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PRESIDENTIAL VETOES IN LATIN AMERICAN CONSTITUTIONS

Eduardo Alemán and Thomas Schwartz

ABSTRACT

A portrayal of the bill-to-law provisions of Latin American constitutions as extensive game forms shows presidential veto powers to be richer, more varied, and more regionally distinctive than hitherto appreciated. Small details and apparent redundancies are surprisingly consequential, the distribution of institutional advantages is both counterintuitive and incompatible with any simple pattern or overall measure of ‘presidential power’, and regional peculiarities turn out to have been rather well designed to encourage democratic responsibility and executive-legislative agreement more than executive dominance or interbranch deadlock.

KEY WORDS • constitutions • executive veto • extensive game forms • paradoxes • parliamentary procedures • presidential systems

1. Introduction

Famous for their long lists of presidential powers and their elaborate bill-to-law procedures, the constitutions of Latin America all allow the President to veto bills passed by Congress. Their veto clauses vary, however, in what they say about override majorities, default options, presidential revisions, congressional consent to those revisions, and the range of legislation that the President may veto. How consequential are those clauses and the differences between them? What advantages and disadvantages do they create for constitutional officers and their constituents? And how, if at all, do they promote or hamper democracy? To answer these questions we portray the veto clauses of 18 Latin American constitutions, all but Cuba’s and Haiti’s, as extensive game forms and assume perfect strategic behavior by President and Congress – an idealization, of course, but the right one to begin analyzing the various ways ambition is made to counteract ambition in Latin American constitutions. One thing we find is that all the nominal differences are real: they make a difference. Another is that all the veto clauses are surprisingly consequential: they can change outcomes in unexpected, even paradoxical, ways. A third is that the distribution of institutional advantages is both counterintuitive and incompatible with any simple pattern or overall measure of
presidential power. A fourth, more positive but no less surprising, is that regional peculiarities are rather well designed to enhance democratic responsibility and discourage interbranch deadlock.

The conventional impression, deemed too obvious to need any defense, is that the veto is a presidential asset: its effect, when it has one, is to help the President get his way. That is why it is commonly seen, not merely as an obstacle to legislation, but as an executive check on the legislative branch and as a means for balancing congressional localism with the wider interests represented by the President. But our examination of constitutional game forms shows that this impression is wrong: every version of the presidential veto found in Latin America can be positively disadvantageous to the President and his electoral constituency. Sometimes the disadvantage is as widespread as possible: the outcome is Pareto inefficient. Such anomalies occur in rather common circumstances.

If these surprises took a bit of digging, another lies right on the textual surface: in a region celebrated for its muscular presidentialism, it often takes naught but a simple majority of legislators to override a veto. That is not so surprising for constructive vetoes, which allow the President to revise bills in some way: even a large majority might uphold a revision not previously on the congressional agenda. But in seven countries of Latin America the simple-majority override also governs the absolute veto, the unqualified rejection of a bill in favor of the status quo, and the conventional impression is that this presidential power is thereby erased: its efficacy comes from raising the hurdle for passage of legislation from a simple to a super majority. Once again, however, a conventional impression is wrong: the absolute veto can make a difference despite the simple-majority override, hence not only by raising the hurdle for passage.

Veto paradoxes, or executive vetoes that hurt the executive, were discovered by Schwartz (1999), but his examples are couched in terms of US veto powers (found in federal and state constitutions) and Anglo-American parliamentary procedure. Our examples are based instead on Latin American vetoes and parliamentary procedure. We find a nice interplay between parliamentary rules and constitutional bill-to-law provisions.

After listing the ingredients of Latin American veto clauses, we assemble them in four extensive game forms, each portrayed as a tree, and add some information about Latin American parliamentary procedure and some assumptions about congressional preferences. The first thing we show is that no two clauses are equivalent: all the formal differences make a difference. Next we show how each game form is subject to the veto paradox, both with and without super-majority override. We then use these findings to assess the relative merits of the several institutional designs found in Latin America, arguing that scholars have overlooked some regional peculiarities, their consequences, and their considerable virtues, most likely by reading Latin
American constitutions through US lenses. A methodological afterword recommends and generalizes our approach to comparative constitutionalism.

2. Constitutional Ingredients

A veto is a formal act of rejection, in effect a contrary vote. So a presidential veto is a vote by the President against a bill that has been passed by the legislative branch but not yet enacted though enactment was a presidential option. Whether and how it counts depend on legislative responses if any.

In content, vetoes are of two main kinds. An absolute veto is an unqualified rejection, a vote for no new law: it rejects a bill in favor of the status quo. A constructive veto is a qualified rejection, a vote for a different new law: it rejects a bill in favor of a revision, a presidential redraft. Some constitutions require that presidential redrafts be sent back for legislative approval by a simple majority of votes (even if overrides must clear a higher hurdle).

