

## **EXECUTIVE VETO POWER AND CONSTITUTIONAL DESIGN**

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## 1. Introduction

The constitutional architecture of a ‘separation-of-powers’ system such as that established by the U.S. Constitution provides for a separately elected executive and legislature with independent powers. While only the legislature has the power to pass bills, executive approval is commonly required for them to become law. The executive exercises *veto power* by withholding approval, though the scope of this power varies and often can be overridden by the legislature.

The U.S. Constitution establishes a bicameral Congress composed of a House of Representatives and Senate with essentially equal legislative powers. In order to become a law, a bill must be passed in identical form by both houses and then presented to the President for his approval. The President gives his approval by signing the bill; he withholds his approval by returning the bill, with his objections stated, to Congress for reconsideration. The latter action is commonly referred to as a ‘presidential veto’, though the term is not used in the Constitution. If on reconsideration both houses again pass the bill by two-thirds majorities, Congress thereby overrides the President’s veto and the bill becomes a law over his objections; otherwise, the veto is sustained and the bill fails to become a law.<sup>1</sup>

The U.S. president’s veto power is ‘simple’, in that he can only approve or reject a bill in its entirety — he cannot modify it in any way. It is also ‘qualified’, in that a veto can be overridden by Congress. The latter attribute of the president’s veto power gives Congress an obvious advantage relative to an ‘unqualified’ veto that cannot be overridden. The former attribute gives Congress a perhaps less obvious advantage, in that Congress can ‘package’ provisions to which the president objects together with provisions that the president strongly desires in a single bill. To negate this latter advantage, it has been proposed that the president’s veto power be expanded to allow him to veto parts of a bill — in particular, ‘line items’ in a budget bill — without vetoing the entire bill; this is commonly referred to as an ‘item veto’. The president’s veto power could be further expanded by giving him ‘constructive’ veto power, i.e., to amend a bill in any germane fashion.

Almost all constitutions in Europe and many elsewhere establish parliamentary systems that unify legislative and executive powers in a cabinet accountable to a parliamentary majority, so that the question of an executive veto *vis-a-vis* the legislature does not arise.<sup>2</sup> However, constitutions in U.S. states and most in Latin American nations and some elsewhere emulate the U.S. Constitution by establishing separation-of-powers systems and giving the executive some kind of veto power that is often more extensive or complex than that granted the U.S. President (Shugart and Carey 1992, Alemán and Schwartz 2006).

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<sup>1</sup> If after ten days the President has neither signed nor vetoed the bill, it becomes law if Congress remains in session but fails to become law if Congress has in the meantime adjourned. (In the latter event the President is said to have exercised a ‘pocket veto’.) Cameron (2009) provides an overview of many of the issues discussed here with specific reference to the U.S. case.

<sup>2</sup> Some European monarchs retain in principle, though not in practice, the power to withhold the royal assent for (i.e., to veto) parliamentary acts. Typically presidents of contemporary European republics can at most suspend the promulgation of a law for a brief period and request parliamentary reconsideration.

A separation of powers system in which the president has some kind of veto power creates a game-like strategic interaction between the legislative and executive branches in the passage of legislation. Sections 2-5 of this chapter provide an expository sketch of ‘solutions’ to a variety of ‘veto games’ that model such interactions. This exposition — which bears some resemblance to Carter and Schap (1987), who however focus specifically on budgeting issues — illustrates a variety of veto powers and their properties, as well as some of the ‘technology’ of public choice analysis — in particular, social choice theory, spatial modeling, and game theory. Section 6 consider various extensions and qualification to these veto game, noting further literature and issues pertaining to executive veto power and resulting executive-legislative interactions. Section 7 provides some brief conclusions.

## 2. Veto Games

We consider the following varieties of constitutional design pertaining to executive veto power:

- (1) the executive has *no veto power*;
- (2) the executive has *simple veto power*, i.e., he can only approve or reject a bill in its entirety;
- (3) the executive has *item veto power*, i.e., he can approve some parts of a bill and reject other parts; or
- (4) the executive has *constructive veto power*, i.e., he can amend a bill in any germane fashion.

Moreover,

- (5) executive veto power may be either *qualified* or *unqualified*, i.e., subject to legislative override or not; and
- (6) if executive veto power is qualified, the vote margin required for legislative override may vary from simple majority to unanimity.

Note that each type of veto power includes the previous types as special cases. Actual U.S. practice is (2) with a two-thirds majority required for Congressional override.

The following expository sketch of veto games is based on the standard *one-dimensional spatial model* with *Euclidean preferences*. The first assumption means that the policy alternatives germane to the legislation at hand are represented by points on a line. The second assumption means that each political actor has an *ideal* (most preferred) *point* on this issue continuum and prefers a point closer to his ideal point to one more distant from it (and is indifferent between two equally distant points).<sup>3</sup>

In analyzing the veto games, we let  $E$  designate the executive’s ideal point. We label the ideal points of the  $n$  members of the (unicameral) legislature  $L_1, \dots, L_n$ ; since they may be ordered from

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<sup>3</sup> Euclidean preferences are thus a special case of ‘single-peaked preferences’.

left (smaller) to right (greater), they may be labelled such that  $L_1 < \dots < L_n$ . To keep things as simple as possible, we assume that  $n$  is odd, that no ideal points or other distinct points of interest precisely coincide, and that no members of the legislature are absent or abstain from voting.

Given Euclidean preferences, we can focus on just three (and typically just two) members of the legislature who are *pivotal* under the relevant *decision rules*, namely *simple majority rule* under which the legislature perfects and passes the bill and the *override rule* used in the event of a (qualified) veto. A decision rule is specified by the number of votes  $D$ , where  $n/2 < D \leq n$ , required for one point on the line (i.e., one version of the bill) to defeat another.

Given simple majority rule, under which  $D = (n+1)/2$ , the *median member* with ideal point  $L_m$ , where  $m = (n+1)/2$ , is *pivotal*. This pivotal position results from Duncan Black's (1948, 1958) *Median Voter Theorem* in conjunction with Euclidean preferences: in any pairwise majority vote between two versions of a bill, the version preferred by the median member wins, so  $L_m$  is the *Condorcet winner*, i.e., it defeats every other version of the bill. In this way, the preferences of the median member effectively represent the preferences of the legislature as a whole when it decides what version of the bill to pass.

