

## PRESIDENTIAL CONDITIONAL AGENDA SETTING IN LATIN AMERICA

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PRESIDENTIAL veto powers have been studied at both the theoretical<sup>1</sup> and the empirical<sup>2</sup> levels. Several authors have also examined veto powers to compare the influence of presidents across political systems.<sup>3</sup> One significant procedural advantage has escaped scholarly scrutiny, however: the ability to make positive suggestions about vetoed bills. Presidents in most Latin American countries, even in the ones that can have their veto overridden by a simple majority of Congress like Peru and Venezuela, have the power to make amendatory "observations." Presidential observations are positive changes introduced in a particular bill after final passage by Congress. These new amendments are returned to Congress for one final round. In most countries amendatory observations require a simple majority to be accepted, but sometimes they are enacted automatically unless a qualified majority votes to reject them. Our argument is that this understudied presidential prerogative is a form of "conditional agenda-setting power";<sup>4</sup> that is, it enables the president to introduce a last proposal that can mitigate

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<sup>1</sup>Thomas H. Hammond and Gary J. Miller, "The Core of the Constitution," *American Political Science Review* 81 (1987); Charles M. Cameron, *Veto Bargaining* (New York: Cambridge University Press, 2000); Keith Krehbiel, *Pivotal Politics* (Chicago: University of Chicago Press, 1998); Charles M. Cameron and Nolan McCarty, "Models of Vetoes and Veto Bargaining," *Annual Review of Political Science* 7 (June 2004).

<sup>2</sup>Nolan McCarty and Keith T. Poole, "Veto Power and Legislation: An Empirical Analysis of Executive and Legislative Bargaining from 1961 to 1986," *Journal of Law, Economics and Organization* 11, no. 2 (1995). Robert J. Spitzer, *The Presidential Veto: Touchstone of the American Presidency* (Albany: SUNY Press, 1988).

<sup>3</sup>Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (New York: Cambridge University Press, 1992); Lee Kendall Metcalf, "Measuring Presidential Power," *Comparative Political Studies* 33, no. 5 (2000).

<sup>4</sup>George Tsebelis, "The Power of the European Parliament as a Conditional Agenda-Setter," *American Political Science Review* 88, no. 1 (1994).

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$\geq 2/3$  of votes (concurrent houses).<sup>14</sup> The stylized game generated by these rules appears as form 3 in the appendix. If Congress fails to override, X becomes law.

The fourth group includes four countries where the president has a block veto and the ability to attach amendatory observations: Nicaragua, Venezuela, Peru, and El Salvador.<sup>15</sup> In all four countries a simple majority may accept the amendatory observations introduced by the executive (Y), and if no vote is taken the status quo prevails (SQ). The override threshold is  $>1/2$  members in Nicaragua and Peru, and  $>1/2$  of votes in Venezuela.<sup>16</sup> Within this group we find the only Latin American country that has a different majority for each type of veto: El Salvador requires  $\geq 2/3$  of votes to override a block veto but  $>1/2$  members to override an amendatory observation. Form 4 shows the game tree generated by these procedures.

The fifth group includes Bolivia, Costa Rica, and Mexico.<sup>17</sup> As in the prior procedure, presidents can exercise block veto and introduce amendatory observations with the status quo as the default alternative, but here the vote to accept or reject the amendatory observations is taken by a simple majority usually before an override vote that requires a qualified majority. The override threshold is  $\geq 2/3$  of votes in Bolivia (joint session of houses) and Mexico (from concurrent houses) and  $\geq 2/3$  of members in Costa Rica.<sup>18</sup> These procedures are summarized in form 5 in the appendix.

The sixth procedure is in place in Chile. It is similar to the prior one—the president has both block veto and amendatory power—but the default outcome is the nonvetoed parts of the bill. The counterproposal can be accepted or rejected by a simple majority, and a vote of  $\geq 2/3$  of members is needed to override.<sup>19</sup> This procedure lets the president craft two

<sup>14</sup> The veto has to be exercised within ten days of congressional passage in Argentina and within fifteen days in Brazil.

<sup>15</sup> For Nicaragua, see constitutional articles 142 and 143 and the internal rules of the National Assembly spelled out in Law 122 of 1991 article 58; for Venezuela, see constitutional article 214; for Peru, see constitutional article 108 and the internal rules of Congress articles 79 and 80; and for El Salvador, see constitutional article 137.

<sup>16</sup> The presidents of Peru and Nicaragua have fifteen days after a bill has passed to exercise a veto; the president of Venezuela has ten days and the president of El Salvador has eight days.

<sup>17</sup> For Bolivia, see constitutional articles 76–78; for Costa Rica, see constitutional articles 126–28 and the internal rules of the Legislative Assembly articles 181–83; for Mexico, see constitutional article 72; and see Eric Magar and Jeffrey Weldon, “The Paradox of the Veto in Mexico (1917–1997)” (Paper prepared for presentation at the 23rd International Congress of the Latin American Studies Association, Washington, D.C., September 6–8, 2001).

<sup>18</sup> All three countries give the president ten days to issue a veto and none impose a congressional deadline. The Costa Rican president cannot veto the budget.

<sup>19</sup> For Chile, see constitutional articles 70 and 117, the Organic Constitutional Law of Congress of 1990 articles 32–36, the internal rules for the Chamber of Deputies articles 167–72 and for the Senate articles 187 and 188, and personal communication with Carlos Carmona and Patricio Navia.