THE ORIGINS OF PRESIDENTIAL CONDITIONAL AGENDA-SETTING POWER IN LATIN AMERICA*

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"For a person who expects to lose on some decision, the fundamental *heresthetical* device is to divide the majority with a new alternative, one that he prefers to the alternative previously expected to win. If successful, this maneuver produces a new majority coalition composed of the old minority and the portion of the old majority that likes the new alternative better. Of course, it takes artistic creativity of the highest order to invent precisely the right kind of new alternative."[1]

William H. Riker, "*Lincoln at Freeport*"

Abstract: This paper examines the origins of amendatory vetoes in Latin America and shows why presidents' ability to present a redrafted bill after congressional passage gives them considerable power to affect legislation. The paper begins with a historical account that illustrates the workings of amendatory observations in nineteenth-century Latin America—the passage of the Electoral Law of 1874 in Chile. Next, it specifies the degree to which different constitutional procedures allow presidents to redraft legislation and shows why the power to introduce amendatory observations provides greater discretion than the power of the better-known block veto, regardless of override thresholds. Lastly, the paper traces the origins of amendatory observations back to the first wave of constitution writing that followed the wars of independence. Our findings challenge prior classifications of veto powers in Latin America and highlight the positive agenda-setting power afforded to the president at the last stage of the lawmaking process.

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1. Quoted from *The Art of Political Manipulation* (1986, 1). Riker coined the word *heresthetic* to refer to political strategy.

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Since their establishment almost two hundred years earlier, Latin American constitutions have undergone substantial changes through numerous reforms. Constitutional engineers often sought to accommodate transitory demands and imitate perceived institutional advantages; however, some basic features structuring the policy-making process remained unchanged. Some of the "sticky" institutional features introduced by constitutional writers in nineteenth-century Latin America are the president's formal power to introduce legislation on a broad range of policy areas and compel congressional action. Both innovations contributed early on to making Latin American governments substantially different from the U.S. model of separation of powers. Less scrutinized are other fundamental distinctions introduced during the first wave of constitution making: amendatory observations and partial vetoes. Such institutional innovations are still in place to this day. Ten Latin American constitutions allow presidents to introduce amendatory observations—additions, deletions, and substitutions—to vetoed bills and five others permit partial vetoes. These differences have implications for the type of legislation passed because they affect the agenda-setting power of presidents. When presidents are allowed to return a modified bill to Congress for a last round of voting, the strategic interaction between these actors becomes strikingly different than under the more familiar "package" or "block" veto. This authority gives presidents positive power to alter the choices faced by Congress. The literature on Latin American political institutions has not fully scrutinized the implications of these procedures and, as a result, several influential works have misclassified presidential powers.

In this paper we examine the origins of amendatory and partial vetoes and show why the ability to respond with a redrafted bill after congressional passage gives presidents considerable agenda-setting power. The paper is divided into three parts and a conclusion. We begin with a historical account that illustrates the workings of amendatory observations in nineteenth-century Latin America. We focus on the passage and subsequent presidential amendments to the Electoral Law of 1874 in Chile. The enactment of this bill was a watershed event in Chilean political development and a turning point in the history of suffrage expansion in Latin America. This account shows how a minority president, confronted with an overwhelming coalition seeking to enact extensive changes that would risk his political future, responds with an alternative version that eventually beats the original proposal. Although the main reforms are enacted, the president is able to use amendatory observations to mitigate the most damaging effects of the new electoral law.

The second part of the paper compares the power to make amendatory observations with the typical presidential veto in a stylized way.

We use set theory to specify the authority entrusted to presidents under different constitutional procedures and show why amendatory observations provide greater discretion than the power of the better-known block veto regardless of override thresholds. Our findings challenge prior classifications of veto powers in Latin America and highlight the positive agenda-setting power afforded to the president at the last stage of the lawmaking process.

The third part explores the origins of amendatory observations and default provisions. We trace the former procedure back to the first wave of constitution writing that followed the wars of independence. Seven Latin American countries adopted presidential amendatory observations in the nineteenth century, and all of them still have this prerogative despite the numerous constitutional reforms implemented during the last two centuries. Even rarer has been the "strong" default provision, where presidents can automatically promulgate the nonmodified parts of a vetoed bill, a procedure that originated in the early twentieth century in Argentina and Brazil. We conclude emphasizing the impact of these institutional procedures on executive-legislative relations and the fundamental differences between Latin American constitutional frameworks and the U.S. model of separation of powers.

AMENDATORY OBSERVATIONS TO THE ELECTORAL LAW OF 1874 IN CHILE

The electoral reform of 1874 marked a turning point in Chile's political history. It led to the extension of suffrage rights and included provisions to strengthen the secret ballot, regulations for voter registration and ballot counting, as well as changes to the winner-take-all method used for electing members of the Chamber of Deputies and municipal authorities. Its passage contributed to a sharp increase in the number of voters and limited presidential control over the electoral process (Valenzuela 1985). The electoral law was part of a series of major institutional reforms enacted during the administration of President Federico Errázuriz (1871–1876). Although Chilean presidents enjoyed several advantages in the period prior to suffrage extension, they were still forced to bargain with Congress and to compete electorally with organized opposition (Scully 1995). The passage of the electoral reform and the subsequent amendatory observations highlight the relevance of institutional and partisan variables in the give-and-take that characterized legislative politics during this period of Chilean history. This account shows how President Errázuriz used amendatory observations to mitigate the damaging effects of unwanted electoral changes while still preserving outcomes that a majority of Congress preferred to the status quo. More generally, it shows how constitutional prerogatives allow Latin American presidents to play a key legislative role.

