



# Presidential Veto Powers

# 14

International IDEA  
Constitution-Building Primer





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International IDEA Constitution-Building Primer 14

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# 1. Introduction

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A presidential veto is a constitutional mechanism that enables an elected head of state to refuse assent to a legislative bill (proposed law) that has been passed by the legislature, but not yet finally enacted. The effect of the presidential veto is to stop the bill from becoming law, unless the veto is overridden according to a constitutionally prescribed procedure which normally involves a super-majority decision in the legislature. The grounds on which the veto power may be exercised and the difficulty of overriding the veto vary between jurisdictions.

This Primer focuses on the legislative veto power in presidential and semi-presidential democracies, where popularly elected presidents exercise substantial powers and are expected to play a relatively active political role. The veto power can be a powerful tool, in such systems, in strengthening the president's influence over policy and legislation. The Primer also mentions vetoes exercised by heads of state in parliamentary democracies, but only in brief.

## Advantages and risks

Historically, the veto power was intended mainly as a passive instrument to protect the constitutional separation of powers and the rights of citizens as part of a system of checks and balances. It retains this function in many cases but has also emerged as an instrument of inter-institutional policy bargaining in democracies characterized by presidential leadership.

The veto power puts great power and responsibility in the hands of one person: why should one person's decision outweigh the decision of a whole legislative assembly? Excessive presidential veto powers may unbalance the working relationship between the executive and legislative branches, resulting in a combination of autocracy and deadlock.

## 2. What is the issue?



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In a society governed by the rule of law, it is important to have a clear statement of what the law is. It is therefore necessary to make an unambiguous distinction between a mere legislative proposal and an adopted law. This distinction is made at the moment of *enactment* or *promulgation* (procedures and terminology vary between jurisdictions) and is typically marked by the formal signature of the bill that is about to become a law by the head of state. In granting his or her signature, or assent, to the new law, the head of state gives it finality and formal legitimacy.

Assenting to a bill usually implies at least the possibility of refusing or withholding assent. The power of a head of state to refuse or to withhold assent to legislation is known as the *veto* power. The veto power is, by nature, an essentially reactive instrument. It does not enable a president to initiate change but rather to protect the status quo by preventing change. In principle, this allows a president to protect the constitution, to uphold the balance and separation of the powers, to prevent the enactment of rushed or badly drafted legislation and to thwart legislation that serves special interests rather than the common good.

However, the veto power is not *only* reactive. Since the veto power increases a president's political bargaining power with respect to the legislature, a skillful and popular president can also use the veto power in proactive ways, as a potentially potent tool for policy leadership and agenda-setting.

Since the presidential veto power can play such a vital role in executive–legislative relations, those involved in designing a constitution need to consider whether the president should have a veto power, and, if so, on what grounds and under what circumstances it may be used. It is also important to consider how the veto power fits into the internal logic of the proposed constitution and relates to the overall balance of powers in a democratic system.



Strong presidential veto powers are typically found in older presidential democracies that are based on the classical 19th-century model of the separation of the powers. Semi-presidential democracies usually have relatively weaker presidential veto powers, as do some recent presidential constitutions (especially in Latin America). In most presidential and semi-presidential democracies, however, presidents enjoy at least some discretionary veto power, enabling them to halt or hinder the enactment of legislation.

In contrast, heads of state in parliamentary democracies, who are expected to act mainly as civic and ceremonial figureheads, usually have only a very limited veto power, if any. In those countries, the head of state's veto tends to be more of a constitutional safeguard or a symbolic measure, rather than a tool for regularly influencing policy. For more information on veto powers in parliamentary systems, see International IDEA Constitution-Building Primer No. 6, *Non-Executive Presidents in Parliamentary Democracies*, and Constitution-Building Primer No. 7, *Constitutional Monarchs in Parliamentary Democracies*.

Excessive veto powers may produce a deadlocked political system in which necessary decisions cannot be taken, and in which policy coherence, accountability and good governance are forfeited. In most cases, therefore, presidential vetoes can be overturned or overridden by the legislature by certain specified procedures or in certain specified circumstances. The precise formulation of these rules can, depending upon the political circumstances, have a substantial impact on policy decisions and on governance outcomes.



### 3. Nature and purposes of the veto power

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#### Where does the veto come from?

The origins of the modern legislative veto power exercised by elected presidents can be traced back to the right of medieval European kings to reject proposals and requests put to them by their parliaments. In so doing, the king, who was supposed to be the guardian of justice and of the common good, was placing his universal judgment above the particular interests of the representatives of the feudal estates.

In the period following the American (1776) and French (1789) revolutions, some democratic constitutional thinkers, including Thomas Paine and Thomas Jefferson, sought to abolish the veto power, in part because of its associations with monarchy. For these radical republicans, freedom was expressed primarily through the right of the people to exercise control over, and to participate in, their government. They placed their faith in local democracy, active public engagement and frequent elections. The presidential veto power was seen as a ‘dangerous’ and ‘arbitrary’ restraint on the authority of the people’s elected representatives, which would give too much power to one person (Paine, 1805).

Meanwhile, more conservative thinkers, such as Alexander Hamilton and John Adams, were sceptical of such populist notions. Understanding freedom primarily in terms of the limitation of power (including the power of the people), they were concerned with protecting private interests and property rights. They regarded the veto as a necessary protection against the so-called ‘tyranny of the majority’, which they thought to be an inherent consequence of lodging power in an unrestrained legislature. They justified presidential veto powers as ‘a salutary

check upon the Legislative body, calculated to guard the community against . . . any impulse unfriendly to the public good, which may happen to influence a majority of that body' (Hamilton 1788).

These disputes between 18th-century radical democrats and their conservative counterparts are not merely of historical interest. For constitutional designers today, they continue to illuminate an important and enduring principle: the veto power *originated as a way to restrain the power of the elected representatives of the people*. In essence, the veto is a counter-majoritarian instrument, the direct effect of which is to privilege the status quo, to make it harder to pass laws and to make social change through the action of the legislative majority harder to achieve. The extent to which this is the case, of course, varies depending on the exact veto and override rules in place, on the electoral system and on other contextual factors.

