's veto of the Family Leave Act handed the Democrats a campaign issue for the 1992 presidential election. The stunning capture of Congress by the Republicans in 1994 seemed to signal a knockout of the Clinton presidency. But the supine president staggered back onto his feet and used a lightning burst of vetoes to pound the overconfident Congress into shocked immobility – at least for a time.

These episodes illustrate memorable vetoes. But the existence of memorable vetoes tells us nothing about the systematic importance of the veto as an institution. This is a critical issue. Political scientists do not collect historical curios simply for their own sake; that is antiquarianism, not social science (Finley 1985). Our interest is understanding the main currents of the separation-of-powers system. From this perspective, the presidential veto is worth studying only if it *frequently* affects the content of *significant* legislation.

Casual observation suggests this is a hard case to make. Consider the extreme rarity of vetoes. Between 1945 and 1992, Congress presented presidents with over 17,000 public general bills (i.e., bills other than

private bills, so these bills have some policy import). From this flood of bills, presidents vetoed only 434. In other words, presidents in the post-war period vetoed only 25 public general bills per 1,000 passed, while 975 per 1,000 escaped unscathed.[4] Several presidents – Kennedy and Johnson are recent examples – vetoed only a handful of bills; some nineteenth-century presidents – John Adams and Thomas Jefferson, for instance – vetoed none at all. From the perspective of simple counts, the presidential veto appears little more than a statistical fluke.

Because vetoes are rare events, can we conclude that they resemble the strike of a lightning bolt: a dramatic and memorable event, calamitous for the unfortunate target, but hardly an important factor in everyday life? *No.* Understanding why requires thinking systematically about the structural incentives embedded in the American separation of powers system.

A BARGAINING PERSPECTIVE ON THE VETO

How can a weapon that is hardly ever used shape the content of important legislation under frequently occurring circumstances? A bargaining perspective on the veto suggests a five-step answer:

1. The institutional design specified by *the Constitution almost guarantees periods when the president and Congress differ over major policy objectives*. Those periods have become a signature of contemporary American politics. We live in an age of divided government.
2. When president and Congress disagree, *the president has a strong incentive to use the veto* if Congress presses its objectives too vigorously.
3. Accordingly, *Congress will anticipate vetoes and modify the content of legislation to head them off*. The veto power will have shaped the content of legislation without actually being used. Veto threats play an important role in this process.
4. However, congressional concessions will sometimes be insufficient to satisfy the president. When that happens, *the president may use actual vetoes not only to block legislation but to shape it*. The president may veto a bill in order to extract policy concessions in a repassed version of the vetoed bill. Congress may alter and repass the bill, groping for a version the president will accept or that can beat his veto. Because this bargaining unfolds through a series of back-and-forth actions, it constitutes *sequential veto bargaining* (SVB).

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[4] More precisely, 17,198 public laws were enacted. Presidents vetoed 434 bills, but 44 of these vetoes were overridden. So the rate of vetoes per bill presented to the president was $434/(17,198 + 434 - 44) = .025$.

5. *The true significance of veto bargaining is masked by the passage of large numbers of unimportant bills* about which the president cares little. Among the many fewer important bills in play at any given moment, the probability of vetoes is quite high and the incidence of sequential veto bargaining substantial, at least during periods of divided government.

In sum, divided government and the politics of the veto go hand in hand. Veto bargaining is an essential part of a theory of divided government.

Each step in this argument deserves a closer look.

Policy Differences between President and Congress

A good place to begin is Figure 1.1, which displays some fundamental data on the macropolitics of American political institutions. The figure shows the occurrence of divided party government from the 24th to 104th Congress, 1835 to 1996. Of course, divided government is only a rough indicator of policy differences between president and Congress, which can emerge even under unified party government. President Carter's battle with Congress over water projects supplies an example. However, policy differences are frequent and profound during divided government, even in its less conflictual periods, such as the early Eisenhower Congresses. So the data in Figure 1.1 supply an approximate lower bound on the recurrent tendency for policy divisions to emerge between president and Congress.

In the Figure 1.1, the hash marks or "rug" at 0.0 indicates each Congress in which unified government prevailed. The hash marks at 1.0 show each Congress in which divided party government occurred. The undulating line is the fit from a nonparametric, locally weighted regression model of the data.[5] 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 just 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 the probability of divided government at the time of the Congress of 1871–72 as 50%.