In addition, we must take account of the location of the ideal points of the *lower* and *upper override pivots*,  $L_q$  and  $L_{q'}$ , respectively. The decision rule for legislative override of an executive veto is specified by  $D = q'/n$ , where  $q'$  is the number of votes required for an override and  $q = n - q' + 1$ . Thus the lower pivot with ideal point  $L_q$  is the least 'extreme' left-of-center member who, combined with all members to his right, constitutes an override (e.g., two-thirds) majority, and likewise for the upper pivot with ideal point  $L_{q'}$ . The preferences of the override pivots effectively represent the preferences of the legislature as a whole when it decides whether to override a veto.

## 1.2 Notation and framework

A particular veto game is defined by (i) the applicable *constitutional structure*, which specifies the *game form*, (ii) a *preference profile*, which specifies the preferences of all relevant actors, and (iii) the location of the *status quo* (or *reversion*) *point* that prevails in the event the legislature fails to pass a bill or fails to override an executive veto.

As noted earlier, the possible bills germane to the issue at hand are represented by points on a line. Given Euclidean preferences, a preference profile can be specified by the locations of five points along this line:

- (1)  $E$ : the executive's ideal point;
- (2)  $L_m$ : the ideal point of the median member of the legislature;
- (3)  $L_q$ : the ideal point of the lower override pivot;
- (4)  $L_{q'}$ : the ideal point of the upper override pivot; and
- (5)  $Q$ : the location of the status quo point.

The locations of  $L_q$  and  $L_{q'}$  — and in particular the distance between them — depend on two factors. The first pertains to constitutional structure, namely the *magnitude of the override decision rule*, which can range from simple majority rule (in which case the median member is also both the lower and upper pivot) to unanimity rule (in which case the left-most member is the lower pivot and

the right-most is the upper pivot). The second pertains to the preference profile, namely the *degree of dispersion* in the ideal points of members.

By definition  $L_q < L_m < L_{q'}$ . We will always assume that  $Q < L_m$  but, if the reverse were true, mirror-image conclusions would hold. This implies that  $L_q$  is almost always the relevant override pivot;  $L_{q'}$  plays a role only in the event that the executive has constructive veto power. We allow  $E$  to be located anywhere on the issue spectrum.

We use this additional notation and terminology to identify other points and intervals on the line. Let  $X$  represent a generic point on the line and let  $B$  represent the *bill* actually passed by the legislature. Finally let  $L$  represent the *legislative outcome* of a veto game; thus  $L = Q$  if the legislature fails to pass a bill or passes a bill that is vetoed without override;  $L = B$  if the legislature passes a bill  $B$  that is approved by the executive or enacted over his veto; and  $L = B'$  if the executive has a constructive veto power and amends the bill to  $B'$  and the legislature fails to override his amendments.

Let  $I$  designate the ideal point of any actor  $i$  and consider some version of the bill  $X$ . Given Euclidean preferences, there is another version  $X'_i$  such that  $X$  and  $X'_i$  are on opposite sides of  $I$  and equidistant from it, so  $i$  is indifferent between  $X'_i$  and  $X$ . Since  $i$  prefers all points between  $X$  and  $X'_i$  to  $X$ , this interval is called  $i$ 's *preferred-to set* with respect to  $X$  and is designated  $P_i(X)$ . If  $S(X)$  is any set of points,  $C_i[S(X)]$  is  $i$ 's most preferred point in  $S(X)$ . (Thus,  $C_m[P_E(X)]$  is the point most preferred by the median member of the legislature from among the points that the executive prefers to  $X$ .) A point halfway between  $X$  and  $Y$  is called the *cut point* between them; given Euclidean preferences, all actors with ideal points on the  $X$  side of the cut point prefer  $X$  to  $Y$  and those on the  $Y$  side prefer  $Y$  to  $X$ . Because of the important role it plays, we use the special notation  $C$  to designate the cut point between  $Q$  and  $L_m$ .

A veto game proceeds through several stages as follows:

*Stage 1.* The legislature passes a bill  $B$  or not. If the executive has no veto power, the game ends, so the outcome is  $L = B$  or  $L = Q$ , according to what the legislature does.

*Stage 2.* If the legislature has passed a bill  $B$  and if the executive has unqualified simple veto power, he either approves  $B$ , so the outcome is  $L = B$ , or he vetoes  $B$ , so the outcome is  $L = Q$ ; if the executive has unqualified item or constructive veto power, he may also modify the bill to  $B'$ , so the outcome is  $L = B'$ .

*Stage 3.* If the legislature has passed a bill  $B$  and if the President has vetoed (or amended) it and if the President has only a qualified veto, the legislature either overrides or sustains the veto, so the outcome is  $L = B$  or  $L = Q$  (or  $B'$ ) accordingly.

If the executive has item veto power, we assume that he can modify the bill  $B$  passed by Congress to any point  $B'$  that lies between  $Q$  and  $B$  (as would be the case if he were deleting items from  $B$ ) but, if he has constructive veto power,  $B'$  can be any point on the line.

## 2.2 Behavior

We examine veto games under three *behavioral* assumptions. The first is *sincere behavior* by both the executive and members of the legislature, which allows us to examine the purely *mechanical effects* of different veto institutions. The second is *strategic behavior* by both the executive and members of the legislature, which allows us to examine the *strategic effects* of different veto institutions. In addition, we examine strategic behavior coupled with the possibility of a *credible veto threat* by the executive in the event he has simple veto power, by placing a prior stage before Stage 1 of a veto game.

*Stage 0:* The executive credibly announces a partition of the set of possible bills into two subsets: those he will approve and those he will veto.