## How does the veto relate to the separation of powers and checks and balances?

According to the classical doctrine of the separation of powers, the power of enacting laws (legislative power) should be separated from the power of administering the state (executive power) and the power of interpreting and applying the laws to particular cases (judicial power). However, constitutions adhering to this doctrine do not typically keep the branches of government entirely separate. As James Madison argued, the doctrine allows for each of the three branches of government to have some involvement in, or control over, the acts of the other two. This partial mixture of mutually controlling powers is known as a system of checks and balances.

Madison regarded the executive's power to veto legislation as one of the most important of these checks and balances, noting approvingly that it existed in many of the early US state constitutions (Madison 1788). However, the veto power is only one of the ways in which the three main branches of government interact and restrain one another. For example, a president might (depending on the constitutional rules in the country in question) have the right to propose legislation, to call urgent meetings of the legislature, to issue decrees with the force of law in certain circumstances, to appeal to the people in a referendum or even to dissolve the legislature and call early elections. For its part, the legislature might have the power not only to override the veto according to a special procedure but also to impeach the president, to approve certain important presidential nominations and to oversee the conduct of the administration through committee hearings and special inquiries.

When designing the provisions of a constitution referring to presidential veto powers (and legislative override procedures), it is helpful to think about these provisions in relation to the whole constitution and as part of an overall system of checks and balances. If there are too few checks and balances, the government

might become arbitrary and autocratic, as well as incoherent and corrupt; but if checks and balances are too strong, government might be strangled, making good governance difficult and so inviting extraconstitutional means of augmenting power (e.g. coups, coercion, bribery). Some typical checks and balances within a modern constitution based on separated powers are shown in Table 3.1.

**Table 3.1. Separation of powers and checks and balances in the Constitution of Liberia (1986)**

Branch of government	Checks on the legislature	Checks on the executive	Checks on the judiciary
<b>Legislature (House and Senate)</b>  Enacts laws (article 29)		Legislature can:  Appropriate money (article 34)  Ratify treaties (article 34)  Override presidential veto (article 35)  Impeach the president (article 62)	Legislature can:  Impeach and remove judges (article 43)  Approve judicial appointments (article 54)  Organize the judiciary (article 65)  Propose constitutional changes (article 91)
<b>Executive (President)</b>  Conducts the administration in accordance with the country's laws (article 50)	Executive can:  Call special sessions (article 32)  Veto bills or line items (article 35)  Propose bills (article 58)		Executive can:  Nominate judges (article 54)  Grant pardons (article 59)
<b>Judiciary (Courts)</b>  Interprets laws and applies them to litigants (article 65)	Judiciary can:  Determine constitutionality of laws (article 66)	Judiciary can:  Determine legality of executive acts (article 66)	

## How does the veto power affect the role and functions of the president?

When considering the scope and extent of the veto power, it may be helpful to examine how the constitution's checks and balances reflect, and relate to, (a) the central role of leadership within the constitution; and, therefore, (b) what role the veto power is supposed to play in checking or facilitating leadership.



### Presidential veto as a means of protecting the constitution

One of the traditional functions of the presidential veto power is to protect the public against legislation that is blatantly unconstitutional or that has not been enacted in accordance with the proper constitutional procedure. The president's role is essentially that of a constitutional guardian, whose function is to conduct an **executive review** of proposed legislation (in contrast to the more widely known **judicial review**). This understanding of the veto power necessarily assumes that the primary centre of political leadership lies elsewhere besides the presidency (e.g. in the Cabinet in the case of a semi-presidential system, or in the leaders of the legislative majority in a presidential system). According to many scholars, the protection of the constitution was the original purpose of the veto as envisaged by the authors of the Constitution of the United States. The veto power, by this account, was initially conceived as a reactive, and quite exceptional, instrument that would be used only occasionally and that could only 'be applied legitimately to legislation that was clearly unconstitutional, encroached on executive power, or was badly drafted' (McCarty 2009: 369).

### Presidential veto as a protection against harmful policies and corruption

In many jurisdictions, the veto power can be used by presidents to prevent the passage of legislation that the president finds objectionable on policy or substantive grounds, without having to make any complaint against the constitutional or procedural propriety of the bill in question. In addition to being deployed against legislation to which the president is ideologically opposed, the veto power is often relied upon as a means of preventing the enactment of so-called pork-barrel bills (where legislators vote for public funds to be spent on projects in their own districts) or special-interest legislation (where lobbyists attempt to influence legislators to enact laws that privilege a certain section of society against the common good).

This understanding of the veto power, in contrast to the veto exercised solely on constitutional or procedural grounds, widens the scope of presidential discretion. It calls on the president, as a figure representing a national constituency, to consider the merits, wisdom and necessity of a bill, and to act as the guardian of general interests. Yet it is still essentially a reactive and negative power that asks the president to review, and to approve or reject, legislative proposals initiated by others (e.g. congressional leaders). It views the president as an autonomous policy actor, but not necessarily as the sole or primary *policy initiator*.

### Veto as a tool of presidential leadership

One of the major developments that has occurred in presidential democracies over the past century is a change in the position and perception of presidential

leadership. In the classical model of the separation of the powers, as it developed in the 18th and 19th centuries, the president was in principle regarded as the leader of the executive branch and as the head of the administration, but not necessarily (at least not in times of peace) as the leader of the country or of the political system as a whole; domestic policy leadership was assumed to be shared between the president and the legislature.