President Errázuriz had been elected in 1871 with the support of the Liberal-Conservative Alliance, which won a majority in both chambers of the Chilean Congress. The coalition originally formed during the late 1850s and first entered the government during the prior administration of President José Joaquín Pérez. The opposition was made up of the anticlerical Radical Party, a few Nationalists and reformist Liberals. While in power, the Liberal-Conservative Alliance was often strained by ideological differences and eventually fell apart after the midterm elections of 1873, divided over legislation limiting the power of the Catholic Church.[2] After the Conservative departure from the governing coalition, President Errázuriz lost majority support in both chambers of Congress and became more vulnerable to hostile legislation.

The breakup of the governing Liberal-Conservative Alliance created a unique opportunity for the opposition to pass the electoral reform that it had long sought (Scully 1995; Valenzuela 1985, 1977). At this point in time, electoral participation was restricted by income requirements and president-controlled municipalities exerted control over voter registration and electoral oversight. Over time substantial opposition to the status quo had gathered, some electorally motivated and some ideological. The Radicals had always been ardent supporters of suffrage expansion. The Conservatives, in contrast, changed their prior stand after leaving the governing coalition and joined the Radicals in their attempt to reform the electoral rules. As members of the governing coalition the Conservatives had benefited with favorable candidacies on official party lists, but since they moved to the opposition their electoral survival had become threatened. Conservatives also seemed to have anticipated electoral benefits from suffrage expansion in rural areas (Valenzuela 1985).

The most relevant changes proposed in the electoral reform bill included (1) the elimination of property and income requirements for voter registration,[3] (2) changes in the entity in charge of voter registration procedures, and (3) new rules for Chamber of Deputies and municipal government elections. By 1874, wider suffrage rights were not a matter of intense bargaining. The latter two issues, however, dominated congressional debate and interbranch negotiations. These changes challenged the president's control over the electoral process by reducing his influence over congressional candidates and municipal politics.

2. The president favored legislation lifting religious requirements that restricted access to public cemeteries, began to discuss the legalization of civil matrimonies, and endorsed making religious education optional in public schools. These positions angered the pro-Church Conservatives and contributed to the breakup of the majority coalition (Valenzuela 1985, 58).

3. The reform actually imposed the legal subterfuge of "presumption by right": any male over twenty-one years of age who could read and write was presumed to have the property and income requirements needed to vote.

Under provisions established in 1854, executive appointees dominated local policy making. A presidentially appointed governor was the presiding officer and a full voting member in all the municipalities under his jurisdiction, made all municipal appointments, and could only be challenged by an oversight board that served at the pleasure of the president (Valenzuela 1977, 184). In each district the body in charge of voter registration, called Mesas Calificadoras, was composed of individuals appointed by municipalities under the watchful supervision of national authorities (Valenzuela 1996). In addition, the *complete* (plurality) list system of voting, in which the list with the most votes would win all the seats in the district, prevented substantial representation for smaller opposition parties and benefited the president's party.

Two provisions advanced by leaders of the Conservative Party and included with the suffrage expansion bill sought to alter these presidential privileges (Valenzuela 1985, 103). The first changed the method of appointing members of the Mesas Calificadoras, taking this power away from municipalities and giving it to the largest taxpayers in the district. This shift in power from president-dominated municipalities to wealthy local figures had begun in 1869, when the latter took control of the district oversight commissions (Juntas Revisoras) from municipal authorities. The second provision sought to change the electoral rules for deputies and municipal governments from a plurality list to cumulative voting. This method would have given voters as many votes as available seats. Dropping the winner-take-all method of plurality lists was very appealing to opposition parties but threatening to the president, traditionally the main beneficiary.

President Errázuriz and the Liberal Party were solidly in favor of keeping the municipality as the core of electoral power. They argued that switching to cumulative voting and concentrating registration and oversight in the hands of major contributors would be highly detrimental to political competition (Encina 1954, 1307). The minister of interior went to Congress to lobby against the changes and accused the Juntas of benefiting only the wealthy (Valenzuela 1985, 103). Presidential control over the electoral process gave the opposition in Congress a short window of opportunity to act, as the future election would likely give the next president another comfortable majority able to stop such drastic changes.

Congress passed the electoral reform in the first week of November 1874, three years after it was introduced. The final version, written in the Senate, included both controversial reforms: cumulative voting and voter registration reform. A few days later, President Errázuriz vetoed the bill and returned it with eleven amendatory observations. The changes made by Errázuriz included modifications and additions to the congressional bill. Although some amendments were minor revisions to the text, others introduced substantive changes. The president used

this constitutional prerogative to temper the influence of the largest taxpayers over voter registration, mitigate losses from changes in the electoral rules, and change some detailed procedures deemed vulnerable to fraud.[4] Congress had the option to accept all or some of the changes, abandon the bill altogether, or try to override the veto the following year (as rules limited the possibility of an override vote of two-thirds majority until the following sessions).

The president found receptive ears among Radicals, who were getting the suffrage expansion they had long sought and could credibly bargain for broader policy-making influence. In an angry floor speech, opposition Senator Marin accused the government of playing "sinister" politics by taking advantage of congressional divisions to procure support with promises of electoral payoffs. Senator Marin argued that accepting the president's amendments implied a serious setback to the reform and stated that he publicly resented the suggestion that these changes were an "olive branch" from the executive.[5] Despite opposition by Conservatives and some Nationalists, President Errázuriz was able to build majority support behind most of his amendments.

The most relevant improvement on the part of the president referred to municipal elections. Congress accepted an amendatory observation that limited the *cumulative* system to elections only for the Chamber of Deputies, while introducing the *incomplete list* system for municipal elections. Such procedure allotted two-thirds of the open seats to the plurality list and one-third of the seats to the party list coming in second. This presidential amendment not only preserved the influence of national authorities over the composition of party lists and continued to overrepresent the plurality winner, but it also provided a channel for minority representation superior than the status quo (i.e., plurality list). Members of the Chamber of Deputies had been sympathetic to this alternative method during congressional debate, but the Senate was not as supportive and, at the behest of the Conservatives, preserved the cumulative voting in the bill originally presented to the president. The final acceptance of this amendatory observation was a significant achievement for Errázuriz, preserving his influence over municipal politics, a crucial arena in Chilean political competition during this period.