If behavior is sincere, veto games are analyzed by forward reasoning. We first determine what will happen at Stage 1, given the legislature's preferences. We next determine what will happen at Stage 2 (if any), given the legislature's prior action and the executive's preferences and the scope of his veto power. We finally determine what will happen at Stage 3 (if any), given both the legislature's and the executive's prior action and the override pivot's preferences. Analysis proceeds in a forward direction precisely because sincere actors are 'myopic' and do not 'look ahead' to the end of the game and adjust their choices accordingly. For example, what a sincere legislature does at Stage 1 is independent of both constitutional structure (e.g., whether the executive has veto power) and the preferences of other actors.

However, if behavior is strategic (and assuming, as is standard, that preferences are common knowledge, i.e., actors know the locations of each other's ideal points and can foresee each other's subsequent choices), veto games are analyzed by backwards reasoning. We (and the strategic actors) first determine (in the case of a full veto game) what the override pivot will do if the bill is vetoed (or amended). Since there is no subsequent stage to which to 'look ahead', the pivot's action depends only on the pivot's preferences in conjunction with the prior actions of the legislature and executive. Knowing this and knowing the pivot's preferences, the executive and median member of the legislature can anticipate whether the veto of any particular bill will be overridden or sustained. Having determined what will happen at the final stage, we (and the executive and the legislature) can determine whether the executive will approve or veto (or amend) a given bill, which depends on the executive's preferences and the scope of his veto power. Finally, having determined what will happen at the second stage, we (and the median member) can determine what bill (if any) the legislature will pass at the first stage.

Note that the same legislative outcome may be reached by different routes. For example, any veto game has two routes to the outcome  $L = Q$ : the legislature passes no bill or it passes a bill which the executive vetoes and the legislature does not override. Likewise, given qualified veto power, there are two routes to  $L = B$ : the legislature passes  $B$  and the executive approves it or the legislature passes  $B$ , the executive vetoes it, and the legislature overrides the veto. Implicit in the whole setup is the assumption that actors have preferences over *outcomes*, not *paths to outcomes*. Given this assumption, we can predict the outcome resulting from strategic behavior, even if we can't definitively determine the choices that lead to that outcome. When the same outcome results (given

subsequent strategic behavior) whatever choice an actor makes, we say the actor makes a *futile choice* when that choice leads through several stages to an outcome that would result immediately if the actor had made the opposite choice. We may wish to suppose that actors do not make futile choices.

### 3. Sincere Veto Games

We first examine veto games with sincere behavior under the different constitutional structures. Outcomes under sincere behavior reflect the *mechanical effects* of constitutional design — that is, varying the constitutional structure (while preferences remain fixed) has *no effect on the behavior of actors* but does *affect the way that this unchanged behavior gets translated into outcomes*.

#### 3.1 No veto power

If we ignore any agenda control and strategizing *within* the legislature, it enacts its most preferred bill, so the outcome is  $L = L_m$ .

#### 3.2 Unqualified simple veto power

A sincere legislature, lacking foresight, passes the bill  $B = L_m$ , just as if the executive had no veto power. The executive in turn approves  $B$  if he prefers  $L_m$  to  $Q$  and vetoes it otherwise. Thus the outcome is  $L = L_m$  if  $L_m$  belongs to  $P_E(Q)$  and  $L = Q$  otherwise.

By taking account of the possible spatial configurations of the relevant points along the issue spectrum (and recalling that  $Q < L_m$ ), we can make this general conclusion more specific. The outcome of the veto game depends on which side of the cut point  $C$  between  $Q$  and  $L_m$  point  $E$  lies. If  $E < C$ , the executive prefers  $Q$  to  $B$ , so he vetoes the bill and the outcome is  $L = Q$ . If  $C < E$ , the executive prefers  $B$  to  $Q$ , so he approves the bill and the outcome is  $L = L_m$ . Note that, if  $Q < E < C$ , the outcome  $Q$  is *suboptimal*, in that there are versions of the bill between  $Q$  and  $Q'_E$  preferred by *both* the executive and (a majority of) the legislature to the outcome  $Q$ .

#### 3.3 Qualified simple veto power

A sincere legislature again passes  $B = L_m$  and a sincere executive approves or vetoes  $B$  based on his preference between  $B$  and  $Q$  (just as if the legislature could not override). If the executive prefers  $L_m$  to  $Q$ , he approves the bill and the pivot has no role. If the executive prefers  $Q$  to  $L_m$ , he vetoes the bill and a sincere legislature overrides the veto if the override pivot prefers  $L_m$  to  $Q$ , again giving  $L = L_m$ , and sustains the veto if the pivot prefers  $Q$  to  $L_m$ , giving  $L = Q$ .

Taking account of the possible spatial configurations of the relevant points leads to these more specific conclusions. If  $E < C$  and  $L_q < C$ , the executive vetoes  $L_m$  and the legislature fails to override the veto, giving the outcome  $L = Q$ . But if  $E < C$  while  $C < L_q$ , the executive vetoes  $L_m$ , but the legislature overrides the veto, giving the outcome  $L = L_m$ . If  $C < E$ , the executive approves the bill, giving the outcome  $L = L_m$  regardless of the location of  $L_q$ . Note that, if both  $E$  and  $L_q$  lie between  $Q$  and  $C$ , the outcome  $Q$  is again suboptimal, in that there are versions of the bill that lie between  $Q$  and the lower of  $Q'_E$  and  $Q'_q$  that are preferred by the executive, the override pivot, and a legislative majority to  $Q$ .

### 3.4 Item and constructive veto power

As always, a sincere legislature passes the bill  $B = L_m$ . With item veto power, a sincere executive vetoes the bill in its entirety if  $E < Q$ , amends it to  $B' = E$  if  $Q < E < L_m$ , and approves it in its entirety if  $L_m < E$ . Thus, the outcome is  $L = Q$ ,  $L = E$ , or  $L = L_m$  accordingly. With constructive veto power, a sincere executive amends the bill to  $B' = E$  in any event, so the outcome is  $L = E$  unless the legislature fails to pass any bill (which a sincere legislature would do only if  $L_m = Q$ ).