The constructive vetoes allowed in Latin America are either deletional or (more broadly) amendatory. The former revise a bill solely by deleting text, the latter by deleting or adding or both. Deletions are limited to meaningful locutions (not, for example, odd letters). Additions must be germane to a bill’s subject. Beyond that, revisions are not limited in content. Neither are they limited to certain bills, except that Costa Rica and Honduras ban vetoes of budget bills. In these ways, Latin American constructive vetoes are much broader in scope than the line-item, item-reduction, and amendatory vetoes allowed in some US states: the first are deletional but with deletions limited to itemized expenditures in budget bills, the second deletional by degrees and likewise limited, and the third limited to corrections and clarifications. Ten of eighteen countries have amendatory vetoes, hence the broadest scope for presidential revision.

All vetoes are overridable by congressional vote, but override requirements vary in three ways. First, the required majority is either simple (> 1/2) or three fifths (≥ 3/5) or two thirds (≥ 2/3). Second, it is a majority of either members or votes (either all members or those present and voting). Third, for bicameral congresses (some are unicameral), the majority must be either from two concurrent houses or from a joint session of the two.

A word about words. Our labels absolute veto and constructive veto follow Schwartz (1999). An antonym of qualified or relative, absolute comes from US public law but has no Latin American synonym. A drawback is that in 19th century Latin America it meant ‘not overridable’. Constructive veto has no conventional equivalent but is recognizably akin to constructive criticism and constructive vote of no confidence. Shugart and Carey (1992) prefer package and partial to our absolute and constructive, but that is misleading because a constructive veto of the amendatory sort need not be ‘partial’ in...
its effect: it can revise a whole ‘package’. *Amendatory* itself is used in US state constitutions but has no uniform Latin American equivalent. *Deletional* is novel but self-explanatory. Some Latin American constitutions use *partial* instead, but that is misleading, for an amendatory veto that does more than delete might still be partial in its effect: it might revise only part of a bill. The verb *send back* comes from US state constitutions; it has no Latin American synonym.

3. Constitutional Game Forms

To portray the extensive game forms created by the constitutions of Latin America, we let

\[
\begin{align*}
C &= \text{Congress, acting by a simple majority of votes, both houses concurring if there are two, except when taking an override vote;} \\
P &= \text{President;} \\
B &= \text{bill before Congress;} \\
X &= \text{alternative bill, the President’s redraft when there is one;} \\
\emptyset &= \text{status quo.}
\end{align*}
\]

The game forms are portrayed by the trees of Figure 1. Constitutions actually vary more than that because the trees themselves allow variation in override rule and scope of X; we have supplied these details in Table 1. Every tree shows a series of choices by President (P) and Congress (C), some conditional on earlier choices. Each choice is represented by a decision node. The rightmost option below each node is the default choice, automatically ‘chosen’ if the player takes no positive action. The top node always represents Congress’s choice of B or \(\emptyset\). In drawing the trees this way, we do not mean to deny that the actual legislative agenda might offer many more options than B and \(\emptyset\). After Congress chooses B, the President can accept or veto B. Acceptance includes tacit approval as well as signing.

Form 1, used by the United States and three Latin American countries, allows only the absolute veto. Once Congress has chosen B over default \(\emptyset\), this game form lets the President choose between \(\emptyset\) (veto) and default B (accept). If he chooses \(\emptyset\), Congress can then choose B over \(\emptyset\) once more, but now an override majority is needed.

Form 2, used by four Latin American countries and by those US states that have line-item or item-reduction vetoes, expands the President’s prerogatives by letting him revise B, but unlike the next two forms it does not require his revision to pass a sendback vote in Congress. So the President can now choose X (revision, or constructive veto) rather than \(\emptyset\) or default B.
If he does, Congress can then restore B with an override vote against default X. In drafting X, the President has a chance to initiate a compromise with Congress. But there is a limit to how compromising he has to be: he need only make X attractive enough that no override majority likes B more. Note that even if B had originally received an overwhelming majority, it might still lose an override vote because the default option is no longer Ø but X.

Figure 1. Latin American Veto Games
Table 1. Veto Procedures in 18 Latin American Constitutions

