

Presidential Vetoes in the Early Republic

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1. INTRODUCTION

Today it is generally recognized that the presidential veto plays an important role in the legislative process. The threat, either implicit or explicit, that a president will refuse to affix his signature to legislation is believed to influence policy outcomes (McCarty and Poole 1995, Krehbiel 1998, Cameron 2000). Beyond its direct effect on policy, veto politics is also believed to play an important role in defining partisan policy conflicts for the electorate (Gilmour 1995, 2001; Groseclose and McCarty, 2000). However, the work of many historians and political scientists suggests that the veto developed these modern functions relatively late. The author of a recent study of the veto makes the following characterization:

As with virtually every other power enumerated in the constitution, the veto power evolved over time as experimentation, circumstance, and cumulative precedent combined to give the power its actual shape, especially as to its frequency, and other conditions of use. (Spitzer, 1988)

The basis of such claims is that the veto was used sparingly, if at all, during much of the 19th century. Perhaps the most common explanation of the infrequency of vetoes focuses on norms surrounding the constitutionally legitimate exercise of executive power. Many scholars have argued that early presidents and legislators viewed the veto prerogative very narrowly (Binkley 1947, Black 1976, Remini 1967, Spitzer 1988, Skowronek 1993,

* This work began while I was the Robert Eckles Swain National Fellow at the Hoover Institution. I would like to thank Keith Krehbiel, seminar participants at the Center for the Study of Democratic Politics at Princeton University, and Andrew Bruck for research assistance.

Watson 1987, White 1956). Under the norms of the day, the veto was not considered a legislative power of the president. Rather, the doctrine of separation of powers held that the veto was primarily an executive or judicial function. Its executive role was two-fold. First, it protected the president from encroachments of the legislature. The second was to give the president the opportunity to reject bills so poorly or hastily drafted that they could not be effectively executed. Alternatively, the veto's judicial dimensions were such that it was to provide an opportunity for the president to prevent the enactment of unconstitutional laws. Accordingly, the veto could only be legitimately be applied to legislation that was clearly unconstitutional, encroached on executive power, or was badly drafted. The "modern" conception of the veto – a tool to defeat or modify legislation that the president finds objectionable on policy grounds – was considered to be antithetical to the separation of powers, republican government, and legislative supremacy. Thomas Jefferson's advice to President Washington over a bill chartering the Bank of the United States seems to suggest such a restricted view:

unless the President's mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution; if the pro and con hang so even as to balance judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. (Quoted in Bass 1972 and Watson 1987).

Adherents of this view suggest that these norms did not breakdown until the administration of Andrew Jackson. Two of his vetoes, the bill creating the Maysville Road and legislation to recharter of the Bank of the United States, are claimed to represent the first two serious violations of the constitutional proscriptions. In the words of Jackson's biographer Robert Remini:

[Jackson] stretched the veto power and claimed the right to block legislation for reasons of policy or expediency rather than constitutionality. Thereafter, Congress carefully considered the presidential will in all legislation in order to avoid a possible veto. Next, he broadened the political power base of the presidency by taking the Bank issue to the people and winning an overwhelming victory in the presidential election of 1832. Thereafter, Jackson did not hesitate to claim an augmentation of executive authority by virtue of his victory at the polls...Jackson widened the president's responsibility to include all the people, a necessary acknowledgement if he was to draw political strength from their support when he tangled with Congress. Moreover, he advanced the concept that the President is the direct (and sole) representative of the people, a revolutionary concept for its time. (pp.177-178)

Thus, Jackson not only blocked legislation that he opposed as a matter of policy, but he also asserted an absolute right to do so on the basis of his representation of the "people." Stephen Skowronek has suggested

these actions made “a mockery of the premier operating principal of the Jeffersonian regime – executive deference to the legislature” (1993 p. 172).