If the executive's veto power is qualified, a sincere veto game proceeds as above until the override stage. If an executive with item veto power vetoes the bill in its entirety, the legislature sustains the veto if  $L_q < C$ , giving the outcome  $L = Q$ , but overrides the veto if  $C < L_q$ , giving the outcome  $L = L_m$ . If the executive modifies the bill to  $B' = E$ , the pivot is in effect choosing between  $B (= L_m)$  and  $B' (= E)$ , rather than between  $B$  and  $Q$ , so the legislature sustains the veto if  $L_q$  lies below the cut point between  $E$  and  $L_m$ , giving the outcome  $L = E$ , but overrides the veto if  $L_q$  lies above this cut point, giving the outcome  $L = L_m$ . If the executive has constructive veto power, the same conclusions hold except that, if  $E$  lies above  $L_m$ , the upper rather than lower override pivot becomes relevant and the legislature sustains the veto if  $L_q$  lies above the cut point between  $E$  and  $L_m$  and overrides the veto if  $L_q$  lies below this cut point.

### 3.5 Summary

Given sincere behavior, either the status quo is maintained or  $L_m$  is enacted into law if the executive has simple veto power;  $E$  may be enacted as well if the executive has item or constructive veto power. Both executive veto power and the legislative override power, if constitutionally allowed, may actually be exercised. Given a veto override provision, the legislature has greater success in enacting  $L_m$  as the distance between  $L_q$  and  $L_m$  decreases.

## 4. Strategic Veto Games

We now examine strategic veto games under the different constitutional structures. Given strategic behavior, varying the constitutional design influences not only the way behavior gets translated into outcomes but *also the behavior itself*, because actors look ahead and reason back — knowing the preferences of other actors, they anticipate what will happen at subsequent stages and make their choices accordingly. But a strategic actor making the final choice in a veto (or any other) game, having no subsequent stage to which to ‘look ahead’ and whose choice determines the final outcome, chooses in the same way as a sincere actor would. Thus the strategic actor making the second-to-last move can anticipate the consequences of his choices and decides accordingly; and so forth. We assume here that play is strictly *non-cooperative* — that is, actors cannot make enforceable bargains or credible threats or promises.

### 4.1 No veto power

Since the game has only one-stage, there is no room for foresight. As before, the legislature simply enacts its most preferred bill, so the outcome is  $L = L_m$ .



## 4.2 Unqualified simple veto power

As the actor making the second and final move, a strategic executive behaves in the same way as a sincere one, i.e., he approves a bill if it belongs to his preferred-to set  $P_E(Q)$  and vetoes it otherwise. But knowing the executive's preferences, a strategic legislature foresees what potential bills the executive will approve or veto and tailors its bill accordingly. The legislature knows it is effectively choosing between  $Q$  and its most preferred bill in  $P_E(Q)$ . If there are bills in  $P_E(Q)$  that the median member prefers to  $Q$ , the legislature passes the version corresponding to its most preferred such bill, i.e.,  $C_m[P_E(Q)]$ , which the executive approves. Otherwise, it passes no bill, preserving the status quo  $Q$  (or possibly futilely passes  $L_m$  or some similar bill, knowing that the executive will veto it).<sup>4</sup>

Taking account of the possible spatial configurations of the relevant points leads to these more specific conclusions. As in the sincere case, the outcome of the veto game depends on which side of the cut point  $C$  between  $Q$  and  $L_m$  the executive's ideal point lies. If  $E < Q$ , there is no room for compromise between the two branches, giving the same outcome  $L = Q$  as in the sincere case. If  $C < E$ , the legislature 'sticks to its guns' and passes  $B = L_m$ , which the executive approves, also giving the same outcome  $L = L_m$  as in the sincere case. However, if  $Q < E < C$ , the legislature is induced to offer the executive a compromise by passing a bill  $B$  that the executive (barely) prefers to  $Q$  but which is just about as close to  $L_m$  as possible; we designate this as  $B = Q'_E - \epsilon$ , where  $\epsilon$  represents some small quantity. The executive approves this bill, giving the outcome  $L = Q'_E - \epsilon$ . Legislative willingness to compromise avoids the suboptimal outcomes that arise with sincere behavior in the same configuration, and the fact that the legislature has the first-mover advantage that leaves the executive facing a take-it-or-leave-it proposition means that the legislature appropriates almost all of the resulting mutual gain.

Executive influence over the outcome thus depends largely on the distance between  $E$  and  $Q$ . If they are far apart,  $P_E(Q)$  covers much of the legislative spectrum and may well include  $L_m$  in which case the fact that the executive has a veto — even an unqualified one — has no influence on the outcome, which moreover the executive may greatly dislike. On the other hand, if  $E$  and  $Q$  are close, the legislature is severely constrained in what bill it can enact into law, giving outcomes close to  $E$ . Provided it avoids futile choices, a strategic legislature is less likely to pass a bill than a sincere one but, at the same time, it is more likely to succeed in changing the status quo, precisely because it is willing to compromise. While the executive's veto power may decisively influence the outcome, it is the existence and anticipated use of this veto power, not its actual use, that produces this influence — indeed, in the absence of futile legislative gestures, the executive never overtly exercises his veto power.

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<sup>4</sup> This is in effect the standard monopoly agenda-formation model set out by Romer and Rosenthal (1978), in which the first acting player (the agenda setter) proposes an alternative that the second acting player can only accept or reject (in favor of  $Q$ ). In a legislative context, the agenda setter is thought of as a committee sending a bill to the floor under a *closed rule* (that does not permit amendments). But here the agenda setter is the legislature itself, which in effect sends bill to the executive under a closed rule, because the executive cannot amend the bill.

### 4.3 Qualified simple veto power

As the actor making the third and final move, a strategic override pivot behaves in the same way as a sincere one, so a veto of bill  $B$  is overridden if and only if the pivot prefers  $B$  to  $Q$ . Knowing the pivot's preferences, the executive may refrain from futilely vetoing any bill that the pivot prefers to  $Q$  but he certainly (and successfully) vetoes a bill  $B$  such that both he and the pivot prefer  $Q$  to  $B$ . Knowing the executive's and override pivot's preferences, the legislature can foresee what potential bills the executive will approve or will pass over his veto, and a strategic legislature tailors its bill accordingly. Thus the legislature is effectively choosing between  $Q$  and some bill that lies in either the executive's or the pivot's preferred-to sets, i.e.,  $P_E(Q) \cup P_q(Q)$ ; if there is some bill in this union that the legislature prefers to  $Q$ , it passes its most preferred such bill  $B$ , which is enacted without (or despite) an executive veto.

