Issues in GOVERNANCE STUDIES

Number 4 July 2006

The Veto-Free Presidency: George W. Bush (2001-Present)

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EXECUTIVE SUMMARY

The power of the presidential veto is a formidable one, enabling executives to play a critical role in lawmaking, and providing an important check on the Congress. Despite the fact that President Bush is an assertive president, particularly in the realm of foreign policy, he has yet to veto a single bill after more than five years in office. This is extremely unusual—the last such president was Thomas Jefferson. While the first two years of the Bush administration represented a period of narrowly divided government, Republicans subsequently have controlled the House, Senate, and White House. Even so, President Bush's record is unique. Beginning with President Truman, there were 24 years of unified government in which presidents cast vetoes, on average, two times per year. President Bush has instead only threatened to veto bills on numerous occasions. A look at the Bush presidency in the historical context of post-WWII presidents who similarly governed during periods of unified government, with an emphasis on personalities, political institutions, and key events that have helped shape the veto-less presidency, may shed light on President Bush's veto-free record.

The Role of Unified Government

Not since Thomas Jefferson has a two-term president refrained entirely from exercising the veto. With each passing day, President George W. Bush moves closer to a precedent set only by Jefferson. Perhaps the most unique feature of the Bush administration is its protracted period of unified party control of the government, a stark contrast to the

The Brookings Institution
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divided governments of George H. W. Bush and Ronald Reagan.[1]

How does a unified government affect the presidential veto? Does it inhibit a president's exercise of the veto, thus impeding our political system's critical checks and balances? An editorial in the November 8, 2004 *Chicago Tribune* pointed out the dangers, "Despite [Bush's] reservations about the campaign finance reform overhaul, despite budget busting excesses of various congressional appropriations, he shied away from saying 'no' to the people on Capitol Hill…Under Bush, Congress has been allowed a bit too much freedom to set national policy, particularly on matters of money…Congress has come to enjoy spending money it doesn't have, and the president has decided it's easier to go along than to resist." Bush supporters might argue that his frequent veto threats have been sufficient to shape legislation, thereby fulfilling the executive's role as a "check" on the Congress. A look at the historical context of the veto will provide insight into the Bush administration's veto-free tactics and strategies.

The Veto-Free President in Historical Context

A president's veto power, designed to prevent legislative encroachment and maintain the balance of political power, is considered extraordinary and is thus rarely used. According to Charles Cameron, a professor of political science at Princeton University, presidents in the post-WWII period vetoed only 25 public general bills per 1,000 (2.5 percent), whereas 975 per 1,000 avoided the veto pen, leading to the enactment of 17,198 public laws.

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One might think that a veto would be employed even less frequently, if at all, during periods of unified government. Presidents governing with their party's majorities in Congress appear to have a tremendous advantage in the legislative realm. At the same time, however, our unique political system creates an environment in which the executive and legislative branches share and compete for political power. In short, party affiliation alone cannot overcome the fundamental interests and incentives of independent branches. So while it is clear that vetoes are relatively infrequent, a unified government does not ensure that vetoes would never be used.

Counting vetoes is not as simple as it may seem. Most compilations of presidential vetoes do not distinguish between the various types of vetoes despite important substantive distinctions between public and private bills, and pocket and conventional vetoes. To focus on the most substantive policy-based vetoes, this discussion examines public bills and conventional vetoes and excludes private bills and pocket vetoes. According to Richard A. Watson, professor emeritus at the University of Missouri-Columbia, bills that presidents have pocket vetoed are not significant policy-based legislation, largely because Congress would not risk a pocket veto of critical bills since it

[1] The brief exception occurred during the 107th Congress when Senator James Jeffords of Vermont announced his switch from Republican to Independent status, effective June 6, 2001. Jeffords' announcement that he would caucus with the Democrats gave the Democrats a one-seat advantage, changing control of the Senate from the Republicans to the Democrats for the remaining eighteen months of the 107th Congress.

cannot override such a veto.[2] Private bills apply solely to an individual or entity (for example, a single firm) that seeks relief from the government; hence, they usually lack policy significance. Consideration of such legislation became so burdensome to Congress that, beginning in the 1940s and continuing through the next decade, the House and Senate passed legislation that allowed executive departments and courts to settle such claims. What once represented a sizeable portion of overall presidential vetoes during the Truman administration became negligible by the time of the Carter administration. In order to provide accurate comparisons over time, it is essential to exclude private bills.[3]

Presidential Vetoes During Periods of Unified Government*
(Truman–Bush)

President	Congress	Years	Vetoes
Truman	81st	1949–50	22
	82nd	1951–52	8
Eisenhower	83rd	1953–54	8
Kennedy	87th	1961–62	4
JFK/Johnson	88th	1963–64	1
LBJ	89th	1965–66	5
	90th	1967–68	2
Carter	95th	1977–78	6
	96th	1979–80	7
Clinton	103rd	1993–94	0
Bush	108th	2003–04	0
	109th	2005–06	0**
Total			63

Source: U.S. Senate Virtual Reference Desk. Accessible from http://www.senate.gov/reference/resources/pdf/presvetoes17891988.pdf.
*These veto totals exclude private bills and pocket vetoes.
** As of June 29, 2006.