However, others have questioned the salience of these constitutional norms in proscribing the aggressive use of the veto (Bass 1972, Fisher 1985, Jackson 1967, and Moe 1987) . They reject the notion that vetoes grounded in policy disputes were neither contrary to the intent of the framers nor inimical to the true views of 19th century presidents and legislators. Vetoes were rare due to a number of other factors such as politically-weak presidents, the availability of other methods of presidential influence, and a simple lack of legislative activity. Bass suggests

...if the veto was used sparingly, other factors than conceiving the veto as a limited power had their influence. With fewer demands for legislation, bills were drafted with greater care and consideration than prevailed in later years, giving early presidents less cause to use the negative. While the quality of bills was higher, quantity was lower, lessening the need to employ the veto.(p. 89)

To make the case that constitutional norms played but a small role, these scholars point to early vetoes that were not justified on either grounds of constitutionality or of legislative encroachment. They point to Washington’s rejection of a military reduction bill and Madison’s rejection of the national bank charter as vetoes justified by few if any constitutional issues.¹ Furthermore, they argue that many of the constitutional objections accompanying other veto messages were little more than window dressing for underlying policy objections.

Despite substantial scholarly attention, this debate is far from resolved either in terms of why the veto was rarely used or what implications, if any, we might draw about executive-legislative relations in the early republic. Empirical work to date has focused exclusively on analysis of presidential veto messages and the statements, often self-serving, of presidents and legislators. The norms hypothesis nor any of its alternatives has been subjected to rigorous tests. Rather than draw testable inferences from the underlying hypotheses, the debate has focused solely on the significance of perceived departures from the posited norms.

In this paper, I add to this debate by providing my own argument about why usage of the veto changed over time. This argument is loosely based on my previous work with Tim Groseclose on the role of an attentive electorate on political bargaining. In that paper, we argue that the primary cause of presidential vetoes (at least on important legislation) is the incentive of legislators and presidents to use veto bargaining to define issue positions before the electorate. I argue here that changes in the electoral environment of the presidency, in particular increasing popular participation

¹However, those who argue the centrality of constitutional norms have countered that these vetoes were justified by executive concerns over how the policies would be implemented, thus falling well within the range of legitimate uses.

and declining influence of political elites in presidential elections, enhanced the incentives to engage in “blame game” politics. As a result, the use of the veto increased, and it became increasingly tied to electoral politics and partisan policy conflicts. Thus, while agreeing that the nature of veto usage changes in the 1820’s, these changes resulted from a democratization of the presidential office, not the breakdown of constitutional norms. However, I also argue that the changes that occurred were limited to veto usage, not to the role of the veto in shaping legislative outcomes. Below I provide both qualitative and quantitative evidence that pre-Jacksonian presidents had about as much impact on legislative outcomes as subsequent chief executives.

The paper proceeds as follows. In the next section, I provide a brief history of the veto from the colonial era to the ratification of the Constitution. This discussion is designed to provide both background and to assess claims that the Constitution proscribed use over policy disagreements. Section 3 reviews the evidence about the justifications provided in veto messages. As will become clear, this evidence is quite mixed suggesting the need for more elaborate tests. Sections 4 and 5 provide a framework for providing a counterfactual of pre-Jacksonian veto usage under more contemporary patterns of behavior. To this end, Section 4 reviews recent theoretical work on the veto, including Groseclose and McCarty’s blame game model. In section 5, the predictions of these models are used to specify an empirical model of veto usage from 1829-1998. Three findings of this section provide key support of my arguments. First, veto usage is systematically lower before 1829 even when controlling for the factors that have previously been purported to explain the difference. Second, the patterns of veto usage are systematically different prior to 1829. It is not simply fewer vetoes, but those that occur are inconsistent with the predictions of the empirical model. Finally, and most importantly, the empirical model illustrates the importance of electoral politics in generating vetoes in the modern period.