Taking account of the possible spatial configurations of the relevant points leads to these more specific conclusions. If  $E < Q$  and  $L_q < Q$ , the legislature prefers nothing in  $P_E(Q) \cup P_q(Q)$  to  $Q$ , so it passes no bill (or futilely passes some bill that it prefers to  $Q$  but that the executive successfully vetoes), giving the outcome  $L = Q$ . If  $Q < L_q$  and  $E < L_q < C$ , the legislature passes  $B = Q'_q - \epsilon$  — in effect, it compromises with its own override pivot. The executive approves this bill (or futilely vetoes it), giving the outcome  $L = Q'_q - \epsilon$ . If  $Q < E$  and  $L_q < E < C$ , the legislature passes  $B = Q'_E - \epsilon$  — in this case, the legislature compromises with the executive because now his veto will not be overridden and the executive approves this bill, giving the outcome is  $L = Q'_E - \epsilon$ . If  $C < E$  and regardless of the location of  $L_q$ , the legislature passes  $B = L_m$ , which the executive approves, so the outcome is  $L = L_m$ . Likewise if  $C < L_q$  (and regardless of the location of  $E$ ), the legislature passes  $B = L_m$ , which the executive approves (or futilely vetoes), so the outcome is  $L = L_m$ .

Once again, provided it avoids futile choices, a strategic legislature is less likely to pass a bill than a sincere one but, at the same time, is more likely to succeed in changing the status quo and, in particular, the kind of suboptimal outcome that was possible in the sincere case no longer occurs. Moreover, while both the executive's veto power and the legislature's override power may decisively influence the outcome, these powers are never overtly exercised in the absence of futile actions by one or other actor.

### 4.4 Item and constructive veto power

If the executive has unqualified item veto power and the legislature passes bill  $B = L_m$ , he vetoes the bill in its entirety if  $E < Q$ , amends the bill to  $B' = E$  if  $Q < E < L_m$ , and approves the bill in its entirety if  $L_m < E$ . It is clear that the legislature can do no better than pass  $B = L_m$ , giving the outcomes  $L = Q$ ,  $L = E$ , and  $L = L_m$ , respectively. However, if the executive has unqualified constructive veto power, the legislature has (only) *gatekeeping* power — that is, the legislature can either 'keep the gate closed' (by doing nothing) and thereby preserve the status quo or it can 'open the gate' (by passing any bill) and allow the executive to amend the bill as he wishes, i.e., to  $B' = E$ . If  $E < Q$ , the legislature certainly keeps the gate closed, so  $L = Q$ ; if  $Q < E < Q'_m$ , the legislature opens the gate, so  $L = E$ . However, if  $Q'_m < E$ , the situation is 'ripe for obstruction' as the legislature keeps the gate closed, giving the outcome  $L = Q$ , despite the fact that both the legislature and the

executive prefer a range of bills to  $Q$ . Thus this institutional structure can produce suboptimal outcomes given strategic, though not sincere, behavior.<sup>5</sup>

If the executive has qualified item veto power, the override pivot in effect chooses between the bill  $B$  as passed by the legislature and the bill  $B'$  as amended by the executive. Thus the legislature sustains an item veto if and only if  $L_q$  lies on the  $B'$  side of the cut point between  $B'$  and  $B$ . It follows that, if  $E < L_q < B$ , the executive amends the bill to  $B'$  such that the override pivot barely prefers  $B'$  to  $B$  and, anticipating this, the legislature passes  $B = L_q$ , which the Executive approves unamended (or futilely amends or vetoes outright, only to be overridden). Note that the legislature clearly has no incentive to pass a bill  $B$  such that  $E < B < L_q$ , which the executive would approve unamended, or such that  $B < E < L_q$ , which the executive would successfully amend to  $B' = E$ . If  $L_q < E < L_m$ , the executive successfully amends  $B$  to  $B' = E$ . If  $L_m < E$ , the legislature passes  $B = L_m$  which the executive approves unamended. If the executive has qualified constructive veto power, nothing changes provided  $E < L_m$ ; otherwise, mirror-image conclusions hold with  $L_q$  playing the role of  $L_q$ .

## 5. Strategic Veto Games with Credible Veto Threats

Assuming the executive has only simple veto power, we now place the previously described Stage 0 on top of a two-stage (unqualified) or a three-stage (qualified) veto game. The executive makes a *veto threat* by announcing an *acceptable interval* of bills about his ideal point (or perhaps the single point  $E$ ) and committing himself to veto any bill that lies outside of it. In the one-dimensional case, the executive's veto threat specifies the bill  $B_E$  that is the least acceptable to him (and the most acceptable to the legislature) that he is willing to approve. The legislature believes that the executive will carry out this threat and adjusts its choice accordingly.

The essential nature of a veto threat is to commit the executive to veto a bill  $B$  that he would not otherwise veto — that is, if and when the time comes to carry out the threat, he would prefer not to do so because he in fact prefers  $B$  to  $Q$ .<sup>6</sup> A veto threat is *ineffective* if the legislature prefers  $Q$  to  $B_E$  or if the legislature can, and (given the location of  $L_q$ ) will, override the threatened veto, so the executive needs to gauge his threat carefully.

### 5.1 Unqualified veto power

Since what the Executive does at Stage 0 is (somehow) to irrevocably commit himself to approve or veto a bill depending on whether or not the bill is acceptable, Stage 1 effectively becomes the final stage of the veto game. The legislature has two options: it can comply with the executive's demand and pass bill  $B_E$  (there is no reason for it to pass a bill that he likes more and it likes less), or it can defy the executive and pass  $L_m$  or some other unacceptable bill or pass no bill at all. Regardless

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<sup>5</sup> Krebiel (1985) notes that a similar situation arises in the U.S. House of Representatives when the House as a whole cannot act on an issue unless the committee with jurisdiction reports a bill on the subject to be considered under an *open rule* (under which amendments are allowed); the committee keeps the gate closed if it anticipates the adoption of amendments that, in its view, make the bill worse than the status quo.