So, how does Bush's veto history compare to that of his peers? Except for the brief period in 1993–94 when President Clinton refrained from using the veto,[4] President Bush clearly stands alone. Presidents under unified governments, on average, vetoed two bills per year. In contrast, presidents under divided governments such as Reagan, Bush (41), and Clinton vetoed six bills annually on average. President George W. Bush's six

[2] Under Article I, section 7 of the U.S. Constitution, the president has ten days to consider a bill, during which time Congress adjourns. If the president does not sign the bill, he cannot return it to the adjourned Congress and thus "pockets" it; Congress does not have the opportunity to override the pocketed veto.
[3] For a comprehensive record of all vetoes including regular, pocket, public, and private, see Appendix A.
[4] During Clinton's six years of divided government, he vetoed thirty-six bills.

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consecutive veto-free years are worthy of further investigation.[5]

The Bush Anomaly

President Bush's penchant for party discipline and control is a factor in explaining his disinclination to veto. Jimmy Carter's "good government" ethos drove him to veto pork-barrel projects. President Bush's desire for Republican Party unity likely discourages him from publicly disagreeing with a Republican-led Congress. Numerous press reports indicate that the administration views a scarcity of vetoes as a sign of strength, demonstrating the effectiveness of GOP-controlled government.

According to the *National Journal*, Candida Wolff, the president's chief adviser on legislative affairs indicated that if the president were to exercise the veto, it would be by "mutual agreement" with Republican leaders in Congress. Such a statement might seem puzzling since vetoes are typically the product of fundamental disagreement between the branches, not a matter to be mediated. Unlike the clear-cut ideological position espoused by Ronald Reagan, however George W. Bush seems to have carved out a pragmatic conservatism and appears willing to go along with what the GOP Congress delivers. Despite his initial opposition, for example, to campaign finance reform, the creation of the Department of Homeland Security, and securities legislation in the aftermath of the Enron collapse, President Bush ultimately signed these bills in the spirit of party unity rather than persevere with a contentious veto.

Bush's pragmatic approach is further supported by his frequent use of veto threats. In May 2006, the Office of Management and Budget reported that President Bush had threatened vetoes on 135 occasions.[6] So, rather than adopt the "all or nothing" style of an ideologue, the president has sought to shape the contents of legislation through less adversarial means.

Parties and Elections

Upon regaining the White House in 2000, the GOP was eager to capitalize on the perceived benefits of unified government. The party's last such opportunity had been a half-century ago. Though the scope of his first-term agenda was largely altered by the events of 9/11, President Bush achieved early victories with tax cuts and education reform. His ambitious agenda during his second term may have been influenced by the success of the first. Victorious in 2004, Bush declared, "I earned capital in the campaign…and I intend to spend it." Congressional Republicans viewed this period as a

[5] Some observers contend that President Bush has not vetoed bills, but rather vowed not to enforce them in his numerous "signing statements," that are submitted along with the signed legislation. The Washington Post reported that the Bush administration has issued more than 750 signing statements on over 110 laws. (June 28, 2006, A9) That, however, is a topic for separate analysis.

[6] The threats that have received the most coverage of late were the defense bill that included the McCain amendment on torture and the legislation to undo the Dubai ports deal.

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unique opportunity to work with—not independent of—the White House.

President Bush's fundraising prowess and, at the height of his popularity, ability to garner votes for fellow Republican politicians won him support from his partisans in Congress. The Republicans gained seats in the midterm elections of 2002 (a rare achievement) and did so again in the 2004 elections. Beholden to the president, the Republican-controlled Congress was inclined to repay the favor and side with the administration on most questions (as demonstrated by *Congressional Quarterly's* presidential support scores in the 108th Congress, indicating that Republicans supported the president, on average, 88% of the time, *CQ Weekly*, December 11, 2004, p.2946).