<table>
<thead>
<tr>
<th>Country</th>
<th>Game Form</th>
<th>Override Rule</th>
<th>Constructive Veto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominican Republic</td>
<td>1</td>
<td>$\geq 2/3$ of members from concurrent houses</td>
<td>none</td>
</tr>
<tr>
<td>Guatemala</td>
<td>1</td>
<td>$\geq 2/3$ of members from unicameral Congress</td>
<td>none</td>
</tr>
<tr>
<td>Honduras</td>
<td>1</td>
<td>$\geq 2/3$ of votes from unicameral Congress</td>
<td>none</td>
</tr>
<tr>
<td>Argentina</td>
<td>2</td>
<td>$\geq 2/3$ of members from concurrent houses</td>
<td>deletional</td>
</tr>
<tr>
<td>Brazil</td>
<td>2</td>
<td>$&gt;1/2$ of members from joint session</td>
<td>deletional</td>
</tr>
<tr>
<td>Ecuador</td>
<td>2</td>
<td>$\geq 2/3$ of members from unicameral Congress</td>
<td>amendatory</td>
</tr>
<tr>
<td>Uruguay</td>
<td>2</td>
<td>$\geq 3/5$ of votes from concurrent houses meeting jointly</td>
<td>amendatory</td>
</tr>
<tr>
<td>Bolivia</td>
<td>3</td>
<td>$\geq 2/3$ of votes from joint session</td>
<td>amendatory</td>
</tr>
<tr>
<td>Chile(^a)</td>
<td>3</td>
<td>$\geq 2/3$ of members from concurrent houses</td>
<td>amendatory</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>3</td>
<td>$\geq 2/3$ of members from unicameral Congress</td>
<td>amendatory</td>
</tr>
<tr>
<td>Mexico</td>
<td>3</td>
<td>$\geq 2/3$ of votes from concurrent houses</td>
<td>amendatory</td>
</tr>
<tr>
<td>Colombia</td>
<td>4</td>
<td>$&gt;1/2$ of members from concurrent houses</td>
<td>deletional</td>
</tr>
<tr>
<td>El Salvador(^b)</td>
<td>4</td>
<td>$&gt;1/2$ of members from unicameral Congress</td>
<td>amendatory</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>4</td>
<td>$&gt;1/2$ of members from unicameral Congress</td>
<td>amendatory</td>
</tr>
<tr>
<td>Panama</td>
<td>4</td>
<td>$\geq 2/3$ of members from unicameral Congress</td>
<td>deletional</td>
</tr>
<tr>
<td>Paraguay</td>
<td>4</td>
<td>$&gt;1/2$ of members from concurrent houses</td>
<td>deletional</td>
</tr>
<tr>
<td>Peru</td>
<td>4</td>
<td>$&gt;1/2$ of members from unicameral Congress</td>
<td>amendatory</td>
</tr>
<tr>
<td>Venezuela</td>
<td>4</td>
<td>$&gt;1/2$ of votes from unicameral Congress</td>
<td>amendatory</td>
</tr>
</tbody>
</table>

\(^a\) In Chile the default outcome for constructive vetoes (following an unsuccessful override vote) is not $\emptyset$ but the nonvetoed parts of $B$.

\(^b\) In El Salvador the override majority for an absolute veto is $\geq 2/3$ of votes. It is the only country with two override thresholds.
Form 3, also used by four Latin American countries, differs from Form 2 in requiring any presidential revision to pass a sendback vote. If the President chooses X, Congress must first decide whether to take a sendback vote. Constitutions are silent about how that decision is made, but in practice it has become the prerogative of leaders of the majority party or coalition in the initiating chamber. If Congress does not take a sendback vote, voting ends and Ø prevails by default. Only if Congress first takes a sendback vote and X loses to Ø can Congress then take an override vote, which would pit B against default Ø. The reason our tree shows Ø as default outcome for no sendback vote and again for a lost sendback vote is that only the latter allows an override vote. So a constructive veto of the Form 3 variety compels Congress to consider the President’s revision (though not necessarily to pass it) on pain of accepting Ø as final outcome – in effect turning a constructive veto into an absolute veto immune from override.

Form 4, the modal veto procedure of Latin America, is like Form 3 except it allows Congress to override a constructive veto, choosing B over Ø, without first rejecting X in a sendback vote: Congress is not compelled to consider presidential revisions. Majority-party (or coalition) leaders decide which sort of vote, if any, to take. Our tree still allows Congress to take no vote at all, ensuring that Ø prevails, because Ø is the default outcome for both sorts of votes. (We no longer have to show Ø separately as the default outcome for ‘no sendback vote’ because that option no longer precludes an override vote.)

4. Congressional Procedures

Besides constitutional veto rules, outcomes depend on legislative procedures, which in Latin America differ from US procedures in two notable ways. First, complex bills are rarely voted on as wholes. Instead, articles are voted on separately, without a final up-or-down vote pitting the whole bill against the status quo. To keep things manageably simple, however, we have referred to B and other agenda items as bills.

The second difference is that all but one of our countries use sequential-elimination agendas: alternative bills are voted up or down in a given order, and voting stops as soon as one bill defeats Ø or else Ø itself has survived every vote. The first tree of Figure 2 portrays such an agenda. For now ignore all that business in parentheses and brackets; we shall return to it later. Mexico differs from other Latin American countries in that it requires a second up-or-down vote to pass anything, as in the second tree of Figure 2. This looks utterly redundant, but we shall see that it is not.

In the USA, by contrast, once main motion B is on the floor, rival X is normally introduced, not as a new bill (or section of a bill), but as the result of amending B in some way. The third tree in Figure 2 shows a US-style agenda:
an initial vote, on whether to amend B, pits X against B, and a final vote, on enactment, then pits the winner of that vote against Ø. The more important contrast is between the first two trees and the third: in the first two there are only up-or-down votes, contests between bills and Ø, but in the third there is also an amending vote, a contest between a bill and a variant of it. Language can obscure: in Latin America the rivals voted up or down following rejection of a given bill (or article) are also called amendments (enmiendas) to that bill.