With other amendments the president intended to limit the authority of the largest taxpayers over voting registration. One change prohibited those serving in the electoral oversight Juntas from also serving in the registration Mesas. The passage of this amendment would have limited

4. The minister of interior, who had an active participation in the debates of the bill, admitted executive opposition to the secret vote but did not seek to observe that section.

5. *Diario de Sesiones*, Chamber of Deputies and Senate, extraordinary sessions of 1874, 24th session.

the pool of candidates and led many towns to recruit individuals of lower economic standing. According to opposition Senator Marin, the president was well aware of the limited number of large taxpayers in many districts and was seeking to give men vulnerable to municipal and gubernatorial authorities significant influence over electoral registration.[6] Finally, a majority in Congress rejected this presidential observation, placing no further restrictions on Mesa members.

Despite his failure to limit the role of large taxpayers, the president succeeded with a less drastic modification that established voter registration in the most densely populated towns. The original bill gave the largest taxpayers the authority to decide where citizens had to register to vote, something to which the government strongly objected. Other modifications that the president proposed and Congress accepted sought to avert electoral manipulation by eliminating requirements for precertified envelopes and by preventing election-day voting boards (Juntas Receptoras) from disqualifying ballots. Congress also accepted some minor corrections updating certain articles of the bill after another recent law eliminated restrictions on tax debtors.

We have summarized the information on the number and type of presidential observations in table 1. The second column identifies the modified articles of the bill, the third column classifies the type of amendatory observation, the fourth column indicates the congressional response, and the last column summarizes the content of the amendment.

With ten of the eleven observations accepted, the electoral bill was promulgated the second week of November of 1874. Its passage was a significant triumph for many government opponents; however, the president used his right to introduce amendatory observations to divide the opposition and mitigate some of the most drastic changes. Had the president chosen to veto the bill in its entirety (with a block veto) the evidence suggests he would had been overridden or been doomed to face a recalcitrant congressional opposition until the next election. Instead the executive responded with several amendatory observations that sufficiently reshaped the content of the bill to moderate some of its most damaging aspects while still presenting a version that could enjoy broad support among members of Congress.

The passage of the Electoral Law of 1874, a watershed event in Chilean political history, was a goal long sought by several legislators that had broken away from the Liberal Party during prior decades. By conceding on suffrage extension and focusing on other undesired aspects of the bill, the president was able to shape the content of several important

6. Floor speech reproduced on the *Diario de Sesiones*, Chamber of Deputies and Senate, extraordinary sessions of 1874, 22nd session.

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Table 1 Chile, Presidential Veto to the Electoral Bill of 1874 (11 Observations)

Observation Number	*Bill Article*	*Observation Type*	*Floor Action*	*Summary*
1	2, 9	Delete sub-sections	Accepted	Corrections that delete electoral restrictions for tax debtors, which were eliminated in a recent constitutional reform.
2	8	Modification	Accepted	It took away the power of the Junta de Mayores Contribuyentes to decide the location of the agency in charge of voter inscription, and set it in the most populous towns.
3	9	Modification	Accepted	Makes a small correction in text due to the rearrangement of articles.
4	31	Modification	Accepted	Modifies the method of elections, changing the rule for municipal elections from cumulative to "incomplete lists." It also sets the number of substitute deputies.
5	32	Modification	Accepted	Adds a provision for the election of some of the public officials (*vocales*) involved in the election.
6	33	Modification	**Rejected**	Imposes limitations on who can participate in the Mesas Registradoras, prohibiting members of oversight Juntas from participating.
7	35	Delete sub-sections	Accepted	Modification that eliminates the use of pre-approved envelopes to introduce ballots in elections
8	41	Modification	Accepted	It states that the ballot should be secret and on white paper with no markings.
9	46	Delete sub-sections	Accepted	By deleting a subsection it takes away the power of the Juntas Receptoras to decide the disqualification of certain ballots in an election.
10	46	Modification	Accepted	Modification that changes reference to preapproved envelopes to ballots (related to observation #8).
11	51	Modification	Accepted	It modifies the procedure by which electoral results are communicated. The president should be now formally notified and it erases the need for signatures from every member counting the ballots.

Source: *Diario de Sesiones* from the Chamber of Deputies and the Senate, for the extraordinary sessions of 1874.

articles.[7] As Riker (1986) noted in the quotation that begins this paper, the ability to introduce a last alternative that can carry the support of a new majority is a powerful political device. Chilean President Errázuriz took advantage of this constitutional prerogative to make substantial gains despite having recently lost his legislative majority and despite Congress's chance to override a veto.

The history of the electoral reform of 1874 is not only a tale of political manipulation by a savvy president, but it is also a revealing case of agenda-setting power. It shows how a (losing) president can use positive agenda-setting power—the privilege to bring a new or amended bill up for consideration before Congress—to significantly influence policy outcomes. The next section examines amendatory observations in a stylized way, specifying the advantages it offers the president and the differences from the better-known block veto.

PRESIDENTIAL AGENDA-SETTING: AMENDATORY OBSERVATIONS VERSUS THE BLOCK VETO

Since the early nineteenth century, Latin American constitutions have allowed for block vetoes and amendatory observations. A block veto is an executive rejection of the entire bill, a prerogative all presidents have. Nowadays, only three countries—Honduras, Guatemala and the Dominican Republic—limit their presidents to just block-veto power. All others also give the presidents the alternative of returning a modified version of a bill for a final congressional vote. The president can introduce negative (apply partial veto thereby deleting parts of the bill) or positive (introduce amendatory observations to replace vetoed parts of the bill) changes.[8] More noteworthy and less scrutinized than the partial veto has been the power to make amendatory observations, which are often combined with a high override threshold.