After addressing the issues surrounding the usage of the veto, I turn to an analysis of the consequences for presidential influence on legislation. A reasonable interpretation of the constitutional norms hypothesis is that presidents had less impact on legislative outcomes prior to Jackson’s vetoes than after. I test this hypothesis in two ways. First, I closely examine the passage of the Missouri Compromise over Monroe’s presumed opposition, an example scholars have often used to demonstrate executive weakness perpetuated by the constraining norms. Second, I develop an empirical model of the probability that legislation opposed by the president passes the House of Representatives. If the norms hypothesis is correct, this probability should have been higher before 1829. It was not, suggesting that only the usage of the veto changed, not its effect on policy outcomes.

2. EXECUTIVE POWER AND THE CONSTITUTION

The executive veto was not a popular institution during the colonial era. As Gerhard Casper (1997) has written, the most notable feature of revolutionary state constitutions was the dependence of the executive on the legislature. In most states, the executive was chosen by the legislature for very short terms in office and given authority narrowly confined to administrative matters. A number of hypotheses have been put forward as to why these constitutions so severely constrained the executive. First, American colonists were long frustrated by the perceived abuses of royal governors in using vetoes to extract concessions from colonial legislatures, including increases in their personal salaries (Moe 1987; Watson 1987). In addition to those vetoes, colonial legislation were also subject to a veto (actually repeal) by the Board of Trade and Plantations of the Privy Council in London (Moe, 1987). This negative was used on almost 500 colonial acts between 1696-1782. (Russell 1915). Given these frustrating experiences, the colonists proved extremely receptive to arguments in favor of legislative dominance. Thus, an anti-executive sentiment manifested itself both in provisions for weak or non-existent executives in the new state constitutions and in the lack of a national executive under the Articles of Confederation.

However, the era of legislative dominance did not last long. In 1776, South Carolina gave its governor an absolute veto, but those provisions were repealed two years later (Thorpe 1909; Watson, 1987; McDonald 1994). In New York's 1777 constitution, a qualified veto was granted to a council of revision consisting of the governor and members of the state judiciary. In 1780, Massachusetts adopted the form that was later to prevail at the Federal Convention, a qualified veto subject to 2/3's override in both houses. While those provisions generated a large amount of controversy during the ratification of that charter (McDonald 1994), they become a blueprint for constitutional revisions in other states. According to historian Gordon Wood,

The Massachusetts constitution of 1780 not only had a direct influence on the New Hampshire Constitution adopted in 1784 but it seemed to many in the 1780's to climax a second wave of state constitutional construction. In its structure at least, it came to represent much of what reformers in other states desired for their own constitutions – a strengthening of the governor at the expense of the legislature, particularly the lower house. The executive power, as the New Hampshire constitution of 1781 declared in defense of its proposed constitution, had become the active principal of all governments: it is the soul, and without it the body politic is but a dead corpse. (p. 435)

Given the observed deficiencies of weak executives in the states and the national government under the Articles of Confederation, the delegates to the constitutional convention were aware of the deficiencies caused by weak

executives and generally agreed that steps should be taken to create an energetic, independent national executive. Given this consensus, the key debates about the executive power were less about ends than about means. The key problem they faced was how to create an office that would be seen as legitimate by an electorate who viewed executive power with some suspicion, yet at the same time be empowered to vigorously execute the law. The veto provisions were an important component of this balancing act. At one extreme, provisions could be made too strong and become a source of opposition at the ratifying conventions. Others also feared that prerogatives might be made so extensive that presidents would be unwilling to use them for fear of public censure. However, diluting the provisions would transform the presidency into little more than a legislative agency.