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[5] The data are taken from the *Congressional Quarterly* 1985:182–83 and table 1–18 in Ornstein, Mann, and Malbin 1997. On locally weighted regression, see inter alia Cleveland 1993, Hastie 1993, and Beck and Jackman 1998. The model shown was fit as a general additive model in the statistical language S-plus, employing the loess function lo (span = .4, degree = 2, family = binomial). The regression diagnostics discussed in Cleveland, Grosse, and Shyu 1993, as well as an analysis of deviance using approximate chi-square tests, suggested no obvious lack of fit, nor are the broad patterns particularly sensitive to changes in the span or use of robust methods (Tukey's bisquare).
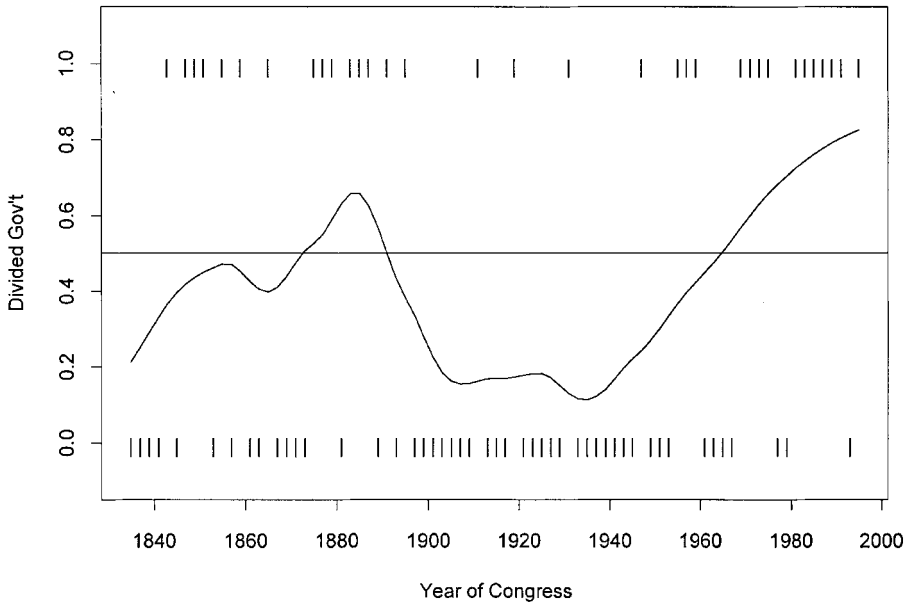
Figure 1.1. Divided Government, 1835–1996

The data display a striking periodicity. 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%. (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 first period of mixed unified and divided government came to a crashing end with the realigning election of 1896. This remarkable event ushered in a half century of unified government, its most prolonged period during the 160 years shown in Figure 1.1. Of course, the Republican Party held the government during 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%. In fact divided government occurred only three or perhaps four times, depending on how one dates the end of the era. The three clear-cut cases

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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. A convenient watershed is the sudden appearance of a Republican president and Democratic Congress in 1955, the first such apparition since Rutherford Hayes found himself facing the 46th Congress in 1879. The model suggests that the probability of divided government continued to increase steadily throughout this new era. By the early 1960s it passed the 50% mark. At present, the probability of divided government is about 80%. Thus, we are living in the greatest period of divided government in more than a century and a half. It needs no regression model to see that we live in the most concentrated such period since the 1880s and 1890s. One can see this simply by looking at the distribution of hash marks at 1.0.

Figure 1.1 suggests an obvious explanation for political scientists' failure to develop a theory of divided government: historical accident. The beginning of the great period of unified government coincided almost perfectly with the emergence of professionalized universities and the new discipline of political science (Ross 1991). The early pioneers saw the unsavory party politics of the 1880s, lived through the amazing election of 1896, experienced Wilson and Theodore Roosevelt, and some two decades of unified government. Their students lived through the equally amazing New Deal realignment, the stupendous Franklin Roosevelt, and two more decades of unified government. How could the political science they created *not* afford a central place to unified government, strong presidents, and (after the second shock) realigning elections?[6] However, if professional political science had emerged fifty years earlier or fifty years later, its central concepts for understanding American government would have looked very different.

A fine-grained explanation for the patterns in Figure 1.1 continues to elude political scientists. In broad terms, however, the source of the system's potential for divided government is quite clear: it is an inevitable by-product of the Founders' design. It is quite literally built into the system.