5. Congressional Preferences

Constitutions and legislative procedures create game forms. To turn them into solvable games we must add players’ preferences. In particular, the outcomes of congressional–presidential interaction depend in part on congressional and presidential preferences. In sections 5 to 8 our goal is to show that certain things can happen under our four game forms, and for that we shall need examples of possible preferences. Overrides aside, the congressional preferences that count are those of a simple majority, meaning more than half the members present and voting, in both houses when there are two.

Each of our games assumes one of three patterns of congressional preference:

Pattern I) Majorities prefer X to B and both to Ø;
Pattern II) Majorities prefer X to B, B to Ø, and Ø to X;
Pattern III) Majorities prefer X to B, B to Y, Y to X, and all three to Ø.
These patterns are not only possible but quite realistic. That is obvious for Pattern I: just imagine that more than half the members share the stated preference.

The cyclic Pattern II must occur (not merely can: must) if two measures would each benefit a minority faction at everyone else’s expense but together those measures command majority support (as in a logroll). Let measure $X$ benefit minority faction $F$, and $X’$ faction $F’$. So $B = X + X’$, and $F + F’$ is the majority that prefers $B$ to $Ø$. Let $G$ be the remaining minority. Because $X$ and $X’$ are costly to $G$, $G$ likes $Ø$ most and $B$ least, with $X$ and $X’$ in between. Because $F$ benefits from $X$ but finds $X’$ costly, $F$ likes $X$ most and $X’$ least, with $B$ and $Ø$ in between. Likewise, $F’$ likes $X’$ most and $X$ least, with $B$ and $Ø$ in between. And because $F + F’$ is the majority that supports $B$, $F$ and $F’$ must both prefer $B$ to $Ø$: there are mutual gains from their implicit vote trade. To sum up, our three minorities rank $B$, $Ø$, $X$, and $X’$ in order of preference as follows:

<table>
<thead>
<tr>
<th></th>
<th>$F$</th>
<th>$F’$</th>
<th>$G$</th>
</tr>
</thead>
<tbody>
<tr>
<td>$X$</td>
<td>$X’$</td>
<td>$Ø$</td>
<td></td>
</tr>
<tr>
<td>$B$</td>
<td>$B$</td>
<td>$X$ and $X’$</td>
<td></td>
</tr>
<tr>
<td>$Ø$</td>
<td>$Ø$</td>
<td>in either order</td>
<td></td>
</tr>
<tr>
<td>$X’$</td>
<td>$X$</td>
<td>$B$</td>
<td></td>
</tr>
</tbody>
</table>

If there are two houses, let both fit this profile of preferences. Because each faction is a minority, any two make a majority. So one majority ($F + F’$) prefers $B$ to $Ø$, another ($F’ + G$) prefers $Ø$ to $X$, and a third ($F + G$) prefers $X$ to $B$ – the fancied cycle.

For the more elaborate Pattern III, replace $Ø$ in each preference ordering by $Y$, then reinsert $Ø$ at bottom – below $B$, $X$, $X’$, and $Y$. Think of $Y$ as a broadly beneficial bill, $X$ as the result of larding $Y$ with pork for $F$, $X’$ for $F’$, and $B$ for both factions. Now majorities prefer $X$ to $B$ to $Y$ to $X$ and all three bills to $Ø$.

Some examples have $B$ preferred to $Ø$ by an override majority. Regardless of the specific override rule, we can ensure this for both preference profiles by letting $F$ and $F’$ each comprise just under half of all members, so all but one or two members prefer $B$ to $Ø$. We shall also need an example where $F$ and $F’$ are small enough that $B$ is preferred to $Ø$ by a bare majority.

Naturally we assume that these preferences do not change when veto power is introduced. We also assume that the President does not use that power merely to delay a final vote while attempting to change those preferences – a perfectly reasonable but not very interesting use of veto power.

To predict outcomes from preferences, we assume actors are strategic (sophisticated): at each decision node they choose between the two options
before them by looking ahead and comparing the *strategic equivalents* of those options, the final consequences of choosing them now.

Take the sequential-elimination agenda of Figure 2, let majorities prefer B to Ø to X to B as in Pattern II, and for now assume no veto power. Because a majority prefers B to Ø, B would win the B-vs.-Ø vote. That makes B the strategic equivalent of Ø at the initial X-vs.-Ø vote. But a majority prefers X to B. So at the first vote a strategic majority votes for X, not Ø. As a result, voting ends there and B is never formally considered. That makes X the overall victor and, we say, the strategic equivalent of the whole procedure. Strategic equivalents are in parentheses, with that of the whole procedure atop each tree (the business in brackets must await section 7).

By contrast, the strategic equivalent of the Mexican and US-style agendas, also in parentheses, is B, not X. So sequential-elimination agendas are consequentially different from those others, and the apparently redundant final votes in a Mexican agenda are not redundant after all: their addition to our original sequential-elimination agenda was enough to change the outcome from X to B.