Presidential leadership was transformed, however, by urbanization and industrialization. Regulating expanding commerce and promoting industrial development, while also responding to the demands of the urban poor and correcting the ill-effects of development, resulted in an increased demand for, and expectation of, presidential leadership in domestic policymaking. In the United States, this change occurred during the so-called Progressive Era (1890s–1920s) and during the New Deal (1933–45). Broadly parallel developments occurred in Latin American presidential democracies; the Chilean Constitution of 1925, which concentrated more policymaking power in the President, was a notable example (Gargarella 2013). In African states, presidential leadership was widely seen as necessary to promote development and meet the needs of increasingly urban populations after independence in the 1960s. Faced with a need to provide coherent policy leadership, presidents in many countries are seen not only as the chief executive but also as the chief legislator, who is expected to take initiative and to provide the impetus for legislation.

### Think Point 1

Where is the balance of power in the constitution? Is the president supposed to be the primary policy leader, one among a number of policy actors or a guardian who does not get involved in day-to-day policymaking? What, therefore, is the purpose of the veto in the political system?

This shift in the primary position of leadership and initiative has consequences for the nature of the veto power (see Table 3.2). A president who is a policy leader cannot also be the main check against bad legislative policy. In this context, the presidential veto power has emerged as a tool of influence, or bargaining chip, that presidents can use strategically and proactively in order to pursue their policy agendas. The veto power ‘guarantees the President a place at the legislative bargaining table’, which enables them to ‘kill legislation he opposes or, more frequently, wrest policy concessions from majorities loathe to relinquish them’ (Cameron 2009: 1). The increased use of the veto as a ‘political weapon’ has ‘allowed the president to become more involved in legislative matters, and has changed the presidential-congressional dynamic so that Congress is no longer the



dominant force in government—as it was until the end of the nineteenth century’ (Slezak 2007).

It is not even necessary for the veto to be used in order for it to have political importance. Its mere existence, if accompanied by convincing signals of the president’s willingness to use it, can have the effect of moderating legislation according to the president’s wishes (Cameron 2009). As McCarty (2009: 370) notes, however, this tempering effect can backfire: instead of making concessions to the president in order to prevent the exercise of the veto, the legislative majority may decide—if it judges that the political conditions are ripe (e.g. in an election year)—to pass a bill that it knows the president will have to veto and thereby force the president to take a policy position that may be unpopular with certain sections of the public.

Table 3.2. Schema of typical presidential roles and corresponding veto powers

President’s constitutional role	Active powers	Reactive powers (legislative veto)	Primary purpose(s) of the veto	Examples	Notes
<b>Policy leader (activist presidency)</b>	<b>Strong:</b> Legislative initiative, decree-making powers, agenda-setting powers	<b>Variable:</b> Ranges from merely symbolic veto power to veto power that is quite difficult to override.	Tool for leadership	Many Latin American constitutions (e.g. Bolivia, Colombia)	The more active power a President has, the less reactive the power that is needed to achieve policy goals
<b>Head of the administration (classic ‘separation of powers’ presidency)</b>	<b>Weak:</b> Constitution does not allow president to introduce legislation or control agenda; decree-making powers limited	<b>Strong:</b> Veto power that is difficult to override	Protecting against harmful legislation and procedural or constitutional irregularities	United States, Liberia	In practice, the president in such systems is often able to use informal sources of power to transform veto into a more proactive tool
<b>Defender of the common good/ constitutional order (guardianship presidency)</b>	<b>Weak:</b> President may have power to propose legislation but does so only in exceptional circumstances; decree-making powers limited	<b>Weak:</b> Veto power may be limited to matters of procedural regularity or constitutional validity; vetoes on policy grounds may be easy to override	Protecting against procedural or constitutional irregularities	Premier-presidential (weak semi-presidential) systems	The president is not expected to be the major policy leader, but may be expected to intervene in certain extreme circumstances

## 4. Basic design options



There are two basic design choices that must be made in relation to the veto power: (a) what are the grounds on which the veto can be exercised; and (b) how can the veto be overridden by the legislature?

### On what grounds may the veto be exercised?

#### Veto on constitutional or procedural grounds

Constitutions may restrict the veto to matters of constitutional or procedural propriety. The Constitution of Austria, for example, specifies that, ‘The adoption of federal laws in accordance with the constitution is authenticated by the signature of the Federal President’ with the countersignature of the Federal Chancellor [Prime Minister] (art. 47). This implies that the president is obliged to promulgate laws and may only refuse to do so only in extreme circumstances, if the law is clearly not, procedurally or substantively, passed ‘in accordance with the Constitution’ (Koker 2014).

A presidential veto on constitutional grounds usually takes the form of referring legislation to the Supreme Court or Constitutional Court for a ruling on its constitutionality. This power is found, for example, in the Constitutions of Bulgaria (art. 150) and Ireland (art. 26). This is a form of abstract or *a priori* judicial review. While the president acts as a gatekeeper, the final decision-making power with respect to the constitutionality of laws rests with the courts.

#### Veto on policy grounds

Conversely, in democracies where the president is expected to take a more active role in leadership and policymaking, it is usual to allow the president a broad discretionary veto power that may be exercised on any grounds the president sees

fit. The president may therefore veto legislation because of substantive policy objections without any need to demonstrate procedural or constitutional irregularities.

### Prohibition of veto for certain types of legislation

Certain types of legislation are not treated in the same way as ordinary legislative acts and may be immune to a presidential veto. For example, presidents that otherwise possess a veto power over all ordinary legislation may be denied the right to veto constitutional amendments (which may have a different process of final approval, such as being endorsed by the people in a referendum). Alternatively, a president may have a veto only over specified types of controversial or fundamental legislation. In Singapore, for example, the president has veto powers only in relation to a fairly narrow range of bills, which includes certain budgetary matters.

## How can the veto be overwritten?

### Absolute veto

In rare cases, constitutions grant the president an absolute veto power that cannot be overturned by the legislature. In principle, this means that no law can come into effect without the president's approval even if a large majority of legislators are strongly in favour.