Institutional analyses have highlighted the power of Latin American presidents to initiate legislation, similar to executives in parliamentary regimes (Cox and Morgenstern 2002; Londregan 2000; Shugart and Carey 1992; Wilmert 1911).[9] The power to issue an amendatory observation,

7. Errázuriz and the Liberals soon regained a majority (in an alliance with the Radicals), and engaged in a period of rapid reorganization, which contributed to the wide support received in the election of 1876.

8. The partial veto in Latin America differs greatly from the line-item and item-reduction vetoes in place in several states of the United States. These latter procedures are limited to expenditures in budget bills while the Latin American procedures apply to most legislation and to any part of the bill.

9. The Argentine Constitution of 1819 was the first to give the President such formal power, a prerogative that other countries would rapidly adopt through the 1820s. By

the president's last chance to put forward a compromise, has received little attention from institutional analyses, however. Moreover, several influential works have provided rankings of presidential powers that depend heavily on veto prerogatives, but these rankings give great weight to the block veto while ignoring amendatory observations (e.g., Metcalf 2000; Shugart and Carey 1992; Shugart and Haggard 2001). As we show below, amendatory observations give presidents greater discretion over legislation than the typical block veto, regardless of override majority.

Let us first consider the case of a president who has a *block veto* that can be overridden by a qualified majority of legislators. Such a president can restrict legislative outcomes to a specified set of proposals: the set of alternatives that can defeat the status quo by a qualified majority (call it Q, the qualified majority of the status quo Q(SQ)). If the set Q(SQ) is empty, then the president could successfully veto any congressional initiative—no proposal would carry the necessary majority for a successful override. When the override majority is two-thirds of votes, this means that the president needs the agreement of over one-third of members of Congress to successfully defend the status quo. Many works on executive-legislative relations highlight the fact that a president has enough support in Congress to make override attempts futile (Nacif 2002; Negretto 2002; Pérez Liñán 2002). The "negative" power of a block veto gives the president a notable tool to preserve a more favorable status quo and restricts the set of proposals that could pass to those in Q(SQ). However, the president cannot select the most favorable proposal among those in Q(SQ)—he is restricted to saying yes or no to the congressional proposal.

Figure 1 provides a visual illustration of the block veto. We have the status quo policy denoted *SQ*, and two different sets running through it: the smaller subset denoted Q(SQ) includes proposals that defeat the status quo with the support of a qualified majority and the larger set includes proposals that beat SQ by a majority (the winset of the status quo W(SQ)). So, $Q(SQ) \subseteq W(SQ)$. If Congress passes bill *B*, shown in figure 1, and the president responds with a block veto, the necessary qualified majority will override him. If instead Congress passes another bill from the area W(SQ) – Q(SQ), such as bill *B'*, then the block veto would succeed and the status quo would be the final outcome. In the latter case not enough members of Congress prefer the bill to the status quo, rendering the override futile. A block veto that can be overridden by a simple majority merely allows the president to force a re-vote on the bill.

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mid-nineteenth century all presidential constitutions outside the United States gave the executive such power.

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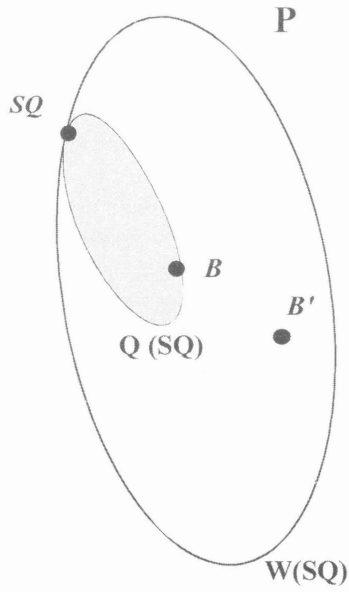

P = President's position
SQ = status quo
B = bill
B' = alternative bill
W(SQ) = set of alternatives that defeat the status quo by a majority
Q(SQ) = set of alternatives that defeat the status quo by a qualified majority

Figure 1 Block Veto

Let us now consider partial vetoes and amendatory observations. The first fundamental difference between block veto and these alternative procedures is that in the latter it is the president who makes a counterproposal to Congress. As long as the president properly targets his redrafted version of the bill, he would be successful. We illustrate the logic in figure 2. In this figure we also show a congressional proposal *B* and the president's ideal point P, and we add two more sets—the set of proposals that defeat *B* by a majority (the winset of *B*, denoted W(B)), and the set of proposals that *B* cannot defeat because it lacks the support of a qualified majority (the set not overridable by *B*, denoted NQ(B)). These additional sets are necessary because now the president is the one that responds to congressional proposal *B*. The precise set from which presidents can choose a successful alternative varies with the rules.

Assume that the president can make an *amendatory observation* (that is, changing a congressional bill by adding whatever he wants to it or

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deleting items from it). If Congress passes bill *B* the president is now allowed to respond with an alternative proposal of his choosing. For instance, under the rules in place in Chile during most of the nineteenth century, the president could successfully respond with counterproposal *C*, located in the intersection of the winset of the status quo and the set of points that cannot be overridden by *B* (W(SQ) ∩ NQ(B)). According to the Constitution of 1833, amendatory observations need a simple majority to pass, while the override threshold to insist on the original congressional bill is two-thirds of the votes (a year later). Consequently, Chilean presidents can select their most preferred alternative from the set W(SQ) ∩ NQ(B), such as point *C* in figure 2. Nowadays, presidents in Mexico, Costa Rica, and Bolivia have a similar procedure, with the difference that override votes can be taken right away. It should be noted that although amendatory observations provide the president with the power to mitigate unwanted changes, the ultimate outcome to most legislators is an improvement over policy otherwise in place and, to at least one-third of them, an improvement over the original congressional bill.

More surprising to many scholars are contemporary rules in Uruguay and Ecuador, where the president's amendatory observations are automatically enacted after a short period of time unless a qualified majority votes to override (three-fifths in Uruguay and two-thirds in Ecuador). Under this procedure, the president could select counterproposal *D* from the set NQ(B), which includes those proposals that cannot be overridden by *B*. The default rule allows presidents in these two countries to enact his redrafted version even though only a minority of legislators may prefer it to the original bill. In Uruguay the president needs the support of just over 40 percent of members to have his proposal prevail, and in Ecuador just over 33 percent.