The interbranch trees presented in Section 3 are *solved* the same way. We find the strategic equivalent of each nonterminal node recursively: by looking ahead and comparing the strategic equivalents of the next nodes down, terminal nodes being their own strategic equivalents. Of course, when the next nodes down have the same outcome as their strategic equivalent there is nothing to compare: that outcome climbs the tree and becomes the strategic equivalent of the given node. Otherwise, for C nodes the comparisons are according to simple-majority preferences unless override majorities are required. In Forms 3 and 4, one C node represents the procedural decision (actually made by certain leaders) whether to take a vote or, in Form 4, which sort of vote (sendback or override) to take; there we assume that C acts as usual, choosing the majority-preferred of two strategic equivalents. For P nodes the comparison is made according to the President’s preferences, of course. At each node, a failure to act (or to reach the required majority, in the case of C nodes) amounts to the immediate choice of the default option, hence to the ultimate choice of its strategic equivalent.

6. Mutual Independence

The four game forms presented in Section 3 are mutually independent: no two are equivalent. We show this with examples in which different forms yield different outcomes for the same set of congressional and presidential preferences. Observe, by the way, that these results are independent of congressional agendas.
As usual let congressional majorities prefer B to Ø to X to B (Pattern II), with an override majority for B over Ø. Let the President prefer X to B. That is enough to determine the strategic equivalents of Forms 1, 2 and 4: 1 and 4 yield B while 2 yields Ø. This is shown in parentheses in Figure 3.

Add that the President prefers B to Ø, and Form 3 yields B, likewise in parentheses. So Form 2 is not equivalent to Form 1, 3, or 4. Add instead that the President prefers Ø to B and the strategic equivalent of Form 3 changes to Ø, shown in brackets. So Form 3 is not equivalent to Form 1 or 4.

For the remaining pair of forms, 1 and 4, we use Pattern I: majorities prefer X to B and, by an override majority, both alternatives to Ø. Assuming the President prefers X to B, the strategic equivalents of Forms 1 and 4, shown in brackets, are B and X, respectively. Thus, Forms 1 and 4 are likewise nonequivalent.

7. Paradoxes, Override Rules, and Parliamentary Procedure: Effects of the Absolute Veto

For each constitutional game form, veto power can be disadvantageous to the president, regardless of override requirements. Such veto paradoxes are especially important for the absolute veto of Form 1 because this form is part of all the others.

Assume Pattern II: congressional majorities prefer B to Ø to X to B, with an override majority for B over Ø. The agenda is the first one in Figure 2 (sequential elimination), and the strategic equivalents are in parentheses. In this case X is the outcome.

Now arm the President with the absolute veto, and let him prefer Ø to X to B. So he would veto either bill. A veto of B would be overridden, but a veto of X would stand because no majority, large or small, prefers X to Ø. The new strategic equivalents, shown in brackets, make B the victor. The paradox is that the President likes B less than X, the final outcome absent veto power: it hurt the President to acquire veto power.

How can that be? What hurt the President was not a veto he exercised but the threat of his exercising one. Strategists in Congress anticipated his veto of X by rejecting X at the first vote: had they not done so he would have vetoed X, making Ø the final outcome. X’s defeat gave Congress the opportunity to pass B, which a majority prefer to Ø, and then to pass B again in an override vote. The paradox involved no successful veto but only the strategic anticipation of one.

True, the President might try to avoid paradox – to secure outcome X – by committing himself in advance not to use his veto. But that takes us well beyond extensive forms and their solutions into the realm of cooperative
Figure 3. Strategic Equivalents to Prove Mutual Independence
game theory, where mechanisms of commitment are not well understood and where assumptions and predictions are controversial.

If we change the example so the President prefers B to X, then the President benefits from veto power. Either way, veto power makes a difference, and it does so regardless of the override hurdle: the absolute veto can make a difference even if overridable by a simple majority of votes. For majorities prefer Ø to X and B to Ø, ensuring that X would lose but B would win a simple-majority override vote. Consequently, the absolute veto can affect outcomes otherwise than by raising the hurdle for passage of laws.

That is not true under the US and Mexican agendas of Figure 2. Assuming simple-majority override, we present the strategic equivalents with no veto power (in parentheses) and with absolute-veto power [in brackets]. Obviously there is no difference. That is because a simple-majority override vote merely repeats a final legislative vote between a bill and Ø, whose terminal position in the tree makes it its own strategic equivalent.

The absolute veto is susceptible to veto paradoxes even under US and Mexican parliamentary procedures, so long as the override hurdle is higher than a simple majority, as it is in both countries. Schwartz (1999) shows this for the US procedure. To show it for the Mexican procedure, consider Figure 4 and assume Pattern III: majorities prefer X to B to Y to X and all three to Ø. Assume also a 2/3-override threshold. Strategic equivalents absent any veto power are shown in parentheses: X is chosen.

Now give the President the absolute veto, let him prefer X to Y to Ø to B, and suppose the majority for B over Ø is a bare one. It follows that the President would veto B and his veto cannot be overridden. The new strategic equivalents are in brackets: Y is now chosen. So the President again is worse off than when he had no veto power.