- Because this would greatly strengthen the president's position in the balance of powers, beyond the bounds of what is normally required by the principles of the separation of the powers and checks and balances, an absolute veto on policy grounds is rare in democratic constitutions. However, some early and conservative constitutions, such as the 1833 Constitution of Chile, did provide for an absolute veto.
- An absolute veto is more usual in situations where the veto can be exercised only on grounds of unconstitutionality. This is because, in principle, no majority can render constitutional a bill that is unconstitutional, and the proper remedy, in such cases, is to amend the constitution or change the bill. In Colombia, for example, the legislature's right to overturn a presidential veto does not apply in the case of bills vetoed on grounds of unconstitutionality. In such cases, the bill, if reapproved by an absolute majority of the legislature, is referred to the Constitutional Court, whose decision—to approve or reject the bill—is binding on the president (art. 167).



### Strong qualified veto (with high thresholds for legislative override)

A veto that can be overridden by a subsequent decision of the legislature is sometimes known as a ‘qualified’ veto. Most constitutions that provide for presidential vetoes on policy grounds also allow the legislature to override the president’s veto by means of a **supermajority vote**.

- The required size of the supermajority varies from country to country. A two-thirds majority is most common (e.g. Argentina, Chile, Costa Rica, El Salvador, Ghana, Mexico, Philippines, Nigeria, Zambia), although in some cases only a three-fifths majority is required (Poland, for example).
- The rationale behind the requirement for a supermajority is that the president’s veto is deployed in order to prevent the passage of partisan legislation or of legislation that is divisive or controversial or of legislation that does not promote the common good. The re-passage of a bill by a supermajority indicates that these objections have been met and overcome. It is evidence that the bill—far from being partisan, divisive or controversial—enjoys a broad consensus of support in the legislature.

In practice, however, the effect of such provisions is to allow the president to unilaterally **alter the size of the majority necessary to enact laws**: if the president supports a bill, an ordinary majority is sufficient; if the president opposes a bill, a supermajority is required. This gives the president the option of influencing the outcome of legislative decisions by exercising what amounts in effect to a large negative ‘bloc vote’.

The effect of this ‘negative bloc vote’ obviously depends on circumstantial factors, such as whether there is a supermajority in the legislature that is ready to pursue a coherent policy in opposition to the president. In many situations, the exercise of a presidential veto will, in effect, be absolute, since the chances of building a sufficiently broad legislative coalition to reach the supermajority threshold and so to override the veto may be very slim. In the United States, for example, from the election of Ronald Reagan (1980) to the end of Barack Obama’s first term (2012), the veto was used a total of 173 times by all presidents, of which only 16 cases (9.2 per cent of the total) were overridden by Congress (Peters 2016).

### Weak qualified veto (with low thresholds for override)

Some constitutions allow presidents to veto legislation by returning bills to the legislature for reconsideration, while allowing the legislature to insist on the bill in a second vote without a demanding supermajority requirement. In many cases, an

absolute majority (50 per cent plus one) of the total number of members of the legislature is required.

- Such vetoes are usually associated with parliamentary systems and with semi-presidential systems in which the prime minister is the leading political figure. For example, the Constitution of the Czech Republic (art. 50) allows the president to return bills to the Chamber of Deputies, but a bill so returned will still come into effect, regardless of any presidential objections, if reapproved by an absolute majority of deputies. Similarly, in Bulgaria (art. 101), the approval of an absolute majority of the members of parliament is required to overturn the president's legislative veto.
- However, such weak vetoes are also found in some presidential systems: the Constitutions of Brazil (art. 66), Colombia (art. 167) and Peru (art. 180), for example, allow their legislatures to override presidential vetoes with an absolute majority in both chambers.

When the legislative majority is resolute and united, such a weak veto may have a mainly symbolic effect. It allows the president to express his or her objections to a bill and to request the legislature to reconsider it, but without ultimately having the authority to prevent its enactment. However, when the legislative majority is uncertain or disunited, even such a weak veto can potentially be decisive. By forcing a delay and reconsideration (which allows members of the legislature to realign themselves or even to change their minds without loss of face), the president might prevent the enactment of laws that would otherwise have been passed.

#### Different supermajorities for different types of legislation

Constitutions may establish different supermajority requirements for different classes of legislation.

- In Cyprus, for example, the president has an absolute veto over legislation in the fields of foreign affairs, defence and security, but only a symbolic veto, which may be overridden by a simple majority, over other legislation (arts 50 and 51). Such rules recognize the special role and responsibility of the president in these areas of what might be termed 'high politics'.
- In Tunisia, the legislature may override presidential vetoes by an absolute majority vote, except in the case of **organic laws**, for which a three-fifths majority is required (art. 81). In Portugal, likewise, presidential vetoes can be overturned by an absolute majority, except for organic laws, laws on external relations, laws on the electoral system and laws on the basic economic structure of society, which require a three-fifths majority (art.

136). This reflects the principle that ordinary laws should be enacted by ordinary majorities, but that organic laws and other laws of special institutional or structural importance should be enacted by a process that requires broader consensus and higher standards of deliberation and inclusion.

### Suspensive veto

There are some instances in which the presidential veto holds a bill in suspense for a specified period of time. During this period, the veto power is, in effect, absolute, since it cannot be overridden. Override becomes possible, however, when the period of suspense has elapsed.

- In Ecuador, for example, the president's veto cannot be overridden for a period of one year; thereafter, the legislature can insist on passing the bill with a two-thirds majority vote (art. 138). The rationale behind this rule is that the president's veto acts as a delaying power to provide time for political passions to cool and for wider deliberation to take place.
- The suspensive veto is rather unusual in the world's contemporary constitutions, but it might have advantages in some situations, especially when it is combined with a relatively low threshold requirement (such as an absolute majority). It could filter out hasty legislation motivated by sudden and momentary passions, and allows more time for public debate to influence the direction of legislation, but it does not allow the minority to thwart the settled will of the majority.
- One possible alternative (which is not known to exist in any current constitution, but is discussed here as a speculative option) is to enable a supermajority to override the veto at any time, while allowing an absolute or simple majority to override it after the period of suspension has elapsed. This would enable the legislative minority—in conjunction with the president—to delay legislation but not to halt forever the enactment of legislation upon which the majority robustly and resolutely insists.