Four Latin American constitutions that nowadays require just a majority vote of Congress to override a presidential veto—El Salvador, Nicaragua, Peru, and Venezuela—also permit amendatory observations. Either proposal needs a majority vote to become enacted otherwise the status quo prevails.[10] Under these rules, the president could choose, for instance, point *E* in figure 2, which beats both *B* and *SQ* by a majority. This procedure is quite different from the one in place in Uruguay and Ecuador because in these four countries the president only succeeds if he is able to find an alternative that makes him and a congressional majority better off than the original bill and the default outcome.

When presidents have the power to introduce *partial vetoes* the redrafted version of a bill cannot include any new text. Amendatory capabilities give presidents a wider set of options that are always as good as

10. In El Salvador the override majority for the block veto is two-thirds of voters, while the override for an amendatory observation is a majority of members.

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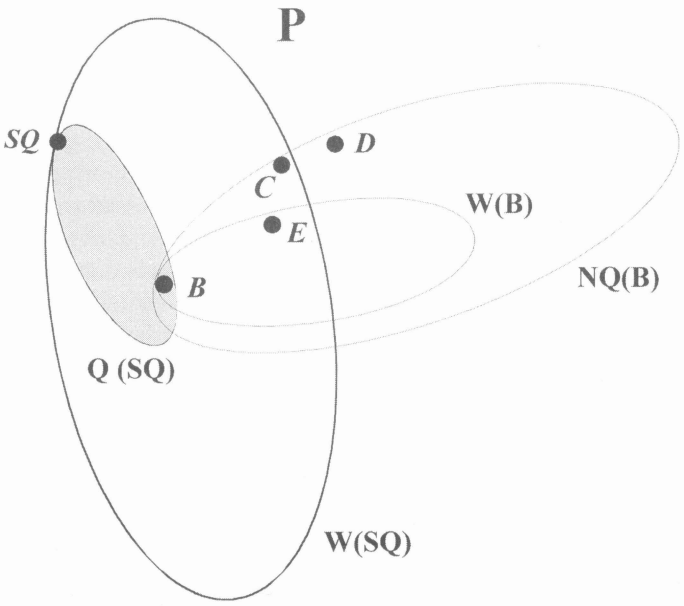

P	=	President's position
SQ	=	status quo
B	=	bill
C, *D*, and *E*	=	alternative bills
W(SQ)	=	set of alternatives that defeat the status quo by a majority
Q(SQ)	=	set of alternatives that defeat the status quo by a qualified majority
W(B)	=	set of alternatives that defeat B by a majority
NQ(B)	=	set of alternatives that B cannot defeat because it lacks a qualified majority

Figure 2 Amendatory Observations

or better than any strategic deletions made under a partial veto. Partial vetoes still give the president substantial discretion, particularly when the non-deleted parts are automatically enacted, as is the case in Argentina and Brazil. In these countries a successful override vote by Congress restores the sections deleted by the president.

The fact that members of Congress may know the preferences of the president and thereby anticipate a possible veto does not make the prerogative inconsequential; it demands that successful bills incorporate presidential views. As we have shown, Congress has to consider a wider set of options when the president can introduce amendatory observations than when the authority is limited to a block veto. The requirement of a qualified majority vote to overrule presidential amendatory observations simply widens the set of alternatives that beat the original congressional bill. What needs to be underlined is that even when a

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simple majority is the override threshold, the president can still select from among a wide set of options (the winset of the bill proposed to him by Congress, and the winset of the status quo). The advantage of a presidential veto subject to majority override, which we emphasize, stands in contrast to the conventional wisdom on veto powers.

The right of many Latin American presidents to make counterproposals is part of a wider set of institutional prerogatives that provide political actors with "conditional" agenda-setting power (Tsebelis and Alemán 2003). The power to shape the legislative agenda is conditional because if the president goes too far with a counterproposal then either Congress overrules or the status quo prevails. If the president in figure 2 proposed his own ideal point (P), Congress would override it.

To summarize, block vetoes on the one hand and amendatory observations and partial vetoes on the other provide the president with markedly different authority. Presidents with block veto authority can only exercise negative power. The set of policies that presidents can protect under the block veto are those in Q(SQ). By contrast, presidents with partial vetoes have negative, and with amendatory observations have positive, power to shape an alternative version of a bill. We have shown how partial vetoes and amendatory observations, even under majority override, allow the president the power to select responses from a wide set of options.

The historical example that opened this paper, the theoretical analysis presented above, and anecdotal evidence from many Latin American countries, all indicate that amendatory observations are highly relevant for executive-legislative relations. However, the literature on Latin American political institutions has not scrutinized this presidential prerogative. This oversight has contributed to problematic rankings of presidential powers, which give considerable weight to override thresholds while ignoring the power to introduce amendatory observations.[11] Many works have missed this positive power given to the president in most Latin American constitutions. The next section explores the origins of this presidential prerogative.