At the convention, debate on the veto focused primarily on two key issues. The first focused on the ease at which Congress could override the veto while the second concerned whether the president should be able to act unilaterally or whether the prerogative should be given to a council of revision. The issue of the necessary supermajority for legislative override was relatively straightforward pitting advocates of stronger executives against those more fearful of executive power. While Alexander Hamilton argued for an absolute veto, the majority sentiment ranged from a 2/3s to 3/4s override depending on the current status of other provisions for presidential powers and tenure in office. When the convention was working under the assumption of a shorter presidential tenure, electoral dependence on Congress, and an active role of the Senate in executive matters, the 3/4s override was more popular. When these provisions were eventually abandoned in favor of longer terms, eligibility for reelection, electoral independence, and a smaller role for the Senate, a consensus for a 2/3s override was cemented. This reduction in the required supermajority was to provide balance for an executive whose powers had grown dramatically over the last few weeks of the convention.

The debate over a proposal to adopt a New York-inspired council of revision provides a glimpse into the intentions of the founders. A proposal that the veto prerogative be shared with the Supreme Court was made at a time when the convention had tentatively agreed to a qualified veto which the president could invoke unilaterally. However, this was not an attempt to weaken the executive. This measure was supported by two advocates of a strong executive, James Madison and James Wilson. Their advocacy was based on the premise that veto was an important instrument of executive influence over legislation (Rakove 1997). Supporters of the proposal argued that the veto was not simply intended to resist legislative encroachments. Virginia's George Mason argued that it must be used to prevent "unjust and pernicious laws." Gouverneur Morris added that the veto was necessary to make the president "the guardian of the people,

even of the lower classes, against legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the legislative body” (both quoted in Rakove 1997). Their support for the council was due to their doubts that a single individual would have the political wherewithal to oppose legislative majorities. A council, on the other hand, would be better positioned to generate political support for its challenges to the legislature. This would make the veto more credible as a counterbalance to legislative dominance.

Nevertheless, the opponents of the council veto did not focus their criticism on the breadth of the veto power advocated by Madison, Wilson, and Morris, but they concentrated primarily on whether judicial participation was consistent with the separation of powers (Rakove 1997). They argued that participation in the drafting of laws compromised the judicial function of interpreting the laws. Eventually, Madison and Wilson’s motion fell 4 states to 3 with 2 divided. Given the tenor of the debate, it is reasonable to conclude that the rejection was of the form of the veto rather than its scope.

Importantly, no effort was made at the convention to explicitly narrow the scope of the executive veto. Furthermore, the ratification debates also do not suggest a consensus for a limited scope. Contrary to the perception that executive power was soft-pedaled during ratification, Hamilton asserted boldly that the veto

...not only serves as a shield to the Executive, but it furnishes an additional security against the enactment of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

Unless one asserts that Hamilton maintained a one-to-one correspondence between “improper” and “unconstitutional”, this statement seems to open the scope entirely to the president’s personal views of public policy. While much has been made of Hamilton’s argument that the veto would be used as sparingly as had the royal prerogative of the British king, he also asserted that

Instead of an absolute negative, it is proposed to give the Executive the qualified negative... This is a power which would be more readily exercised than the other. A man who might be afraid to defeat a law by a single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one-third of each house concurring in the sufficiency of his objections... In proportion as it is less likely to offend, it would be more apt to be exercised; and for this reason in may in practice be found more effectual.

In spite of the role of legislative dominance in the doctrine of the opponents of the constitution, there was little if any direct criticism of its veto provisions (Moe 1987). While the Anti-Federalists found many faults

with the proposed constitution, the provision that allowed an executive to challenge the judgments of as many as 2/3 of the legislature was not one of them.

3. VETOES IN THE EARLY REPUBLIC

Although constitutional proscriptions on veto usage did not arise from the framing and ratification of the Constitution, it is not yet possible to dismiss the norms hypothesis completely. An alternative explanation is that executive restraint developed as a constitutional principle as precedents were established during the first presidential administrations. It was well understood by President Washington and others that his behavior in office was likely to determine how future presidents used their prerogatives. Even such trivialities as the use of titles and the proper protocols for socializing were heavily scrutinized for the ways in which they would effect future presidents. The use of the veto was no different.