<sup>6</sup> Given that the legislature knows the executive's preferences, a 'threat' to veto a bill  $B$  such that the executive prefers  $Q$  to  $B$  is redundant and merely a 'warning' the legislature.

of how it does so, if the legislature defies the threat, the outcome is  $L = Q$ . If the legislature complies, the outcome is  $L = B_E$ . The legislature therefore complies with the executive's demand if and only if its median member prefers  $B_E$  to  $Q$ . Knowing this, the executive recognizes the best bill he can induce the legislature to pass is  $C_E [P_m(Q)]$ .

Once again, we can make this general conclusion more specific by taking account of the possible spatial configurations of the relevant points. If  $E < Q$ , the executive can make no veto threat that improves the outcome; the legislature either passes no bill or futilely passes a bill that it prefers to  $Q$  but that it knows, even in the absence of a veto threat, that the executive will veto, giving the outcome  $L = Q$ . If  $Q < E < Q'_m$ , the executive announces he will approve only  $B_E = E$ , which the legislature passes, giving the outcome  $L = E$ . If  $Q'_m < E$ , the executive announces he will approve  $B_E = Q'_m - \epsilon$ , which the legislature passes, giving the outcome  $L = Q'_m - \epsilon$ .

While the executive's ability to make a credible threat has no effect in the first circumstance, it does advantage him in the other circumstances — indeed, often allowing him to secure his ideal point. In effect, the executive has seized the first-mover advantage that otherwise belongs to the legislature. Indeed, even as we assume that  $Q$  always lies below  $L_m$ , a credible veto threat allows an executive whose ideal point lies above  $L_m$  to bring about an outcome that also lies above  $L_m$  — something that cannot occur in the absence of a credible veto threat. For example, a free-spending executive making a credible veto threat can induce the legislature to appropriate more money than it would ideally prefer (or would ever do in the absence of a veto threat).

## 5.2 Qualified veto power

The legislature has the occasion to override a veto if and only if it defies the executive by passing a bill he has declared unacceptable. Thus, when it decides whether to comply with or defy the executive's demand, the legislature is choosing between  $B_E$  (if it complies) and either the bill it would pass in the absence of the threat, i.e.,  $C_m [P_q(Q)]$  (if it defies the threat and overrides the veto) or  $Q$  (if it defies the threat and fails to override the veto). Thus, in order to induce the legislature to comply with his demand, the executive must offer a bill  $B_E$  that it prefers to both  $C_m [P_q(Q)]$  and  $Q$ , and the executive selects his most preferred point that meets this criterion as  $B_E$ .

We again make this general conclusion more specific by taking account of the possible spatial configurations of the relevant points. In the event that  $L_q < Q$ , the override power is of no help to the legislature and the strategic situation is identical to that above: if  $E < Q$ , the outcome is  $L = Q$ ; if  $Q < E < Q'_m$ , the outcome is  $L = E$ ; and if  $Q'_m < E$ , the outcome is  $Q'_m - \epsilon$ . If  $Q < L_q < C$ , a strategic legislature would pass  $Q'_q - \epsilon$  in the absence of a veto threat; in the event that  $Q < E < L_q$ , no veto threat that can induce the legislature to pass a bill closer to  $E$ , so the executive makes no veto threat (or only an ineffective one) and the legislature passes  $Q'_q - \epsilon$ , which the executive approves (or futilely vetoes), giving the outcome  $L = Q'_q - \epsilon$ ; in the event that  $L_q < E < Q'_m$ , the executive announces that he will approve only  $B_E = E$  and, knowing a veto of any bill closer to  $L_m$  will be sustained, the legislature complies, so the outcome is  $L = E$ . If  $C < L_q$  (so the override pivot prefers  $L_m$  to  $Q$ ), a strategic legislature would pass  $L_m$  in the absence of a veto threat; in the event that  $E < Q'_E < L_m$ , no veto threat can improve on that outcome, so the executive makes no veto threat (or only an ineffective one) and the legislature passes  $L_m$ , which the executive approves (or futilely vetoes),

giving the outcome  $L = L_m$ ; in the event that  $Q'_q < E < Q'_m$ , a strategic legislature would pass  $Q'_E - \epsilon$  (if  $Q'_E < L_m$ ) or  $L_m$  (otherwise), but the executive announces that he will approve only  $B_E = E$  and, knowing a veto will be sustained, the legislature complies, giving the outcome  $L = E$ ; if  $Q'_m < E$ , the executive announces that he will approve only  $B_E = Q'_m - \epsilon$  and, knowing a veto will be sustained, the legislature complies, giving the outcome  $L = Q'_m$ .

### 5.3 Credible executive commitment with a constructive veto

Unqualified constructive veto power helps the executive more than simple veto power even when the latter is enhanced by the ability to make credible veto threats. While an executive with such veto power has no reason to make veto threats, he may have reason to make a credible *promise* that he will *not* amend a bill that he would otherwise prefer to amend, namely in situations ripe for legislative obstruction, i.e., when  $Q'_m < E$ . In the absence of such a credible promise, the legislature keeps the gate closed so  $L = Q$  but, given a promise not to amend  $B = Q'_m - \epsilon$ , the legislature passes such a bill, which both the executive and (a majority of) the legislature prefers to  $Q$ .

### 5.4 A note on irrevocable legislative commitment

Given qualified executive veto power, one can imagine a *legislative commitment* according to which all members would enter into a 'social contract' to override any executive veto regardless of their individual preferences on the bill in question, which would effectively deprive the executive of his veto power. But since such a commitment must be both collective and global, unlike the kind of executive commitment that is tailored to a specific veto game, it is unlikely to arise or be sustained.

## 6. Extensions and qualifications

Having examined a variety of specific veto games, we now briefly consider additional variations and extensions that have been discussed in the literature on executive veto power and constitutional design. These pertain to preference information and its implications for behavior, the scope of veto games, the nature of the issue space, and details of parliamentary voting procedures and override rules.