### Making design choices

A high supermajority requirement (e.g. two-thirds or three-fourths) may make it very difficult for legislatures to override a presidential veto. This, in turn, may make periods of divided government (when the legislative majority and the presidency are held by opposing parties) more problematic, since relatively small minorities may have disproportionate power to block necessary legislation. On the other hand, a low majority requirement (e.g. a simple majority or an absolute



majority) may provide insufficient constraints on the ill-considered, partisan or corrupt actions of the legislative majority unless other mechanisms are in place to prevent this.

To judge the advantages and disadvantages of these options, constitutional designers may wish to consider, above all, the general purposes, ethos and intent of the constitution. Is the constitution primarily intended as a way to express and to give effect to the democratic will of the majority, or is the principal purpose of the constitution to enforce a system of limited government, individual rights and minority protection? Most constitutions, of course, do both of these things but with very different degrees of emphasis.

## 5. Additional design considerations

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In addition to the basic features of the veto discussed above, there are a number of additional design considerations and options to consider. These include the line-item veto, timelines and the pocket veto, the need for official consultation before exercising the veto and presidential amendments.

### Should the president have a line-item veto?

The process of negotiating legislation and steering bills through the legislature may result in bills that, while retaining some semblance of the initial proposal, are riddled with special-interest provisions or particular spending commitments designed to win the support of individual legislators or lobby groups. In aggregate, dependence on appeasing such particular interests can lead to incoherent policies and poor budget management, which undermines the general interest.

A line-item veto allows a president to partially object to a bill (including particular spending items) while allowing other parts of the bill to be signed into law. This means the president can veto the special-interest provisions that are added onto the bill during its passage through the legislature.

In theory, this should improve the coherence of legislation, prevent corruption and impose financial discipline. For these reasons, the line-item veto has become common in US states (about 90 per cent of US states allow governors to exercise a line-item veto) and at the national level in Latin America (e.g. Argentina, art. 83; Brazil, art. 66; Paraguay, art. 208). The practical effect of the line-item veto on curbing irresponsible spending may be limited. According to Baker (2000: 64–65), there is ‘no systematic impact of enhanced veto authority on the level of

government spending’, and ‘[m]uch of this work serves to dispel the common misconception that enhanced veto power restrains a government’s spending’. Nevertheless, it is self-evident that a line-item veto increases the president’s power over the budget and, as a result, over the whole range of public policy.

## Timelines and the pocket veto

### Period within which the veto can be exercised

Most constitutions providing for a presidential veto power specify a time period within which the president can consider a bill and decide whether or not to veto it.

- This period varies, but 10 days (Costa Rica, United States) to 30 days (Ecuador) is usual; a period of three months (Finland) is exceptional.
- A further possibility is to reduce the period during which the president may exercise a veto in times of urgency. In Benin, for example, the president ordinarily has 15 days in which to consider a bill and to either enact it or to veto it, but the legislature may declare a bill to be urgent, in which case this period is reduced to just five days.

### What happens if the president neither vetoes a bill nor signs it?

There may be circumstances in which a president fails, or refuses, to sign a bill but does not actively reject, veto or return it to the legislature within the period prescribed by the constitution. In these cases, the constitution can resolve the impasse in various ways.

- In some constitutions, a bill that has not been signed or vetoed by the president within the prescribed period automatically becomes a law at the end of that period regardless of the president’s inaction. The Constitution of Argentina (art. 80), for example, states that, ‘Any bill not returned within ten working days is to be considered approved by the Executive Power’.
- The US Constitution allows 10 days during which the president may veto a bill. At the end of this period, the bill automatically becomes law ‘in like manner as if [the President] had signed it’. Unlike in Argentina, however, the bill does not become law if Congress has adjourned and thereby has prevented the president from returning the bill. In these cases, the bill does not become law and simply lapses at the end of the ten days (art. 1, s. 7), meaning that if Congress wishes to insist on the bill, it must recommence the legislative process from the beginning in the next session. This is

known as the **pocket veto** (as if the president were to put the bill in his or her pocket and walk away with it).

- In Mexico, a bill not returned within 10 working days is deemed to have been approved unless Congress is not in session, in which case the bill must be returned on the first day on which Congress is next in session (art. 72). In effect, this means that the president can delay the promulgation of a bill by simply refusing to sign it when Congress is not in session, but the bill will become law automatically when Congress reconvenes unless the president actively returns the bill.
- In Benin (art. 57), if the president neither signs nor returns a bill within the permitted period, then the bill is deemed to have been vetoed, and, as such, the legislature can then override the veto through the usual process (in Benin's case, by an absolute majority vote).

Some constitutions do not specify a time period during which the presidential veto may be exercised. In the absence of a time limit or an override mechanism, the president's approval is absolute, and no bill can become law without it. Such open-ended provisions are usually only found in constitutions (e.g. Austria) where it is expected that the president will use the veto only rarely and only on constitutional or procedural grounds. Even in these circumstances, however, the absence of clear timelines may result in a lack of procedural certainty. If the constitution specifies the time period in which the veto may be exercised and what happens if the bill is neither signed nor vetoed at the end of that period, then this may prevent inter-institutional conflicts from arising later. Crucially, the situations in which a veto power is likely to be exercised are extraordinary situations, and it is at such times that procedural clarity is most important if constitutional crises are to be avoided.

#### Time restrictions on reintroducing vetoed legislation

Constitutions may place time restrictions on the reintroduction of legislation that has been vetoed. In Costa Rica, for example, a bill that has been vetoed and that the legislature has not repassed by the two-thirds majority required to override the veto cannot be proposed a second time during the same session of the legislature (art. 127). Such restrictions may stop the escalation of conflicts between the legislature and executive, and can hinder the absorption of excessive legislative time by one issue over which no agreement can be reached. By enforcing a 'pause for thought', time restrictions also allow for temperatures to cool and for attitudes to soften, so that acceptable compromises may be reached in due course.