In puzzling out why the American constitutional order almost guarantees periods of disagreement between the president and Congress, it is helpful to consider the logic of the system from the perspective of "principal-agent theory." Principal-agent theory is a powerful set of tools for analyzing delegation, hierarchy, fiduciary relationships, contracts, and

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[6] V. O. Key's seminal article on "critical elections" appeared in 1955.

the like. Employing this perspective, it is useful to distinguish between two broad classes of governmental designs, the *unitary-agent design* and the *multiple-agent design*.

   The unitary-agent design envisions the delegation of power from the people (the principal) to a single team of governors (the agent). The people grant the team a temporary franchise to govern, during which it has a relatively free hand with policy. Periodically, though, the franchise is declared open. Other teams may then compete for the franchise through an election. The prospect of competition creates powerful incentives for the incumbent team to supply the people with good government.[7] Parliamentary democracies provide the clearest example of this simple and readily understandable design. Perhaps partly because this design is so easy to understand, it is widely employed.

   The multiple-agent design is more complex and used less often. Here, the people delegate power not to a single team that temporarily controls the entire government but to several standing entities with somewhat overlapping jurisdictions over policy making. Each entity specializes in an activity but has a monopoly over none. The entities then engage in structured competition among themselves. In addition, the people periodically provide feedback to some or all of the entities separately, via elections. The structured competition among the distinct entities, in conjunction with feedback directed at them individually, is intended to create incentives for good governance.

   The most famous example of the multiple-agent design is, of course, the American system of government. Why did the founders favor the multiple-agent design over the unitary-agent one? The unitary-model has a danger that is easily illustrated in an extremely simple model of governmental performance, shown in Figure 1.2. In this simple Markov model, the political system may be in either of two states: the "virtuous" state *V* or the "tyrannical" state *T*. There are a series of discrete periods, 1, 2, 3, and so on. Regardless of which state the system is in at time *t* it must make a transition to a subsequent state at time *t* + 1. Possible transitions are shown by the arrows. Each transition arrow may occur with a particular probability, the likelihood of making the transition to *V* or *T* given the present state (either *V* or *T*).

   In the unitary design, competitive elections are supposed to keep the government in the virtuous, nontyrannical state in each period. Consequently, given such a constitutional design, if the system is in state *V* at time *t* it is very likely to remain there at time *t* + 1. For the sake of concreteness, assume this probability is .98. Unfortunately, there remains

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[7] Palmer 1995 provides a lengthier elaboration of this general perspective, focusing on Westminster parliamentary systems.
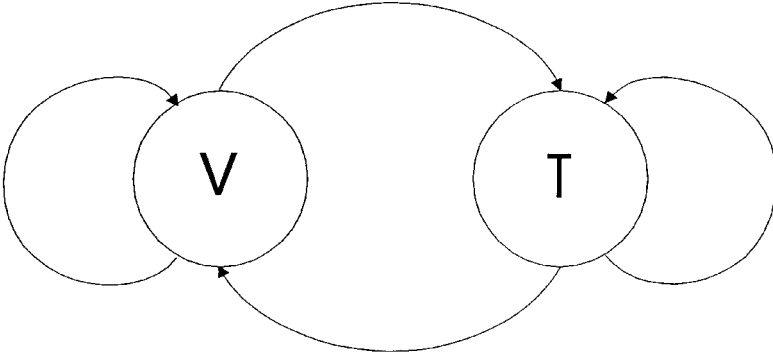
Figure 1.2. Two-State Markov Model of Governmental Performance

a small chance the other transition could take place. This could happen because a team that had previously performed well becomes corrupted by power and delivers a self-coup, the well-known *autogolpe* of Latin American politics. Or a newly entering team might turn out to be very bad, unexpectedly. Or, the people in a momentary fit of passion might select a team that calmer reflection would suggest is bad. All these are unlikely events – in our tinker-toy polity, they happen on average only one election in fifty. But they *can* happen. If they do, the system flips into the tyrannical state. One of the great tragedies of human history is the difficulty of escaping from tyranny, since tyrants so ruthlessly maintain their power. The difficulty of escape is reflected in the transition probability out of *T*. Again for the sake of concreteness, assume the transition probability out of *T* to be one-tenth that out of *V*. This is a small probability but not absolutely zero. As the collapse of the Soviet Union reminds us, transitions from tyranny are possible.

Given the transition probabilities shown in Figure 1.2, how much time will the system tend to spend in the virtuous and tyrannical states? To put it another way, what are the long-run probabilities of being in *V* and *T*? The answer is easy to calculate once we set up the problem in the form of Figure 1.2. Simple algebra (provided in the appendix to this chapter) shows the probability of being in *T* is 95%! The probability of being in *V* is only 5%. This example illustrates quite vividly how even small chances of disaster become calamitous over the long haul, the *Challenger* principle of politics.