### 6.1 Information, behavior, and scope

As we saw in Sections 3-5, different assumptions concerning the behavior of actors lead to strikingly different conclusions about the outcomes of specific veto games and the general patterns, that characterize them, e.g., how frequently (if ever) vetoes or overrides actually occur, whether outcomes tend to favor legislative or executive preferences, and whether suboptimal outcomes may occur. Sincere behavior in effect assumes that actors know nothing about each other's preferences (or, in any case, make choices as if this were true). In contrast, strategic behavior assumes that actors know each other's preferences precisely, whereas such knowledge is likely to be at best somewhat uncertain. For example, it is not realistic to assume that legislators know the precise boundary between bills that will provoke, and those that will escape, an executive veto (indeed, the executive himself probably does not know either); likewise, the executive does not know precisely which vetoes will be overridden and which sustained, so he may veto bills and be overridden (or make veto threats

that turn out to be ineffective). In general, as knowledge about preference becomes more uncertain, strategic veto games more closely resemble sincere ones.

Moreover, the analysis of strategic veto games is based on reasoning backward from the possible outcomes resulting from sincere choices by the actor making the ‘final move’, and this can be justified only on the assumption that each veto game is separate unto itself. But the ‘final move’ in a particular veto game may not really be final. In particular, a legislature that cannot override a veto has the further option of passing a different version of the bill that is closer to the executive’s ideal point and that he is therefore more likely to approve. This in turn suggests that, even in the absence of an advance veto threat, the executive may veto a bill that he prefers to the status quo in the expectation that the legislature will then pass a still better version of bill. Such considerations sustain a process of *sequential veto bargaining* (Cameron 2000, Cameron and McCarty 2004) leading to the ultimate passage of a bill that likely approximates a compromise between the outcomes of a one-shot strategic veto game in which the legislature has the first-mover advantage and a one-shot veto game with a veto threat in which the executive has the first mover advantage, as neither branch in this iterated process is in a position to force a take-it-or-leave-it choice on the other.

Not only may strategic veto games extend over multiple iterations with respect to a single issue but strategic calculations may extend over more than one issue. Thus the legislature may refuse to pass a bill much desired by the executive, or the executive may veto a bill that is strongly favored by legislative majority, in order to hold a bill desired by the other branch hostage to induce the latter to make concessions on other legislation.

While in Section 5 we assumed that the executive can make veto threats that the legislature regards as perfectly credible, it is not clear how he can do so. Several quite formal analyses (e.g., Ingberman and Yao 1991, Matthews 1989) consider how the executive can enhance the credibility of veto threats. Moreover, the executive may veto bills that he actually favors in order to demonstrate his willingness to do so and thereby enhance the credibility of future veto threats on issues he regards as more important (McCarty 1997).

Most empirical analyses of veto interactions focus on the U.S. case (e.g., Lee 1975, McCarty and Poole 1995, McKay 1989, Rohde and Simon 1985) and indicate that party affiliation plays a key role — in particular, that presidential vetoes occur more frequently in the event one party controls the presidency and the other Congress. We have not explicitly considered party as a factor here, though the case in which the ideal points of the executive and the median member of the legislature are far apart (and especially when they lie on opposite of the status quo) might be interpreted as typical of divided government. Yet party may play a role in veto games beyond such polarization of preferences, as illustrated by ‘blame-game’ politics (Grosseclose and McCarty 2001), where a veto game is played before an ‘audience’, i.e., the electorate, with varied party preferences and policy inclinations. Congress may pass a bill that is relatively popular with the electorate (and especially the majority party’s own partisans) but which is relatively unpopular with the president’s partisans (and perhaps contrary to his party’s pledges) in the full expectation — indeed, hope — that the president will veto the bill and thereby identify himself with an unpopular position on the issue. In passing such a bill that it expects will be vetoed, Congress is making not a ‘futile choice’ but an electorally

expedient one, as Congress — contrary to our earlier assumptions — has (partisan) preferences over different routes to the outcome  $L = Q$ .

Finally, veto games become considerably more complex when the legislative issue space expands from one to two (or more) dimensions (as in Carter and Schap 1987, Hammond and Miller 1987, Schap 1988) or if actors are allowed to have arbitrary preferences over relevant versions of the bill (as in Schwartz 1999).

## 6.2 Institutions

The U.S. Congress is bicameral; moreover, as they are based on different schemes of representation, preferences typically are differently distributed in its two houses. Almost all U.S. states and other separation-of-powers systems likewise have bicameral legislatures, rather than the unicameral type assumed here. Given bicameralism, two types of override rules are possible. By far the most common is a *concurrent ballot* under which the two houses vote separately and both must vote to override; the alternative is a *joint ballot* under which the two houses vote together in a single override vote. The latter case has a single override pivot just as in the unicameral case; the former case has two override pivots, one in each house; whichever is more extreme becomes the relevant pivot.

What bill the legislature initially passes may further depend on the type of parliamentary voting procedure it uses to structure the sequence of votes among different versions of the bill. There are two main types (Schwartz 2008): *amendment procedure* typically used in Anglo-American legislatures and *sequential elimination procedure* typically used in continental European and Latin American legislatures. The former has an especially strong tendency to produce a bill corresponding to the ideal point of the median member (even if voting within the legislature is sincere), while the latter permits several of the veto paradoxes noted below.

Beyond this, varied procedures may be used in response to an executive item or constructive veto. Earlier we assumed that the legislature simply chooses between the executive's revised bill  $B'$  and the original bill  $B$ , with an override majority required to reject  $B'$  and restore  $B$  as the outcome. While some legislatures do use such a procedure, it has several problematic features. First, the executive has in effect placed a new version  $B'$  of the bill on the legislative agenda (as any member could have proposed  $B'$  earlier), so it may be more reasonable for the legislature to choose between  $B'$  and  $B$  in a 'send-back' vote using simple majority rule. Second and for the same reason, in the event that the legislature chooses  $B'$  over  $B$ , it can be argued that  $B'$  itself should be subject to an enacting vote that pits  $B'$  against  $Q$ . Third, in the event the executive has an item veto, the legislature may vote to restore deleted items from the bill individually rather than simply choosing between  $B'$  and  $B$ . Schwartz (1999) examines several such procedures in actual use and proposes a new procedure as most desirable.