Paradoxes aside, see how veto clauses interact with parliamentary law. To be efficacious, the absolute veto with simple-majority override requires sequential-elimination agendas rather than US- or Mexican-style agendas. But the six countries that allow simple-majority override do use sequential-elimination agendas – as indeed do all countries but Mexico.

8. Constructive Vetoes and Pareto Inefficiency: Unexpected Consequences of Form 2

Form 2 combines absolute and constructive vetoes in the simplest way: there are no sendback votes. To construct a veto paradox, again assume Pattern II: majorities prefer B to Ø to X to B. But now let Congress vote on B alone. Absent veto power, B is chosen.
Next assume Form 2 veto power and let the President prefer X to B to Ø. Then if B passed, the President would use a constructive veto to change B to X. Such a change would survive an override challenge, however low the override hurdle, because an override vote would pit B against default X, which a majority prefers to B. That makes X, not B itself, the strategic equivalent of B back in congress. Because a congressional majority prefers Ø to X, the final outcome is Ø: acting strategically, Congress anticipates presidential menace by passing no bill, giving the President nothing to redraft. The paradox this time is that the President prefers B, the outcome absent veto power.

In a way we have a double paradox because Congress too prefers B to Ø: Form 2 veto power can hurt both President and Congress at once. Owing to the cycle, that may not seem so anomalous. Besides, not every legislator prefers B to Ø. But consider a variant: in Congress a single bare majority prefers B to Ø to X (and, therefore, B to X), while everyone else shares the President’s preference for X to B to Ø. So the congressional preference is now acyclic, indeed transitive: a majority prefers B to Ø and both to X. Assume also that the override threshold matters: it takes more than a bare majority – at least one vote more – to override. So X would still survive an
override vote even though a bare majority prefers B to X. As a result, strategic equivalents are unchanged, and as before, the addition of veto power turns B into Ø. Now, however, President and Congress both have transitive preferences with B above Ø. Now, moreover, the President and every legislator prefer B to Ø: veto power has created a Pareto inefficiency.

9. How Sendback Votes Change Things: Consequences of Forms 3 and 4

Forms 3 and 4 require any presidential revision to pass a sendback vote. That blocks the worst anomaly of Form 2. Congress will not refuse to pass B from fear of executive redrafting because Congress must approve any redraft. Even if Congress follows a constructive veto with no action at all, it is Ø, not X, that prevails by default.

Yet the constructive part of Form 3 does not escape paradox. Suppose Congress votes on X, then B. The tree in Figure 5 portrays this procedure. Again assume Pattern II: majorities prefer B to Ø to X to B. Strategic equivalents absent veto power are in parentheses: X is chosen.

Now assume Form 3 veto power, let the President prefer X to Ø to B, and suppose B is preferred to Ø by an override majority. In this case the strategic equivalents are in brackets: Ø is chosen. Veto power has again made the President worse off.

Form 4 is like Form 3 except that congressional leaders now have the further option of taking a sendback vote after rather than before an override vote. That makes it harder to concoct a veto paradox, but not impossible.

Suppose Congress votes on X, then B, then Y. Figure 6 portrays this procedure. Here we must assume the more elaborate Pattern III: majorities prefer X to B to Y to X and all three to Ø, with an override majority for Y over Ø. Strategic equivalents absent any veto power are in parentheses: X is chosen.

Now arm the President with Form 4 veto power and let him prefer X to Y to B to Ø. The new strategic equivalents are in brackets: the final choice now is Y, which the President likes less than X.

10. Summary

By casting the bill-to-law procedures of 18 Latin American constitutions as extensive game forms, we could predict and compare outcomes once preferences were at hand. Our chief findings are four. One is that there are four basic game forms, with crosscutting variations in override rule and scope of presidential redrafts. Another is that these differences are real: they can
create different outcomes. Yet another is that policy benefits do not depend in any intuitively expected way, nor in any uniform way at all, on formal powers. A President’s veto power can work to his advantage, of course, but also to his disadvantage. Such cases involve the simplest agenda form most often used in Latin American congresses along with the congressional preference pattern that underlies all successful legislative packages of minority benefits and a presidential desire to limit such benefits. The fourth finding
is that the sequential-elimination agenda allows the absolute veto to be quite effective even if overridable by a simple majority. More generally, the absolute veto in the context of Latin American parliamentary law can make a difference otherwise than by raising the vote hurdle for new legislation.

On top of those findings, we have highlighted five institutional peculiarities of Latin America. Two were just mentioned: the simple-majority override and the interaction between the absolute veto (shared with the USA) and the sequential-elimination agenda (shared with the parliamentary countries of continental Europe). A third Latin American peculiarity, exhibited by 11 out of 18 constitutions, is the simple-majority sendback vote for congressional approval of constructive vetoes under Forms 3 and 4, with the status quo as default outcome. In those US states that have sendback votes, the default outcome is rather B, the bill originally passed by the legislature.
This is not so surprising in the US context, where sendback votes are used only for amendatory vetoes and those are limited to corrections and clarifications. But in Latin America, both amendatory and deletional vetoes are far broader than anything allowed in the US states (Aleman and Tsebelis, 2005). That, indeed, is our fourth peculiarity. Our fifth and last is the constrained override vote for constructive vetoes under Form 3: no override vote is possible until the presidential revision has lost a sendback vote, so the effect of not taking a sendback vote is that of an absolute veto immune from override. The otherwise similar but more common Form 4 drops this harsh constraint.