There were numerous debates within Washington's cabinet about the proper scope of the veto. Most members wanted him to use the veto aggressively to establish a precedent. Jefferson, perhaps the least sympathetic to a strong presidency, went so far as to suggest that he seek out bills to veto. In the end, Washington only used the veto twice and the first one coming three years into his term (see Table 1). The first bill concerned apportionment of the House of Representatives. In Washington's view the plan was clearly unconstitutional as it was so heavily biased towards the northeast that it constituted a de facto repeal of the 3/5's Compromise. That the first veto came only after three years and was generally agreed to be a flagrant violation of the constitutional bargain may have helped to establish the principle of a veto power limited in scope.

However, Washington's second veto message contained little constitutional analysis. When Congress voted to reduce the army by mustering out two companies of light dragoons, Washington objected on several grounds. Some of these may be safely categorized as relatively minor administrative details such as legality of paying the troops between their legal and actual discharge dates. However, Washington pointedly argues that these companies were needed to secure the frontier against Native Americans, a clear policy disagreement.

As Table 1 points out, the other vetoes of the era were also justified by a mix of objections. Some clearly dealt in constitutional issues such as the vetoes concerning church-state relations and the veto of a plan to allow Supreme Court justices to try cases in district court. Yet others were based primarily on policy objections. Madison vetoed the charter for the Second Bank of the United States because the mechanism for political

control were deemed insufficient and a naturalization law which provided too many incentives for fraud.

Categorizing other vetoes is even more difficult, because it is hard to discern whether the stated constitutional objections are sincere or whether they essentially repackage policy differences. The two internal improvements vetoes raise constitutional objections that were inconsistent with settled doctrine. Madison vetoed an internal improvements bill on his last day of office with the objection that Congress lacked the power to promote such projects. However, Jefferson, with Madison in the cabinet, had earlier signed the bill authorizing the building of the Cumberland Road and Madison as president signed appropriations for building extensions of the road (Bass 1972). When Monroe later vetoed legislation for federally collected tolls on the Cumberland Road, his veto message hinged on a tortured distinction between Congress's right to appropriate money for roads and its right to administer internal improvements.²

Table 1: Early Exercises of the Veto

Bill	Subject	Date	Rationale	Override
HR 163	Apportionment of Representatives	Apr 5, 1792	constitution	46%
HR 219	Reduction of Army	Feb 28, 1797	policy	60%
HR 155	Incorporating Church in Alexandria	Feb 21, 1811	constitution	28%
HR 170	Land-grant for Church in Mississippi	Feb 28, 1811	constitution	38%
HR 81	Trials in district courts	Apr 3, 1812	constitution	27%
HR 170	Naturalization	Nov 6, 1812	policy	pocket
S 67	Incorporating National Bank	Jan 30, 1815	policy	44%
HR 106	Importation of Stereotype Plates	Apr 30, 1816	unknown	pocket
HR 29	Internal Improvements	Mar 3, 1817	constitution?	49%
HR 50	Cumberland Road	May 4, 1822	constitution?	49%

Table 1 contains even more evidence that is unfavorable the norms hypothesis. For much of the 19th century, Congress felt obliged to take recorded votes on motions to override on every veto with the exception of pocket vetoes. Note that in only one case does the motion to override get even 50% support, suggesting that many members who supported legislation voted against the override. This is quite contrary to behavior one would expect if they were trying to maintain a norm against veto usage.³

²A believer in the salience of the restrictive norms might argue that the fact that Madison and Monroe felt compelled to use constitutional language suggests their importance. However, if standards for constitutional analysis were so low, it would be hard to argue that the norms were constraining.