The multiple-agent design is intended to be very resistant to the slide into tyranny. To see its logic, return to the two-state model of government performance. Continue to suppose there is a 2% chance that a bad agent comes to power in any given period. In the multiple-agent design,

however, a single bad agent cannot create a despotism by itself because the other agents can block its moves. Suppose there are three agents each with the power to block the others' slide into tyranny. Then the system's one-period probability of a transition from virtue to tyranny falls from .02 to $.02^3 = .000008$ – from 1 chance in 50 to 1 chance in 125,000! The same type of calculation carried out earlier shows that the long-run probability of being in the virtuous state is now 99.6%. The corresponding chance of being in a despotism is less than one-half of 1%. The example is contrived but the logic of the multiple-agent model is clear.

The historical experience of parliamentary democracies suggests the Founding Fathers may have exaggerated the vulnerability of the unitary-agent model to tyrannous breakdown, though systematic studies of the evidence are rare. On the other hand, simple statistics are likely to be deceptive since we will tend to see the unitary design only in places where it is likely to succeed. Countries in which the unitary-agency model is fragile are not likely to select it as their constitutional design, an example of what statisticians call "selection bias." Regardless of the real probabilities, though, there is abundant evidence of the Founders' fear of tyranny. The corrupting influence of power was an obsessive concern of Whig political science. *Federalist 10*, for example, discusses the vulnerability of republics to temporary madness propagated by demagogues (Hamilton, Madison, and Jay 1787). The American constitutional design reflects this fear of tyrannous breakdown.

How does the logic of the multiple-agent design play out in the American system? The key is the way the Founders constructed the electoral foundations of each branch to frustrate seizure of the whole government by any unified agent. First, the Founders staggered the length of terms across the presidency, the House, and the Senate, and then further staggered them within the Senate. Consequently, none operates on the same electoral clock. However enthusiastic voters might be for adherents of a given party at a particular time, they are flatly unable to install them in all the key positions in one fell swoop. At least two elections over four years, and possibly three over six years, are required. Second, the Founders assured that each organ would represent "the" people in a somewhat different way. In the House, vox populi arises from the voices of single representatives from 435 small districts. In the Senate, it emerges from a chorus of dual representatives from fifty states. The voice of the people to which the president is most likely to attend is even more complex, since he is chosen in a population-weighted election of the states. For him, "the" people is a plurality of voters in states with a plurality of electoral votes. A faction that might be powerful under one aggregation is unlikely to exert power in all three organs simultaneously.

The protections against unitary control are so strong that some observers – usually partisans of the unitary-agent model – portray it as a government at war with itself. This seems too extreme to be really plausible, at least most of the time. Despite the different clocks and the different methods for aggregating voter preferences, the range of disagreement between the branches is probably tightly bounded, provided voters' preferences are neither too heterogeneous nor too mercurial. If voter preferences are such that the median senator is a socialist, the median representative is unlikely to be a libertarian. When key actors in all three branches share a policy goal, law making is remarkably smooth and expeditious. Policy making can occur almost with the speed of a thunderclap (recall FDR's 100 days). If a crisis demands swift and decisive executive action, Congress can allow the president to assume the mantle almost of a dictator, the case of Lincoln providing the most telling example. Even in periods of divided government, Congress regularly produces important legislation (Mayhew 1991). American democracy need not, and frequently does not, end in deadlock. But what can happen – and does with increasing frequency – is that actors with different policy preferences capture different branches of the government. In such a situation, the president's structural incentives to use the veto become important.

Structural Incentives to Use the Veto

The American separation-of-powers system is rarely at war with itself. Nonetheless, the Constitution is an invitation to struggle, in Corwin's memorable phrase. The checks and balances intended to stop the slide into tyranny also provide each organ with tools for bargaining over policy. In the legislative arena, the veto is the president's primary tool. The question is, Does the president have a systematic incentive to use the veto to pursue his policy goals?