11. Lessons

Taken together, those peculiarities challenge a common stereotype of Latin American constitutions by showing that their bill-to-law provisions work, not so much to give presidents some advantage over their congresses, but to encourage inter-branch cooperation and democratic responsiveness. That casts a new light on the veto paradox, which seems anomalous only if the presidential veto is supposed to promote presidential advantage.

The most famous objection to the presidential veto is that it encourages inter-branch deadlock: Congress passes and the President vetoes and nothing gets done. It may be argued that constructive vetoes enable the President to fashion a compromise. But under Form 2, constructive vetoes may actually aggravate deadlock and create a Pareto inefficiency: if a presidential redraft unacceptable to Congress would nonetheless survive an override vote, Congress would pass nothing to begin with, even if something (B) were unanimously preferred to nothing (Ø). Such seems to have been the fate of an uncontroversial health care bill in Uruguay during the presidency of Julio M. Sanguinetti (1995–2000). The bill was not reported to the floor of Congress for final passage because drastic changes (market-oriented amendments rejected in committee) were expected to be successfully added by the President through the use of a constructive veto.

One Latin American peculiarity, the sendback provision of Forms 3 and 4, blocks the worst sort of deadlock under Form 2: the President cannot menace Congress with the prospect of a redraft less acceptable than Ø, because Ø automatically prevails in default of any further vote. The President’s redraft must pass a simple-majority vote in Congress, and if it cannot then Congress is free to try a new bill and the President to try a new redraft until agreement is reached or one branch refuses to continue the bargaining process; it is as if the President were a third but overridable house of Congress. This process seems rather well designed to enhance responsible government: either President and Congress reach agreement and share credit (or blame) for the
legislative result, or else one branch can be held responsible for saying ‘no’ but proposing no new compromise. Compromise is further encouraged by the broad license enjoyed by Latin American presidents for redrafting legislation: limiting redrafts to line-item deletions and reductions in budget bills or to minor corrections, as in those US states that have constructive vetoes, is hardly the best way to split the difference between two initial positions. This institutionalization of compromise fits recent empirical analyses of legislative productivity. They show that most presidents succeed in enacting most of their policy proposals (Figueiredo and Limongi, 2000; Nacif, 2002; Cheibub et al., 2004; Alemán, 2004; Mejía Acosta, 2004).

True, as in labor disputes, back-and-forth proposals between President and Congress could still end up in deadlock. But at least the responsibility for deadlock, on one or both sides, is made visible. It is in this sense that the sendback provisions of Forms 3 and 4 encourage bargaining and compromise (while not, of course, eradicating posturing and deadlock). These constitutional incentives for compromise clash with one of the main conclusions from what Elgie (2005) calls the first wave of parliamentary/presidential studies: the constitutional structure of presidential systems make them prone to executive-legislative deadlock, particularly in the presence of fragmented party systems (Linz, 1990; Mainwaring, 1993). According to Stepan and Skach (1993: 18), ‘mutual independence creates the possibility of an impasse between the chief executive and the legislative body, for which there is no constitutionally available impasse-breaking device’. But as we have shown, there are such devices.

Redrafts aside, the simple-majority override automatically blocks interbranch deadlock so long as one of the bills on the congressional agenda is majority-preferred to Ø. The usual argument for a higher override hurdle is a conservative one: high hurdles discourage radical or risky departures from Ø. But the simple-majority override found in many Latin American countries preserves a fair measure of conservatism while blocking deadlock. In the first example of Section 7, giving the President an absolute veto shifted the outcome from X to B even assuming simple-majority override. There was no veto and no deadlock: B became law. Even so, the veto threat blocked X, which was particularly radical on the most straightforward preferential grounds: a majority liked it less than Ø. This is especially important in Latin America, where, as in that example, sequential-elimination agendas make it easy to pass bills that a majority likes less than Ø. Far from thwarting the will of the majority, the net effect is rather to block anti-majoritarian innovation.