³Proponents of the norms argument might take solace in that the one veto that came closest to resulting in an override was Washington's veto of the Army reduction bill. While there was no recorded final passage, an amendment to restore the dragoon com-

A final piece of evidence also suggests the absence of the restrictive norms. If the ideological commitment to legislative supremacy that underlaid the norms was strong, one would expect to see it reflected in the constitutions of new states and in the revisions to existing state charters. To the extent that citizens wanted to constrain the legislative influence of their governors, they should have withheld the veto or restricted its scope. The evidence from the constitutions adopted during the early 19th century completely undermine this view. Figure 1 provides the number of states in which the governor had some form of veto power and the number of states in which he did not.⁴ Note that the modal pattern shifted dramatically towards the veto over this period. In fact, no state dropped its veto provisions. Only two states, Illinois and Ohio, entered the union with a constitution lacking an executive veto. Only handful of states adopted new constitutions before 1850 without adding a veto (Maryland, Delaware, Rhode Island, and Virginia). Not a single state constitution restricts the scope of the veto to constitutional or administrative objections.

While the preceding evidence suggests that constitutional norms were probably not very important, it is also clear that early presidents did not use the veto very often. There were only ten vetoes prior to 1829, and half of these were by a single president. Nevertheless, it would be premature to conclude that presidential or congressional behavior differs substantially from current patterns. There could be many factors which account for the paucity of vetoes. First, legislative output of Congress was very low, providing few opportunities for the veto. Presidents typically had partisan majorities in Congress during this period implying that there would be few disagreements. Therefore, the only way to establish that patterns of veto politics changed is to construct a counterfactual of the usage of the veto would have been if presidents and legislators had played the “modern veto game.”

4. THE MODERN VETO

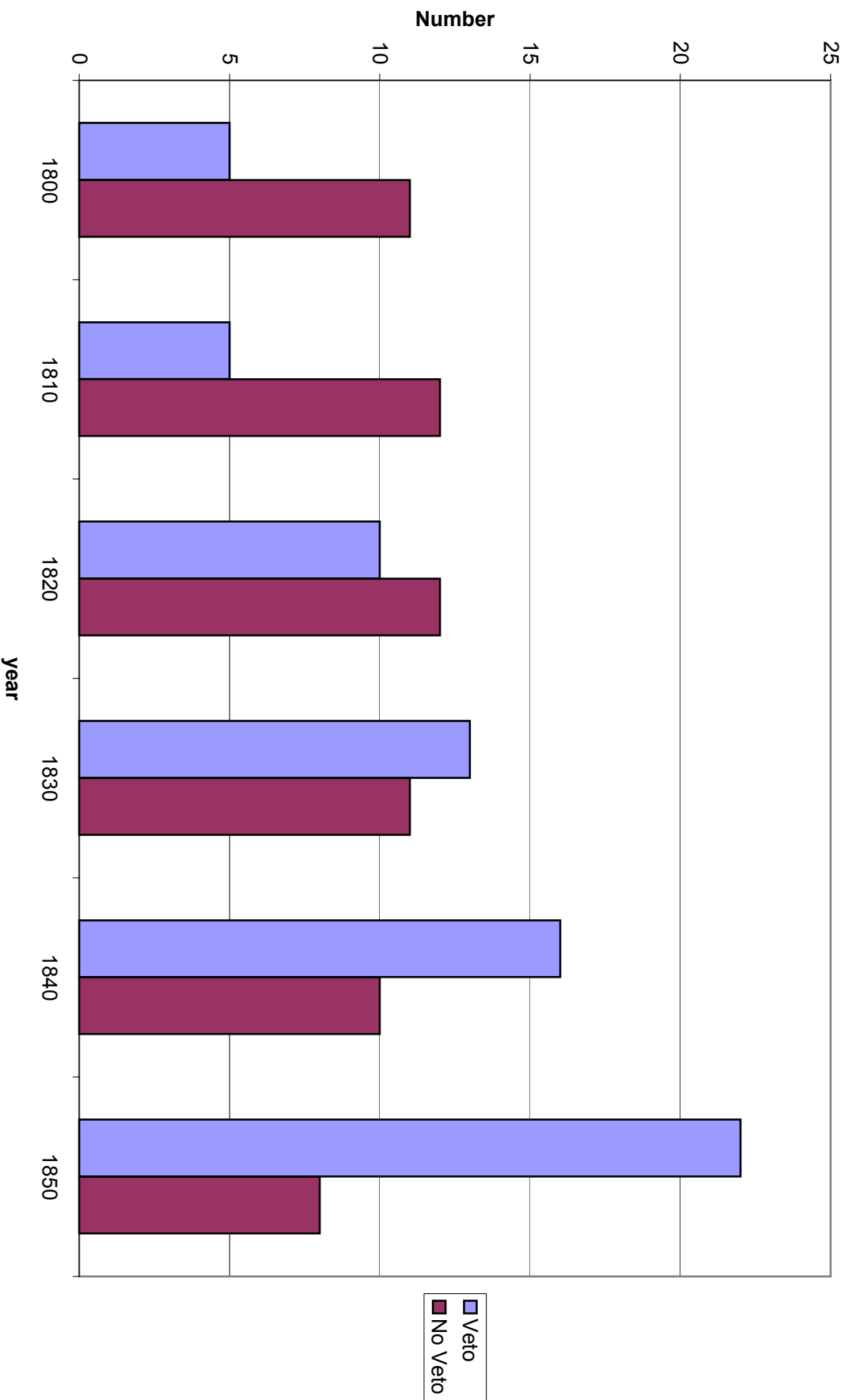
Before comparing pre-Jacksonian veto usage to that predicted by contemporary behavioral patterns, it is important specify clearly what those patterns are. Unfortunately, there is little scholarly consensus on the causes of veto activity. However, the development of formal models of presidential-legislative bargaining has been a fertile area for research. Many of these models make quite explicit predictions about veto usage. In the analysis