## 6.3 Veto paradoxes

Several seemingly paradoxical phenomena are associated with veto and override rules. One is that veto games may produce suboptimal outcomes in which the status quo is preserved even though the legislature and executive have a common interest in making certain changes in the status

quo. We saw this with sincere veto games with simple veto power and noted that strategic voting eliminates the suboptimality; we also saw this with strategic veto games with constructive veto power and noted that a credible promise by the executive eliminates the suboptimality.

Another seeming paradox concerns simple veto power overridable by a simple legislative majority. At first glance (and in many conventional accounts), such an override rule renders the veto power inconsequential. Unless it raises the requirement for enactment of the legislature's bill from a simple majority to some greater override majority, such a veto appears merely to delay enactment of the bill (though this may provide the executive the opportunity to change some legislative preferences). This conclusion is true in the one-dimensional analysis presented earlier. However, Schwartz (2004; also see Carter and Schap 1987, 239) shows by examples that it is not true if (i) the legislature uses sequential elimination procedure and (ii) legislative preferences include the kind of majority preference cycle that one-dimensionality rules out. In such circumstances, the fact that the executive has veto power, even if overridable by a simple majority, may induce strategic legislators to pass a different bill from what it would pass if the executive did not have veto power.

Finally, Schwartz (1999) identifies what he calls the *veto paradox* — namely, that executive veto power can work to the executive's disadvantage in particular strategic veto games. Indeed, the example provided just above can illustrate the point, since the executive may prefer the bill that the legislature would pass if he did not have veto power to what it passes when he does.

#### 6.4 A note on veto players

Since readers may be aware of the 'veto players' theory of political institutions proposed by Tsebelis (1995 and 2002), it may be worthwhile to clarify the relationship between (executive) veto power and the concept of a veto player. A *veto player* is an individual or collective actor whose agreement is necessary in order to change the status quo policy. Thus an executive with unqualified simple veto power is an individual veto player, while individual legislators are not. But the legislature as a whole is a collective veto player, as is each house in a bicameral system. (If executive veto power is qualified, veto player analysis becomes more complicated.) In a multiparty legislature, certain parties or coalitions of parties may have veto player status. If a bill enacted by the legislature can be appealed to referendum, the electorate becomes a collective veto player.

To take a further example, the well-known 'veto power' of the five permanent members of the 15-member UN Security Council makes each an individual veto player. However, the five permanent members cannot by themselves pass a resolution — nine affirmative votes are required. Thus the Council's ten rotating members constitute a collective veto player such that at least four of them must agree to change the status quo.

Veto player theory focuses on the conditions for *policy stability*. A policy  $P$  is *stable* if there is no other policy that all veto players prefer to  $P$ . Given our one-dimensional setup, we can place the ideal points  $L_m$ ,  $L_q$ , and  $E$  in any arrangement along the line and consider what positions of  $Q$  are stable. If the executive has unqualified simple veto power, all points in the interval between  $E$  and  $L_m$  are stable. If the executive's veto power is qualified, the set of stable policies is unchanged if the ideal point of the relevant override pivot lies outside the interval between  $E$  and  $L_m$ ; otherwise, it shrinks to the interval between  $L_q$  and  $L_m$ . Adding new veto players — for example, making the legislature



bicameral — never shrinks and typically expand the set of stable policies. Tsebelis and others generally explicate veto player theory with reference to a two-dimensional policy space, in which the geometry of policy stability becomes rather more complicated.<sup>7</sup>

## 7. Conclusions

Having examined the operation of a variety of executive veto institutions, we conclude by briefly considering these institutional options from the perspective of constitutional choice.

As noted at the outset, the issue executive veto power arises in a separation of powers system but hardly in parliamentary systems. Within the former, the effects and desirability of various executive veto powers likely depend on other constitutional choices, including the mode of electing legislators (ranging from small local districts to nationwide proportional representation) and the executive, the terms for (and term limits imposed on) each branch, the structure of the legislative branch (bicameralism creates ‘checks and balances’ within the legislative branch, arguably rendering the external check of an executive veto less desirable), and so forth. Typically, the legislature represents more locally-oriented (and perhaps shorter-term) interests, while the executive represents a more nationally-oriented (and perhaps longer-term) interests. In the U.S. at least, justification for presidential influence over legislation is often justified in these terms, and the president’s veto power is generally seen as importantly enhancing that influence, mostly through Congressional anticipation of possible vetoes.

In the U.S. context, the most debated issue of constitutional choice pertaining to veto power is whether the president’s veto power should be expanded to include an item veto, at least with regard to budgetary legislation. Some public choice scholars and others argue that, as Representatives are elected from small districts and Senators from individual states, members of Congress have an electoral incentive to engage in logrolling practices that expand the federal budget by including many public projects that benefit localities but may be hard to justify in terms of national costs and benefits. It seems to follow that an executive item veto would mitigate this problem, but the effect would depend on the exact nature of the veto and the override rule and any mitigating effects might be counterbalanced by strategic responses by Congress (e.g., Carter and Schap 1987, McCarty 2000). Moreover, a strategic President who wanted to expand the federal budget could, through threats and promises, use the item veto power to extract additional spending from Congress.

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<sup>7</sup> We may note several other uses of the term ‘veto’ in the public choice literature. In social choice theory (e.g., Austen-Smith and Banks 1999, 40), a preference aggregation function gives *veto power* to individual  $i$  if, given that  $i$  strictly prefers alternative  $x$  to alternative  $y$ ,  $y$  is never strictly socially preferred to  $x$ . In voting power theory (e.g., Felsenthal and Machover 1998, 24), a *vetoer* (or *blocker*) belongs to every winning coalitions. (This is essentially the same as being a veto player.) Mueller (1978) has proposed a system of *voting by veto*. Each of the  $n$  members of a voting body proposes a version of a bill to deal with some issue, producing an agenda of  $n+1$  options (including the status quo). In a randomly selected order, each member in turn unilaterally eliminates (or ‘vetoes’) one alternative from the (remaining) agenda, and the one option that survives is selected.

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