THE HISTORICAL ORIGINS OF AMENDATORY OBSERVATIONS AND THE "STRONG" DEFAULT PREROGATIVE

For many constitutional experts, the early development of Latin American governmental institutions was very much influenced by the U.S. model (Miller 1997; Rapaczynski 1990; Thompson 1991). Several of the first constitutions written in the newly independent nations certainly borrowed from the constitution of their northern neighbor (e.g., Venezuela 1811, Mexico 1824, Argentina 1853, Brazil 1891). The prestige and

11. See for instance Shugart and Haggard (2001) and Metcalf (2000).

almost five successful decades of a revolution-born government made it inevitable that Latin American nations should look to the United States in establishing their own governments (Fitzgibbon 1948). Although federalism, individual rights, and a written constitution were significant elements commonly adopted in Latin America's early constitutional experiments, frameworks for political representation and intrabranch relations had sufficiently distinct characteristics (Leiras and Zimmermann 2003). The debate over the influences faced by early constitutional engineers continues to this day (Aguilar Rivera 2000, 2002; Gargarella 2002). Although we do not address in this paper the original intentions of the elites who engineered the founding republics, we strongly believe that early on the institutional framework produced in Latin America was substantially different to the U.S. model, particularly in regards to the president's formal powers to affect the legislative process. Current institutional analyses of legislative politics in Latin America have made this point about the contemporary democratic period (Cox and Morgenstern 2002 Shugart and Carey 1992); here we show how the most fundamental distinctions originated considerably prior to the most recent period of democratization and constitutional reforms.

The first wave of constitutional engineering in Latin America (in the 1810s and 1820s) introduced several substantial differences from the traditional U.S. model of separation of powers. Constitutional prerogatives such as veto powers, the formal (and sometimes exclusive) right to introduce bills, and the authority to shape the content and timing of the congressional agenda contributed to making Latin American presidents active players in day-to-day legislation since the early nineteenth century. The Argentine Constitution of 1819 was the first to give the president the formal power to introduce legislation in almost all matters of law, a prerogative that other countries would rapidly adopt throughout the 1820s. By the mid-nineteenth century all Latin American constitutions had this procedure in place. According to Wilmert (1911), this move sought to incorporate what was seen as a fundamental advantage of the British form of government vis-à-vis the U.S. model of separation of powers. By the end of the nineteenth century, Latin American presidents, like their counterparts in the British government, were the chief proponents of most major policy proposals, often sending cabinet ministers to defend and amend legislation in congressional debates.

Another constitutional difference established early on related to the president's authority to alter legislation after passage by Congress. Although some constitutional experiments followed the U.S. constitution more closely, at least in terms of veto prerogatives (e.g., that of Argentina in 1819, and Venezuela in 1811), governments began to adopt substantial innovation in the 1820s and 1830s. None of the constitutions that the literature credits as having influenced early Latin American

constitutional writers [United States (1776), France (1791, 1793 and 1814), Cadiz (1812)] gave the executive the ability to introduce amendments to vetoed bills or to issue partial vetoes. Below we highlight the origins of presidential amendatory observations and the "strong" default prerogative (strong because congressional inaction implies acceptance of the president's modified version of the bill).

Amendatory Observations

The first substantial innovation in veto prerogatives was originally introduced by independence hero Simón Bolívar. In 1826 he was given the task of writing a constitution for the nascent nation of Bolivia. In the document he single-handedly wrote, Bolívar introduced a highly relevant innovation, the ability of presidents to add amendments to vetoed bills. The 1826 constitution gave the president the right to introduce remarks or "observations" before returning vetoed bills to Congress for a final reconsideration. Congress could adopt the modified version returned by the president, or vote to insist on the bill as originally passed. To accept or override the president's version, Congress was not required to reach any special majorities. The constitution did not establish a deadline for a congressional vote, and the default alternative in case of inaction was the status quo (i.e., similar to current procedures in Venezuela, Peru, Nicaragua, and El Salvador).[12]

In a historic speech to the Congress of the nascent Bolivia, Simón Bolívar acknowledged those documents and practices that inspired his institutional engineering.[13] Although he pays the usual tribute to the U.S. constitution, North American governmental norms, and ancient Greeks and Romans, Bolívar emphasizes the influence of the lesser-known Haitian Constitution of 1816. Although Bolívar publicly acknowledged that the section on executive powers was taken from the constitution Alexandre Pétion had written for Haiti in 1816, amendments to vetoed bills were absent from the Haitian constitution. The Peruvian Constitution of 1826, also written under Bolívar's direction, replicated presidential prerogatives found in the neighboring nation. As written in these two constitutions, the executive veto became a motion of reconsideration, introducing the possibility of presidential amendments under simple majority override.[14]

12. The document sought to establish a complex system of four branches and a bicameral legislature, with a president for life and a council of Catholic priests.

13. A copy of the speech can be found at the following website: http://www.unsl.edu.ar/librosgratis/gratis/bolivia.pdf.

14. A version of a presidential veto with a simple majority override was later established in the French Constitution of 1875 (and more recently, in some former communist countries of Eastern Europe).

The next country to permit presidential amendments to vetoed bills was Chile, two years after Bolívar's innovation. At this time the Chilean Congress entrusted Spanish political consultant and literary figure, Joaquín de Mora the job of helping draft a new Chilean Constitution. Joaquín de Mora was a Spanish writer and intellectual and probably the first foreign political consultant to be hired by several South American governments in the early nineteenth century. He worked in France and England before moving to Argentina, invited by President Bernardino Rivadavia. De Mora had an active political life in South America and was very well known among the region's political elite (Encina 1954).[15] He was the leading consultant to the committee that wrote the 1828 constitution. The presidential veto engineered by de Mora was specific enough to differentiate, for the first time, between mere objections and amendatory "observations." The rules allowed the president to rewrite a vetoed bill before returning it to Congress. The override threshold was a simple majority, as it was established in the Bolivian and Peruvian constitutional experiments. The reasons for choosing this procedure or the thoughts of de Mora about presidential vetoes are again absent from the historical record.

The three constitutions that first provided presidents with the authority to introduce amendments to vetoed bills were short-lived experiments that anticipated what was to become a decade of very active constitutional writing across the newly independent Latin American nations. The ability to introduce amendatory observations was established soon after in four additional countries: Uruguay (1830), Ecuador (1843), Costa Rica (1848), and Mexico (1857). These developments came at a time in which many influential intellectuals were beginning to leave a lasting imprint on Latin American constitutionalism (Gargarella 2004). In addition to Bolívar and de Mora, other well-known institutional engineers included moralists like Juan Egaña and his son Mariano in Chile, revolutionaries like José Gervasio Artigas in Uruguay, Catholic priests like Bartolomé Herrera in Peru and José María Luis Mora in Mexico, liberals like Florentino González in Colombia, Juan Bautista Alberdi in Argentina, Francisco Xavier de Luna Pizarro in Peru, and Vicente Rocafuerte in Ecuador, as well as reputed academics like Venezuelan Andrés Bello. All of them had strong views regarding the institutional framework of presidential systems and all made salient contributions to constitutional thought but, at this early stage in the history of presidentialism, none appear to have concentrated on the details of amendatory observations or partial vetoes.