A supportive piece of evidence is presidents' consistent use of the veto to further their policy objectives. Even in the earliest vetoes, before Andrew Jackson's presidency, there were clear instances in which presidents used the veto to press raw policy preferences, not merely to block laws of dubious constitutionality. Examples include Washington's veto of a military bill (discussed later) and Madison's veto of a national bank, a proposal whose constitutionality he conceded but whose wisdom he condemned. By the time of the Civil War, vetoes based on "expediency" – that is, preference without any pretense of a constitutional issue – were common.[8]

[8] Edward Campbell Mason suggests that the greater reliance on constitutional arguments in early veto messages probably reflected the issues that arose in an era

What is the source of the president's structural incentive to veto? One possibility, clearly stated by James Bryce more than a century ago, is the public's hope that the president will counteract institutional pathologies to which Congress is particularly susceptible: "The people regard him [the president] as a check, an indispensable check, not only upon the haste and heedlessness of their representatives, the faults that the framers of the Constitution chiefly feared, but upon their tendency to yield either to pressure from any section of the constituents, or to temptations of a private nature" (1888:75–76). In modern parlance: Congress is prone to excessive pork-barreling, special interest sellouts, localistic parochialism, and sectional logrolling (Ferejohn 1974; Arnold 1979; Shepsle and Weingast 1981; Mayhew 1974). The presidency is much less prone to these particular pathologies. Accordingly, a president can seek electoral advantage by using the veto to limn his own virtue against the pitch of congressional vice. As Bryce noted,

So far from exciting the displeasure of the people by resisting the will of their representatives, a President generally gains popularity by the bold use of his veto power. It conveys the impression of firmness; it shows that he has a view and does not fear to give effect to it. The nation, which has often good grounds for distrusting Congress, a body liable to be moved by sinister private influences, or to defer to the clamor of some noisy section outside, looks to the man of its choice to keep Congress in order. (1888:75)

This is powerfully argued, but the case for popularity-enhancing vetoes is not as clear-cut as Bryce supposed. Political scientists Tim Groseclose and Nolan McCarty have shown how, under special circumstances, Congress can tempt the president to veto popular legislation so that he rather than Congress takes the electoral beating (1996). Edward Campbell Mason's judgment is probably the most judicious one: "the veto is a negative power, not popular or unpopular in itself" (1891:132). Nonetheless, presidents have never hesitated to trumpet Bryce's argument when it suited their purposes. "The president is the only representative of all the people" is a cry that dates back at least to Andrew Jackson. From the perspective of the multiple-agent design, it is a claim that is entirely bogus since both the House and the Senate also represent all the people. But it is an attractive rhetorical device for contrasting presidential responsibility with congressional pathology, as highlighted by a veto.

In addition, consider the strong converse of the structural incentive view: if the policy preferences of the president's electoral coalition conflict with bills passed by Congress, what incentive would restrain the veto pen? What would stop a president from pursuing his supporters'

when many fundamental constitutional questions had yet to be decided (1891:130–31).

objectives even in the teeth of congressional opposition? One force might be public opinion. For example, even Roosevelt's ardent supporters found his court-packing plan hard to stomach. Thus, widespread subscription to a Whig conception of the presidency, in which the executive owes the legislature strong deference, might inhibit presidents from exercising the veto. Jeffrey Tulis has argued that nineteenth-century presidents in fact adhered to a different "norm" of the presidency (1987). Yet the (at least nominal) Whig Tyler was one of the greatest vetoers in history, and the decidedly Whigish William Howard Taft displayed a deft hand with the veto.[9] The man known to his contemporaries as the "veto president" was not George Bush or even Gerald Ford. It was Grover Cleveland. As Edward Corwin noted in his 1940 appraisal of the presidency, a restricted notion of the office could never be maintained after Wilson and the two Roosevelts. When policy preferences differ, Congress cannot assume a compliant president. Quite the opposite.

Heading Off Vetoes

I have argued that the American Constitution sets up an institutional framework in which presidents often disagree with Congress over policy goals and have a strong incentive to use the veto. Doesn't this reasoning founder on the simple fact that presidents just don't use the veto very often (putting aside Cleveland's and FDR's vetoes of hundreds of private bills)? No. First, as I suggest later, vetoes are not as rare as they initially appear, at least under specific circumstances. But even if they were, the point would still be misdirected. Alexander Hamilton, in *Federalist 73*, explains why:

A power of this nature in the Executive [i.e., the veto] will often have a silent and unperceived, though forcible operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared. (Hamilton et al. 1787:480)

Hamilton is here invoking what contemporary political scientists call "the second face of power," power based on anticipated response (Bachrach and Baratz 1962; Nagal 1975).[10] (The so-called first face is outright compulsion.) As has often been pointed out, actor A can influence actor

[9] In what is usually regarded as the most extended Whig interpretation of the presidency, published in 1916, Taft wrote with genuine enthusiasm about the veto as a vehicle for expressing the executive's legislative preferences (1916: esp. 16ff.).