A close study of the constitutional bill-to-law procedures of Latin America is doubly enlightening. It shows not only that these procedures enhance responsible government rather than presidential dominance but that students of Latin American institutions have too often seen their subjects through the
distorting lens of US experience. Innovations highlighted in this article, which have been in place since the early 19th century, have been overlooked in several influential analyses of executive-legislative institutions in Latin America. Many works ignore the sweeping redrafts allowed in Latin America but not in the USA (Shugart and Carey, 1992; Metcalf, 2000; Shugart and Haggard, 2001; Payne et al., 2003). Default provisions and sendback votes, which can promote inter-branch agreement and democratic responsiveness, have been utterly ignored by the literature, and some works expressly equate the absolute veto subject to simple $1/n$ majority override with the absence of any veto power (Shugart and Haggard, 2001) – true enough in the presence of US but not Latin American parliamentary law. Last, several works (Shugart and Carey, 1992; Metcalf, 2000; Payne et al., 2003) have attempted to reckon presidential power (no plural) as a weighted sum of presidential powers (plural). The tacit assumption is that a greater index predicts greater advantage to the President. However, not only can the veto powers that contribute to presidential ‘power’ hurt as well as help the president, but some of them encourage inter-branch agreement and democratic responsiveness rather than presidential advantage.

12. A Methodological Afterword

By studying the veto clauses of Latin American constitutions as extensive game forms, we have illustrated a general approach to describing and comparing constitutional procedures across countries. We believe this approach can be extended, for example, to presidential decrees, agenda-setting powers, bicameralism, court review, parliamentary confidence, and parliamentary dissolution, as well as whole constitutions. A game form is a game minus preferences over outcomes, and our exercise is to draw extensive game forms so as to ensure predictability for any given set of preferences – or failing that, to minimize added assumptions that constrain preferences.

To historical and legal accounts of constitutions, our exercise adds structure, filtration, and an inferential engine. Earlier we reduced all differences in constitutional veto clauses to four game forms and two parameters: override majority and scope of redrafts. Unlike measures of presidential power, our game forms sacrifice no essential information, yet they are simple enough that differences between them are few and apparent. More generally, our exercise offers a uniform vocabulary and graphology for formulating and comparing constitutions across countries. The extensive-form approach compelled us to see details we might have missed and to look for details essential to our games but not immediately apparent from constitutional texts, such as default rules and the sequencing of sendback and override votes by legislative leaders.
Because game forms allow us to infer certain consequences, some of them far from obvious, with mathematical certainty but without harsh modeling assumptions, we could take constitutional details and show conclusively that they were or were not consequential. More specifically, we could look for apparent redundancies, such as the absolute veto with simple-majority override, or the Mexican double vote, and show conclusively that they were not really redundant. And of course we could conclusively confirm or refute certain impressions, such as that veto powers are always advantageous to presidents. Combined with suitable modeling assumptions, our game forms may help to answer other comparative questions about the distribution of constitutional advantages, the prevalence of local distributive benefits, and the stability of policy. That last one is especially promising. Tsebelis (2002) has neatly tied policy stability, or the durability of the status quo, to the number and ideological positions of ‘veto players’ institutional and partisan (coalition-government partners). By drawing finer distinctions among the powers that those players might possess, our approach might help refine Tsebelis’s stability predictions.

Games in extensive form figure so prominently in speculative models that it is easy to forget their quintessential function of representing real rules, such as constitutional procedures. If solvable, they let us make exact predictions without relying on modeling assumptions except that of strategic behavior. Sometimes solvability is elusive. Still one can draw game trees, identify the obstacles to solvability, and try to fill the gap with a minimum of added assumptions. One obstacle to solvability is indefinite length: moves and counter moves might continue without predictable end. We sidestepped this obstacle by stopping at the end of one formal constitutional round. Still we noted that, under Forms 3 and 4, executive-legislative interaction might continue indefinitely, as each side rejects the other’s last proposal and makes a new one. To make a prediction in such a case one must invoke a bargaining model. Another obstacle is created by information sets, or the effective simultaneity of choices by two or more actors. That we avoided by treating Congress as a single player and by relying on constitutional rules to order the moves of actors. Yet another obstacle is indifference by a player between outcomes, including a tie vote in Congress. This problem failed to arise because the procedures we studied always specified default outcomes. But for that reason it is necessary to identify default outcomes when seeking solvability in the face of indifference or ties. Then there are cycles. But they interfere with solvability only when a cyclic voting body confronts three or more options at once, and we were able, with very little contrivance, to cast all congressional choices as pairwise. In other contexts one might have to invoke restrictive spatial models or debatable solution concepts for cooperative voting games.
The most immediate payoff is empirical, even if one’s ultimate goal is normative. For the constitutional game forms of Latin America are distinctively designed to encourage or discourage certain observable results. For example, even if only absolute vetoes are in the offing, the combination of simple-majority override and Latin American parliamentary law prevents inter-branch deadlock without emasculating the President. The observable result should be no inter-branch deadlock but still a President active in the bill-to-law process. Again, the broad constructive veto with sendback vote, especially under Form 4, should encourage President and Congress to act as bargainers who usually reach agreement – but are occasionally punished by voters for holding out to the bitter end. By contrast, Form 2 should occasion comparatively frequent deadlocks that hardly anyone likes but for which neither branch is the consensus culprit.

Our constitutional games back up empirical research with predictions that are not only surprising but based on well-defined underlying processes. Game-theoretic models do that too, but our games are real, not fancied, the creatures of actual institutions rather than hypothetical processes. For that reason, our initial findings buttressed by empirical research can inform the evaluation and choice of institutions.

REFERENCES


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