panies failed 18-64. Thus, Washington’s 40% support on the override was almost double the 21% support for restoring the dragoons prior to his veto. So again it seems unlikely that Congress tried to use its override authority to enforce a norm against policy vetoes.

⁴This data is collected from Thorpe (1909).

Figure 1

Veto Rights of State Governors



that follows, these theories will play dual roles. First, they provide guidance on how to specify a predictive model which can be used to test to see if pre-Jacksonian veto behavior is anomalous. More importantly, they also provide a set of potential arguments as to why such changes may have taken place. Below I review a number of theoretical arguments about veto usage in order to create measures for the predictive model and to provide potential hypotheses for why usage patterns may have changed.

4.1. The Complete Information Agenda Control Model

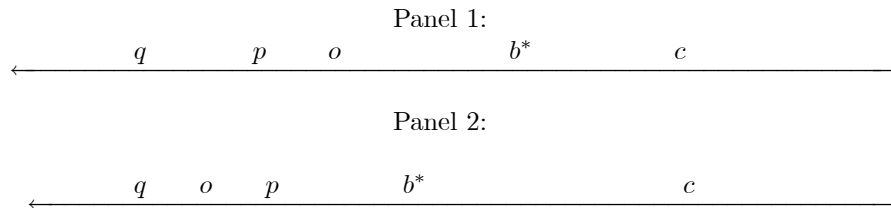
The point of departure for game-theoretic models is the monopoly agenda control model of Romer and Rosenthal (1978) in which an agenda setter (typically the pivotal legislator) has the power to make take-it-or-leave-it offers to the president or, in more sophisticated versions, the legislator who would be pivotal on an override attempt (see Krehbiel 1998). In this framework, all actors are perfectly informed about the preferences of all other actors. While this basic model makes fairly sharp predictions about policy choices as a function of the ex ante status quo and the president's preferences, it makes the prediction that no vetoes should occur in equilibrium. The reasoning is quite straightforward. Since the agenda setter is perfectly informed about the president's preferences, she should be able to forecast exactly which bills the president is willing to accept. As long as both the setter and the president prefer some bill to the status quo, the setter will be able to take advantage of her position to get the bill from this set that she most prefers. If no bill is preferred by both actors, there is no reason to legislate so vetoes should not occur under this scenario either.