[10] Hamilton's apparent restriction of this argument to "unjustifiable pursuits" was probably disingenuous.

B even though A takes no visible actions. The reason is that B anticipates the unpleasant response of A if B takes certain actions. Accordingly, B comports herself so as to head off A's response. It is a principle perfectly familiar from everyday life. The concept of the second face of power clearly suggests that *the veto* (a capability) can shape the content of legislation even if *vetoes* (uses of the capability) are rare.

Beyond pure theory, however, is there any reason to believe the second face of power has practical application to vetoes? Roderick Kiewiet and Mathew McCubbins are perhaps the only political scientists who have tried to test this idea directly. Using measures of policy preferences and fluctuating appropriations in various areas, they find evidence that Congress indeed tries to prevent vetoes by modifying the content of money bills (Kiewiet and McCubbins 1988). In Chapter 6 I provide additional evidence on the second face of power by examining the effect of the veto power on Congress's legislative productivity.

Despite this intriguing evidence, the argument from the second face of power is clearly too powerful, at least in its simplest and most extreme form. In simple models of the veto power (reviewed in Chapter 4), vetoes never occur because Congress is so good at anticipating the president's preferences. In these models, the legislature calibrates bills with razor sharp precision to escape vetoes. But, of course, vetoes do occur.

Something must be wrong with the simple models, or at least missing. What the missing component might be is shown by the case studies that opened this chapter. In both instances Congress appeared to misestimate what the president would tolerate, bringing on a veto. In other words, what these cases show to be missing from the simplest version of the second face of power is *congressional ignorance about what the president will tolerate*. This type of ignorance is an example of what game theorists call *incomplete information*. It assumes a central role in the analysis in this book.

If Congress operates under incomplete information, it is hardly surprising if we observe actual vetoes. But in addition – and this point is essential for understanding the politics of the veto – incomplete information creates rich opportunities for presidents to engage in strategic behavior.

A particularly interesting form of strategic behavior is the veto threat. If Congress is quite sure what the president will accept, there is no room for threats to affect congressional behavior. But if Congress is not sure how far it can push the president before provoking a veto, a veto threat may warn Congress that it is close to or over the line. Perhaps Congress responds to the threat by modifying the proposed legislation before sending it to the president. Or perhaps not: the president may be bluffing and talk is cheap, so why should Congress actually respond?

Veto Bargaining

This puzzle occurs in many guises in politics: why should mere rhetoric – just intangible words – induce a very real, tangible response? When will threats, and threats alone, work? At least in the context of veto threats, the puzzle has real empirical bite, for presidents have employed veto threats, with real consequences, for over a century. Remarkably, though, it is possible to untangle this puzzle using modern game theory. When one does, some very stark predictions emerge, predictions that are substantially confirmed by systematic empirical evidence. I examine veto threats in Chapter 7.

In short, the veto does not need to be used to have an effect. Anticipation is sometimes enough. Presidents help anticipation along by making veto threats, which, somewhat amazingly, do shape legislation and head off vetoes.

Using Vetoes to Shape Legislation

Incomplete information has the potential to turn legislating into a high-stakes poker game between the executive and legislative branches. As the game progresses through several rounds – passage, veto, override attempt, repassage, reveto, and so on – vetoes become potent gambits. In sequential veto bargaining, vetoes – actual vetoes, not simply the veto as a presidential capability – shape legislation.

There are three ways vetoes can shape legislation. First, an intransigent president can try to kill a bill. He uses the veto to force its repassage, hoping outside events derail the legislation. Second, the president can force Congress to craft a new, veto-proof version of the bill, one he may still find objectionable but nonetheless preferable to the original version. Third, the president can force Congress to rewrite the vetoed bill, offering enough concessions so he will sign the repassed bill. The president may do this even though he would have been willing to sign the first bill if it were a one-shot offer. In each of these cases the veto is a form of strategic holdout intended to shape the outcome of the interbranch bargaining. Skillful presidents can use sequential veto bargaining to impress their preferences on policy much more than static conceptions of the veto would suggest.

Welfare Reform Revisited.   Consider again the story of Clinton and the welfare vetoes. A bargaining perspective suggests viewing the process as a high-stakes poker game. Congress made repeated bids, weighing the value of concessions against the risk of a veto. The president exploited the fear of a veto, with his veto threats. However, extracting substantial concessions required him to go beyond threats to actual vetoes, even at