Political Partisanship

Partisan polarization within the House and the Senate has intensified since George W. Bush became president. Partisan ideological cohesion within the GOP has translated into more support for the Bush agenda, further minimizing the chances of a presidential veto.[7] The Republican majority has sought to quell internal conflict to bolster the party's reputation or "brand name." Vetoes would not fit this playbook.

The House and the Senate respectively also shape presidential strategy. The House's rules and practices enable leaders to command votes and sanction members who stray from the party line, and the Republican leadership has been loyal to the Bush White House. The role of House Democrats has been mostly marginalized in key proceedings such as conference committees, enabling GOP leaders (and the administration) to control the substance of most legislation—and thus blunt the need for any vetoes.

Whereas the GOP majority in the House, though slight, maintains a relatively high degree of discipline and capacity to sideline the minority, the narrow GOP majority in the Senate confers far less. Senate rules aid the minority party. The prospect of a filibuster, for example, means that Senate leaders must often govern with super-majorities. For a time, Senator Bill Frist's (R-TN) position as majority leader heightened cooperation between the president and the Senate. The narrow margin of Republican control, however, continued to complicate Frist's legislative efforts and the administration's goals. Recognizing this uphill battle, the White House has avoided adding veto confrontations to Frist's headaches.

Events

Presidents are judged by their response to uncontrollable events. The stock market crash of 1929, the attack on Pearl Harbor, the Cuban Missile Crisis, race riots in the 1960s—each of these events had a profound impact on the country and, of course, on the incumbent president. Similarly, the terrorist attacks on 9/11 created crisis conditions under which

[7] Conversely, President Truman confronted a highly fractious Democratic party composed of organized labor, conservative southern Democrats, and western progressives.

Republicans and Democrats alike granted the president substantial leeway, especially on measures related to the war on terror. The crisis conditions provided another motive for working with the president rather than courting vetoes.

The Veto in the Second Term

A spate of missteps, controversies, and revelations complicated the president's best efforts to spend the "political capital" he earned after his re-election. The failed attempt at Social Security reform; the bumbled reaction to the ravages of Hurricane Katrina; escalating budget deficits; the failed nomination of Harriet Miers to the Supreme Court; the mounting casualties in Iraq; scandals affecting White House staff members Scooter Libby and Claude Allen; revelations of NSA eavesdropping; and skyrocketing gasoline prices—all these, and more, contributed to the decline of the president's approval ratings.

The unrelenting series of political misfortunes may well set the stage for Bush's first veto since Republicans on Capitol Hill are less tethered to a weakened, lame-duck president. The time may even be ripe for the veto by "mutual agreement," as suggested by White House staff member Candida Wolff. The president may calculate that, in order to limit the damage to the Republican party in the forthcoming mid-term elections, he needs to provide Republican candidates with an opportunity to draw free of him in a highly public way. The debate on immigration legislation may prove to be a crossroads, particularly since President Bush has practical experience and strong convictions about how best to reform immigration law. Regardless of the bill's contents, the unique conditions that once facilitated the veto-free presidency are changing.

Appendix A

All Presidential Vetoes During Periods of Unified Government 1949–1980

Truman

Veto Types	Public Bills	Private Bills	Pocket/Public	Pocket/Private	TOTAL
1949	8	22	2	0	32
1950	14	26	2	5	47
1951	4	5	1	3	13
1952	4	1	3	1	9
TOTAL	30	54	8	9	101

Eisenhower

Veto Types	Public Bills	Private Bills	Pocket/Public	Pocket/Private	TOTAL
1953	1	3	1	5	10
1954	7	10	10	15	42
TOTAL	8	13	11	20	52

Kennedy

Veto Types	Public Bills	Private Bills	Pocket/Public	Pocket/Private	TOTAL
1961	3	3	2	0	8
1962	1	4	3	4	12
1963	0	1	0	0	1
TOTAL	4	8	5	4	21

Governance Studies
The Brookings Institution
1775 Massachusetts Ave., NW
Washington, DC 20036
www.brookings.edu

Governance Studies Program

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Johnson

Veto Types	Public Bills	Private Bills	Pocket/Public	Pocket/Private	TOTAL
1963	0	0	2	0	2
1964	1	3	0	2	6
1965	3	4	0	0	7
1966	2	1	3	1	7
1967	2	0	0	1	3
1968	0	0	3	2	5
TOTAL	8	8	8	6	30

Carter

Veto Types	Public Bills	Private Bills	Pocket/Public	Pocket/Private	TOTAL
1977	2	0	0	0	2
1978	4	0	13	0	17
1979	0	0	0	0	0
1980	7	0	3	2	12
TOTAL	13	0	16	2	31