15. After working in Chile, de Mora moved to Peru and Bolivia, where he ended up serving in the executive branch as a cabinet minister.

Although most of the constitutions written during the first decades of independence did not survive long, the Chilean Constitution of 1833 was to remain as one of the most stable in nineteenth-century Latin America. It gave the president the ability to introduce amendatory observations, and specified his right to initiate bills and convene extraordinary sessions of Congress to attend exclusively to those matters selected by the president. The 1833 constitution was in place until 1925 (with important reforms since 1891) and was to become a source of inspiration for institutional designers in the second wave of constitution making that began in the middle of the nineteenth century.[16]

Under Chile's procedures (in place from 1833 to 1893) the president could "correct or modify" a congressional bill, which would then return to Congress for a last round of voting. According to Leiras, during the constitutional convention all versions of the veto circulating during debate preserved the prerogative instituted in the 1828 constitution.[17] The salient differences centered on the override procedure and not on the president's power to introduce amendments to vetoed bills. In the final version, Congress could accept the president's amended bill by a simple majority or attempt to override it. The override procedure was cumbersome. The bill had to be passed again within the following two years (no special majorities) after which it could be vetoed again. After the second veto, Congress could override with a qualified two-thirds majority vote in each chamber.

Osvaldo Milnes (1918), in one of the first published books on the executive veto written by a political scientist in Spanish, highlighted the significance of amendatory observations in the Chilean Constitution of 1833. He was particularly concerned with the germaneness of the presidential additions, and praised the constitutional reform of 1893 that introduced an override requirement (two-thirds majority) and a later norm (discarded in the 1920s) of treating presidential observations as a new bill and not an amended version to be voted up or down.[18] Milnes' work advances a normative argument for limiting

16. Argentine scholar Juan B. Alberdi published in 1852 one of the first comparative studies of Latin American constitutions. In this work, he referred to the Chilean constitution of 1833 as "superior in its writing to all others in South America, sensible and profound in regards to the executive branch . . . a mixture of the best the colonial regime had with the best of the modern regime from the first constitutional period" (1997, 39).

17. In regards to the veto procedure, the only contention was whether the override vote could be taken immediately after the veto, or a year later. Personal communication with Marcelo Leiras, 26 May 2003).

18. The actual meaning of "corrected or modified" in the amendatory observation was a matter of discussion among constitutional scholars and legislators during the nineteenth century in Chile. See for instance *La Constitución frente al Congreso* by Jorge Hueneeus (1890), a professor of comparative constitutional law in the department of law and political science at the University of Chile.

amendatory observations and commended nineteenth-century presidents for having restrained themselves in the use of such a powerful and controversial prerogative.

After an interlude of three decades, the amendatory observation was reintroduced in the Chilean Constitution of 1925 this time with the option of an immediate two-thirds override.[19] In the following decades the president made use of the veto often and took advantage of procedures allowing omnibus legislation to make drastic additions to vetoed bills. A former speaker of the Chamber of Deputies sarcastically noted that, "[Chilean presidents] as a general rule have taken advantage of the veto to legislate about the mundane and the divine" (Elorza 1971, 47). The ability to introduce non-germane issues (and have them voted up or down under closed rules) became known as the *veto miscelaneo*. This practice and omnibus legislation in general were made unconstitutional after reforms passed in 1970, more than fifty years after Milnes' study. The Chilean Constitution of 1980, still in place to this day, explicitly forbids non-germane amendments to a vetoed bill.

Another country that adopted amendatory observations early in its history is Uruguay. This presidential prerogative was introduced in the Constitution of 1830, Uruguay's first constitution as an independent republic. It was specific enough to distinguish between presidential objections and modifications. According to the rules, Congress could insist on the original bill or accept the presidential version if it reached a two-thirds majority vote, otherwise nothing would be enacted.[20] The Constitution of 1934 specified that presidential observations could be accepted by a majority vote, whereas overrides would still require qualified majorities to pass (Giménez de Aréchaga 1946).

The first Central American country to adopt amendatory observations was Costa Rica. It gave the president this prerogative in every constitution beginning with its first as an independent republic in 1848. Presidential amendments could be accepted by a majority vote, and nothing would be enacted if Congress did not respond to the president's veto (status quo as default). Although the constitution changed on several occasions, the amendatory observation provisions remain to this day. In 1859 the override majority needed to insist on the original congressional bill was reduced from three-fourths of members of Congress to two-thirds. The Constitution of 1949, still in effect, for the first time specified that the president could not veto the budget bill, formalizing what had been common practice. Nowadays, two other Central American countries give

19. It also established presidential urgencies (deadlines for a congressional vote on a bill deemed urgent by the president). This constitutional prerogative was soon introduced in other places.

20. In 1918 the majority for override or acceptance was reduced to three-fifths.

presidents the authority to issue amendatory observations to vetoed bills: El Salvador, which adopted the procedure in the Constitution of 1982, and Nicaragua, which incorporated this prerogative through a constitutional amendment in 1993.