## Need to consult before exercising a veto

A constitution may require the president to consult with other institutions or officials before exercising the veto power—for example, with the speaker or presiding officer of the legislature, with the chief justice or with a special council of state established to advise the president. The need to consult may help prevent a president from acting in a capricious or arbitrary manner, and may enable other political and institutional actors to influence or restrain presidential decisions, perhaps forcing the president to think more clearly about the consequences of his or her decision.

In Ireland, for example, the president's power to refer legislation to the Supreme Court for a ruling on its constitutionality may be exercised only after hearing the advice of the Council of State, which consists of various appointed and ex officio advisers. In Singapore, the president, before exercising certain discretionary powers, including the power to veto budgetary decisions, is required to consult with the Council of Presidential Advisers. In these cases, the advice tendered to the president is confidential, and although required to seek it, the president is not bound to act upon it (if this were not the case, real power would lie with the advisers, and not with the president, whose function would then be merely symbolic).

## Statement of reasons

Another way in which a constitution can prevent the arbitrary or capricious use of the veto power, while keeping responsibility in the hands of the president, is to require any veto to be accompanied by a statement of the president's objections, giving a reasoned justification for the exercise of the veto power (e.g. art. 2, sect. 7 of the US Constitution). The accompanying veto statement also gives the president an opportunity to lay out precisely what is wrong with the bill and to specify how the bill could be improved. In this way, the veto power also becomes—albeit indirectly—an agenda-setting power through which the president is able to exercise political leadership, to define policy stances to the electorate and to put political pressure on legislators.

## Presidential amendments

Some constitutions go further than just allowing the president to make comments on a bill when returning it. They allow the president to propose specific amendments to the bill, and allow the legislature to pass the bill a second time, by an ordinary majority, if the president's proposals are fully adopted.



This power to propose amendments is a powerful tool of presidential leadership, which enables the president to set the legislative agenda and to proactively shape legislation (Tsebelis and Alemán 2005).

- In Chile, a bill that has been vetoed by the president may be passed by an ordinary majority if amended by the legislature in accordance with the president's proposals. If the legislature does not amend the bill in accordance with the president's proposals, however, the veto may be overturned only by a two-thirds majority in both chambers (art. 73).
- In Kenya, likewise, a bill that has been vetoed by the president becomes law if the legislature, by an ordinary majority, amends the bill in accordance with the president's proposals, while a two-thirds majority is necessary to enact a bill that has not been so amended (art. 115).

## Referring bills to the people

Some constitutions allow the president to refer bills that have been adopted by the legislature to the people in a referendum. The president of Iceland, for example, can refer newly passed laws to the people, whose decision on whether to accept or repeal the law is final (art. 26). In effect, this can be regarded as a form of democratic veto, since the ultimate decision is made not by the president or the legislature, but by the people. Provisions relating to referendums are more fully discussed in International IDEA Constitution-Building Primer No. 3, *Direct Democracy*.

Enabling the people to be the final arbiter on a piece of proposed legislation can have two positive effects depending on the threshold for overcoming a presidential veto. In contrast to allowing a simple majority of the legislature to override a veto, referring a decision to the people can be more effective at preventing the adoption of unpopular legislation. In contrast to allowing override only by a large majority of the legislature, a referendum can prevent stubborn minorities from blocking popular legislation. This may be an advantage in situations where there is a desire to create an effective and active state that can legislate effectively for the benefit of the majority, but where this power is subject to democratic constraints to protect the people against its abuse.

Referring bills to the people can also take another form, in which the legislature uses reference to the people as a way of bypassing the president and the president's potential veto power. In Argentina, for example (art. 40), Congress may submit a bill for popular consultation (a referendum). Such bills are not subject to a presidential veto, as they are automatically promulgated if approved by 'the affirmative vote of the people'.

## 6. Contextual considerations

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### Timing of elections

Since presidential and semi-presidential forms of government allow the people to vote separately for the president and the legislature, they can be prone to periods of so-called divided government. Divided government occurs when the president and the legislative majority (and, therefore, the Cabinet in semi-presidential systems) are politically opposed to one another. It is during these periods that the veto is most likely to be used, as the president attempts to block legislation proposed by his or her political opponents. In the United States during the period 1945–92, for example, only about 2 per cent of all congressional legislation was vetoed, but 20 per cent of important legislation was vetoed during periods of divided government (Cameron 2009).

The timing of elections can greatly influence the likelihood of divided government and, therefore, the extent to which the presidential veto is used. As a general rule, divided government is less likely when elections to the presidency and legislature occur at the same time, and more likely to occur when the elections happen at different times. This is because (a) when elections are concurrent, legislative candidates from the same party as a popular presidential candidate are swept into office on his or her coat-tails; and (b) when elections are non-concurrent, grievances and general dissatisfactions against an incumbent president may be expressed by voting for legislators from opposition parties.

Concurrent terms of office can also strengthen the president's popular mandate, since there will not be a time when a sitting president is confronted by a legislature whose electoral mandate is more recent—and therefore, more valid—than the president's own.

## Legislative structure

### Bicameralism versus unicameralism

In a bicameral system, especially when the two chambers are incongruent (selected by different means, or at different times, such that there is likely to be a substantial difference in the partisan composition of the chambers), it may be much harder to attain a given supermajority requirement in order to overturn a presidential veto than it would be to reach the same supermajority threshold in a unicameral system. For example, all other things being equal, a greater degree of consensus would have to be built in order to reach a two-thirds majority in both houses of the US Congress (which has two differently composed houses, with staggered election dates and over-representation of rural states in the upper house) than to reach a two-thirds majority in Zambia's unicameral parliament, for example.

### Electoral system and party system

Reaching a two-thirds majority in a two-party system merely requires that these two parties agree (assuming most members vote on party lines). If there is a multiparty system, then reaching the same two-thirds majority may require a much broader agreement between perhaps half a dozen political parties. Similarly, if parties are coherent and have centralized leadership structures, peak-level agreements between the leaders will be sufficient to bring the legislative caucuses into line, while highly fragmented parties may require that agreements be made with the leaders of factions or with individual legislators, thereby increasing the difficulty of attaining any specified supermajority threshold. In addition, the degree of ideological polarization—and even personal trust or antipathy—between the parties may be a relevant consideration: a given supermajority requirement will be harder to reach if the parties are mutually antagonistic, and easier to reach if they are mutually cooperative. These circumstantial factors can vary over time, and it is not necessarily the role of the constitutional designer to design provisions that are perfectly adapted to the present time; rather, given the expectation that a constitution should last for decades or generations, designers should think about how the mechanisms they propose would work under various contextual circumstances, and they should avoid making decisions based on assumptions about a political context that might not hold in the future.

## The whole package of presidential powers

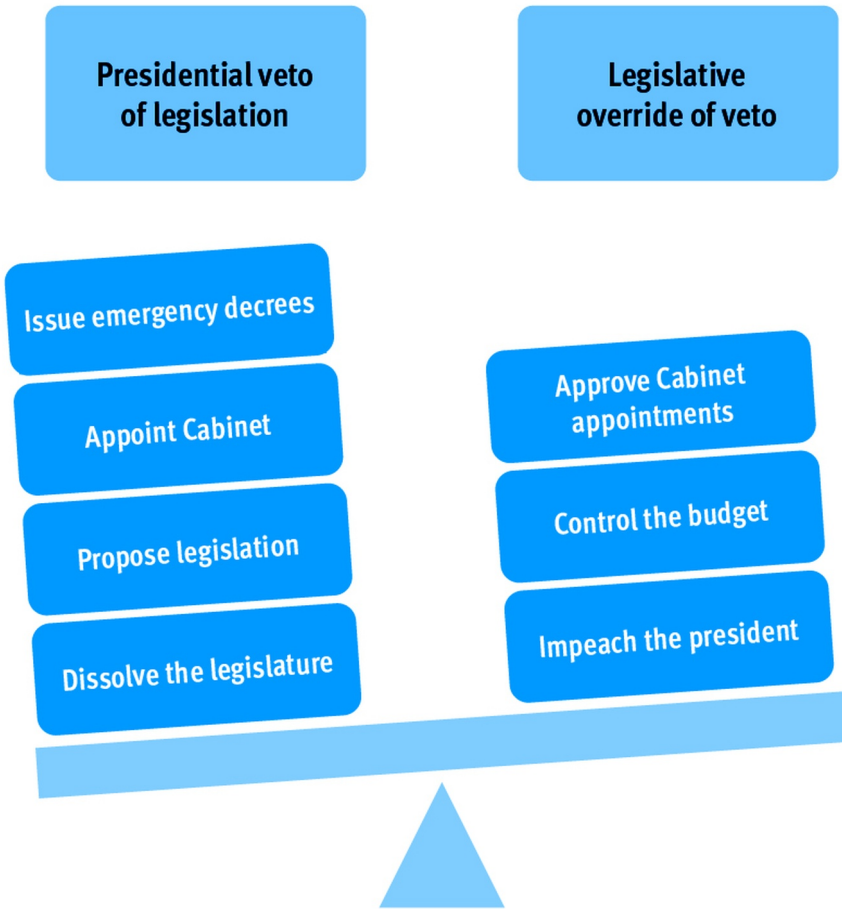
The possibility of using the veto power as a bargaining chip means that its effectiveness depends not only on the rules regarding the exercise of the veto power, but also on the other rules that structure inter-institutional bargaining and



shape the political relationships between the president and the legislature (or, in semi-presidential systems, between the president and the prime minister).

In designing the presidential veto power, constitutional designers must therefore think about the whole package of powers vested in the various state institutions, and consider the political interactions between them, rather than treating each part of the institutional design in isolation (see Figure 6.1).

Figure 6.1. Veto powers and override powers are part of a balance of powers



This package of powers may include, for example, the ability to set the legislative agenda by proposing legislation and budgets, as well as the power to bypass legislative decision-making to achieve policy objectives through the use of quasi-legislative regulations or emergency decrees. Even powers that are seemingly

unrelated to the legislative process, such as the power to nominate judges, to appoint members of independent commissions or to award public honours, may be employed by presidents and legislatures as part of their overall policy-bargaining strategy.

One of the greatest powers at the disposal of (some) presidents is the power of dissolution—the ability to dismiss the legislature and call new elections. This is a ‘big stick’ that a president might use to prevent the enactment of unfavourable legislation or, conversely, to coerce the legislature into passing legislation that the president supports. Another powerful presidential tool is the referendum, which may give the president the ability to bypass legislators and appeal directly to the people on a major policy issue. But these tools are unwieldy and unpredictable. They are effective when the president enjoys the support of a majority of the people for his or her actions; however, a president who miscalculates the extent of his or her public support, and is defeated at the polls, whether in an election or a referendum, may lose a lot of the legitimacy and goodwill necessary to govern effectively.

## Political culture and expectations

The actual distribution of political power in a state may differ substantially from the distribution of powers established on paper. Political culture, including long-established customs, conventions and expectations, will play an important role in establishing this difference. Constitution-makers wishing to transform the operation of a political system should be aware that culture is often ‘sticky’: it is slower to change and more resilient to external shocks than changes in institutional form.

So countries with a long history of excessive presidential power, or that have a particular presidential candidate who has a very large personal following, may tend towards presidential autocracy even if the powers of the president are curbed on paper. If the intention is to change these ingrained habits, particular care must be taken in drafting the constitution to allow as little room as possible for autocratic regression.