Enactment Rules and the Default Alternative

Another important development regarding the executive veto began to take hold in the early twentieth century: the default promulgation of the president's counterproposal. This procedure is now in place in three countries that permit amendatory observations and two that permit partial vetoes. The automatic enactment of a presidentially revised bill is a highly consequential practice that is rarely clarified. When inaction on the part of Congress implies tacit approval of the president's redrafted version, the president has substantial discretion to affect outcomes, particularly when congressional rejection requires an override vote by a qualified majority. As we showed in the analytical section, such presidents only need the support of a minority of legislators to enact their redrafted version. Nowadays five Latin America countries—Argentina, Brazil, Chile, Ecuador, and Uruguay—have provisions for tacit approval of presidentially redrafted bills.[21] With the exception of Brazil, all others require qualified majorities to insist on the bill as originally passed by Congress.

Argentina first implemented "default enactment" of partially vetoed bills during the presidency of Hipólito Yrigoyen (1916–1922). This procedure allowed the president to promulgate into law those parts of the bill he did not delete with his partial veto. This interpretation of veto rules was not the result of a constitutional reform (the constitution was silent on this aspect) but following the president's first move in this direction, it became dubiously accepted. Since Yrigoyen, almost all presidents have made use of this power (Molinelli 1991). Until the 1940s, it was used occasionally and mostly on budget bills in which the president objected to some spending attached by Congress. Since Juan Perón's arrival to the presidency in the mid-1940s, the usage of the partial veto has been extended to other types of legislation. The Peronist Constitution of 1949, in place until 1955, gave formal status to the partial veto. After Perón's fall from power, the Constitution of 1853 was formally restored, but the partial veto with partial promulgation continued to be used. The occasional democratic governments that came to power after 1955 and until 1976 also made use of these procedures.[22] The constitutional reform of 1994

21. In Chile Congress has the option to stop such enactment by a majority vote.

22. Since 1983 the number of vetoed bills has grown markedly, particular after 1989, and their use has been much more creative.

formalized for the second time the practice of partial veto with promulgation of the non-vetoed parts of a bill.[23]

Brazil introduced the partial veto in 1926 through a constitutional reform to the Republican Constitution of 1891 (Mello Grohmann 2003). It had already been implemented at the state level for at least thirty-five years. Bahia (1891), Pará (1915 reform), and Ceará (1921 reform) allowed governors to partially veto the budget bills; Maranhão (1904 amendment) permitted partial vetoes for budget bills and military related legislation; and Minas Gerais (1920 revision), for all types of bills.[24] The main difference between the Brazilian and Argentine procedures has been the frequent changes in override thresholds and the specifications to what can be deleted in a partial veto. Prior to 1988, most Brazilian constitutions established a qualified majority for the override of partial vetoes. In the reform of 1926 the override threshold was set at two-thirds of votes, and except for the brief use of majority override between 1934–1937, it stayed that way until 1988. The Constitution of 1988, currently in place, reestablished majority override and specified the extent to which presidents can delete legislation using the partial veto. According to Lessas Bastos (2000), when presidents lacked restrictions, partial vetoes sometimes led to the deletion of words in ways that completely changed the original intent of legislation, something often mentioned in other countries that allow partial vetoes. Nowadays Brazilian presidents are the only ones in Latin America specifically prohibited from deleting isolated words with a partial veto.

Tacit approval has also extended to the president's amendatory observations, as the analytical section highlighted. So far, such procedures have been adopted in Uruguay (1967) and Ecuador (1998). According to the Uruguayan Constitution of 1967, if Congress fails to override within sixty days, the redrafted version of the bill (including all presidential amendatory observations) becomes law.[25] Since 1996 the deadline for overrides has been shortened to thirty days and the override threshold is three-fifths of votes in each chamber. Ecuador, which first adopted amendatory observations in 1843, recently (1998) introduced a reform that specifically made presidential observations the default alternative after thirty days unless Congress overrides with a two-thirds majority vote.

CONCLUSION

While much of the literature that examines the early constitutional development of Latin American countries is based on the thesis that

23. The Chilean Constitution of 1980 also allowed for the enactment of non-vetoed parts.

24. Personal communication with Gustavo Mello Grohmann, 2 April 2004.

25. According to Giménez de Aréchaga (1946), during the debate over the 1934 constitution there was a motion that sought to include the partial enactment of vetoed bills but failed on the floor of the convention.

nineteenth-century constitutions were inspired by and replicated the U.S. constitution, the institutional details indicate that Latin American presidents were given a significantly heavier arsenal for the creation of legislation. Amendatory observations are particularly helpful because they allow the president wide discretion to redraft the congressional proposal. The authority to offer a last alternative gives the president an opportunity to make a positive move to mitigate any unwanted provisions included in a bill passed by Congress. The analytical section explicated why amendatory observations give greater discretion to the president than block vetoes do (even if these vetoes require strong qualified majorities to be overruled), and the example from nineteenth-century Chile showed how President Errázuriz was able to use this institution to get his preferences incorporated in the electoral reform bill. Partial vetoes and amendatory observations are nowadays often used across Latin America and are one of the main weapons used by presidents to shape the content of policy proposals.

As a result of agenda-setting institutions that originated in the nineteenth century, Latin American presidents have significantly more authority in the legislative game than their U.S. counterpart. We agree with the view that Latin American presidential systems occupy a location intermediate between parliamentary systems, where the executive (i.e., the government) has almost all the agenda-setting power, and the U.S. system where all legislative agenda setting belongs to Congress (Cox and Morgenstern 2002; Wilmert 1911). However, our emphasis has been on the positive agenda-setting power embodied in the right to redraft legislation, which we consider paramount. These procedures have a long history going back almost two hundred years. We traced their origin back to Bolívar's constitutions and showed how such provisions were diffused to other countries. We know that the effects of presidential changes to vetoed bills generated controversial debates inside Congress, as legislators early on were confronted with the outcomes of such presidential discretion.[26] We believe that further research on the constitutional conventions can reveal how much of the policymaking effects of these procedures were known or anticipated by institutional designers, in other words, whether they were operating under complete information about the consequences of their choices. This line of research should contribute to improving the rich literature on Latin American constitutional history.

26. See for instance Giménez de Aréchaga (1946) for Uruguay and Hueneeus (1890) for Chile.

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