## 7. Alternatives to the presidential veto

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There are few alternatives to the presidential veto power. Most constitutions that provide for a directly elected president with more than a ceremonial function allow the president to exercise some form of veto if only in the form of a constitutional or procedural veto, a policy veto that can be easily overridden or the right to refer legislation to the people in a referendum. If it is decided not to allow any presidential veto power, while retaining a system of government in which the president has more than a figurehead or ceremonial function, then it would be necessary to strengthen the presidency's other powers, such as dissolution powers and decree-making powers.

In an ethnically, religiously or linguistically divided society, however, it might be advisable to give veto powers to those who represent particular communities, although successful examples of this are rare. The Constitution of Cyprus, as originally enacted, provided for a president from the Greek community and a vice-president from the Turkish community, each of whom had a veto over legislation in order to protect the vital interests of their respective communities. In Kosovo, certain classes of legislation concerning the rights, identity and interests of national minorities require approval by a double majority of the legislature, essentially giving those minorities a veto power that they can use for self-preservation.

## 8. Decision-making questions

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1. What is the overall principle of the constitutional design? Is the constitution primarily intended to harness and direct the power of democratic leaders, or is it primarily intended to restrain democratic leaders in order to protect minorities, individual rights or property? What consequences does this have for: (a) the ease or difficulty of the legislative process; and (b) the role of the president within that process?
2. Is the president supposed to be: (a) the primary policymaker who takes the main role in initiating policy; (b) one of several competing policymakers who share initiative with the legislature; or (c) primarily a guardian of the constitutional order, whose leadership is exercised only sporadically, such as at times of crisis?
3. What powers does the president need in relation to legislation in order to fulfil those functions?
4. Presidential veto powers and presidential agenda-setting powers (e.g. the right to propose or introduce legislation) often operate in tandem. How are these powers balanced?
5. How do the president's legislative veto powers relate to his or her other powers? Is the overall package of presidential powers sufficient for the intended purposes? Are the powers excessive?
6. What is the structure of the legislature in terms of its electoral cycle, number of chambers, electoral system and expected partisan composition? What influence does this have on: (i) the difficulty of passing legislation and (ii) the difficulty of overturning vetoes?



7. What is the prevailing political culture? Are their ingrained habits of presidentialism that will tend to make the president a seemingly natural repository of power? What effect will this have on the operation of the political system as a whole, and what accommodation should be made for it in the design of the veto power?



## 9. Examples

Table 9.1. Presidential veto powers

Country	Grounds on which veto may be exercised	Timeline and other veto requirements	Override procedure	Additional remarks
<b>Benin</b>  Unitary structure, unicameral legislature, presidential executive	Any	President has 15 days to promulgate a law or veto it; may be reduced to 5 days in cases of urgency, as declared by the legislature; if president does not act within this time, Constitutional Court may promulgate the law if it deems it constitutional	Absolute majority of the legislature; president can again refuse to promulgate a law that has been overridden by an absolute majority but in this case Constitutional Court must decide whether bill is constitutional, and, if so, it promulgates the law	Benin has an unusual combination of presidential and judicial review; president's veto is easy to override, but can be applied twice: if applied a second time, it is sustained only if Constitutional Court deems the bill in question unconstitutional
<b>Colombia</b>  Unitary structure, bicameral legislature, presidential executive	Any, but override rules differ depending on whether veto is exercised on policy or constitutional grounds; government may object to a bill in whole or in part (line-item veto)	Variable timeline depending on number of articles in bill: from 6 to 20 days; if bill is not returned to legislature within this time, the president must promulgate it	Absolute majority in both houses of the legislature; if bill is opposed on constitutional grounds, both houses have to send the bill to the Constitutional Court, whose decision is binding on the president	Decision to return bills to legislature for reconsideration nominally rests with the government, not the president, although the structure of the executive is such that the president really directs the government

Country	Grounds on which veto may be exercised	Timeline and other veto requirements	Override procedure	Additional remarks
<b>Kenya</b>  Quasi-federal (regionalist) structure, bicameral legislature, presidential executive	Any, but must note reservations when returning a bill to parliament; in doing so, the president may propose amendments	President has 14 days in which to grant assent or exercise a veto; if president does not act within this time, bill is deemed to have been enacted	Ordinary majority of legislature if bill is amended in accordance with president's recommendations; by two-thirds majority vote if not so amended	Asymmetric bicameralism gives Senate co-decision-making powers over matters concerning Kenya's regions; when overriding the president's veto, bills subject to Senate approval need to be repassed by both houses (other bills only need to be repassed by the lower house)
<b>Romania</b>  Unitary structure, bicameral legislature, semi-presidential executive	On constitutional grounds by reference to Constitutional Court; on any other grounds by returning the bill to parliament	President has 20 days in which to refer bill to Constitutional Court or to return it to parliament	If Constitutional Court upholds a bill's unconstitutionality, law may not be promulgated unless first amended to bring it into line with the constitution; in the case of other vetoes, legislature may repass a bill by an ordinary majority, and president cannot veto it a second time	Until the adoption of a constitutional amendment in 2003, Romania had an unusual procedure allowing a law that had been ruled unconstitutional by the Constitutional Court to be repassed by a two-thirds majority in parliament
<b>United States</b>  Federal structure, bicameral legislature, presidential executive	Any grounds, but the reasons for exercising the veto must be stated in the president's veto message to Congress	President has 10 days to grant assent or exercise a veto; if Congress not in session, president may exercise a pocket veto, which cannot be overridden by Congress	A veto may be overridden by a two-thirds majority in both houses of Congress	
<b>Zambia</b>  Unitary state, unicameral legislature, presidential executive	Assent may be withheld on any grounds; president may give reasons but is not constitutionally obliged to do so	No timeline: president has unlimited time to grant assent or return a bill (and no obligation to return a bill); bills not returned or assented to do not become law	If bill returned to parliament with proposals for amendment, parliament may override veto by a two-thirds majority, with or without amendments; if not returned, bill is, in effect, subject to an absolute veto	This is an unusual example of a system that allows the president to exercise an absolute veto simply by refusing either to grant assent or to return the bill to parliament for reconsideration

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# Annex

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