This logic can be illustrated with a simple model with three players: a legislative agenda setter C , the president P , and an override pivotal legislator O . The model assumes that each of these actors has policy preferences and acts strategically to move policy as close to her most preferred policy or "ideal point." The ideal points are labelled c , p , and o and Figure 2 illustrates one of the many possible configurations of these points. The model assumes a very simplified version of the policy making process. First, C proposes a bill b to change the status quo q . P can choose either to accept this revision to the status quo or veto it. If the veto is sustained, q is retained as policy in question. However, the veto may be overridden by a 2/3's vote. The ideal point o is such that if O prefers b to q at least 2/3's of the legislature will as well. Thus, assuming all legislators vote for the policy closest to their ideal point, o 's vote is necessary and sufficient to override any presidential veto.

To insure that actions by each player are sequential rational, the game can be solved backwards beginning from its last stage. If the president vetoes b , O will vote to override if b is closer to o than is q . When deciding to veto, P faces two possible situations. If b is closer to o than is q , the veto will be overridden so there is no reason to veto.⁵ However, if O would be unwilling to override the veto in favor of b , the president will veto any bill lying further from his ideal point than q . Finally, in the first stage, C will anticipate these strategies and propose its favorite bill than either P or O prefers to the status quo. In panel 1 of Figure 2, C will choose b^* which is just accommodating to O that she will support it on the override vote. In panel 2 P is easier to accommodate, so b^* will be chose so that the president weakly prefers it to the status quo.

This simple model makes two important predictions. The first is that the right to veto legislation has an influence on policy. Without presidential veto rights, the equilibrium policy outcome would be c regardless of the configuration of preferences. More strikingly, however, the model predicts that the veto will not be exercised. Thus, the model suggests that there need be no correlation between the influence conferred by the veto right and its frequency of exercise.

Figure 2



4.2. Incomplete Information Model

The complete information models suggest that if one wants to explain vetoes one must dispense with at least one of the assumptions underlying the legislative agenda control model. A number of recent models have focused on the consequences of relaxing the assumption that the agenda setter has complete information about the likelihood of vetoes and overrides (see Matthews 1989, McCarty 1996 and Cameron 2000). When there is

⁵It is true, given the model's explication, that the president is indifferent between signing b and having it become law over his veto. However, if the president incurs the slightest cost from having a veto overridden, he would strictly prefer to sign.

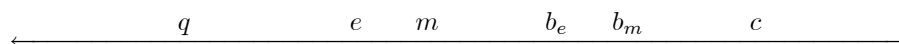
such uncertainty, vetoes may occur because the legislature overestimates its ability to extract concessions from the president.

The main argument of these incomplete information (models can be illustrated using Figure 3. Here we assume that C does not know P 's preferences with certainty, but rather believes that his position is either extreme (e) or moderate (m). In panel 1, the bill C will choose depends on whether he thinks the president's preferences are most likely e or m . If C puts sufficiently strong beliefs on e , b_e will be proposed and will be accepted by both types. However, if C believes its like that the president is at m , b_m will be proposed with m will accept but e will veto. Therefore, vetoes are consistent with rational equilibrium behavior.

However, its not always the case that uncertainty will generate vetoes. Suppose that c is located more closely to e and m as in panel 2. Then, C 's proposal will be her ideal point independent of her specific beliefs. Since neither type will veto, no vetoes occur. Therefore, the incomplete information models predict that veto activity will be larger when C has preferences that diverge sufficiently from the expected position of P . Cameron (2000) provides a similar model which includes the possibility of an override by an uncertain override pivot. It predicts that veto activity will increase in the policy difference between C and the expected position of O .

Figure 3

Panel 1:



Panel 2:



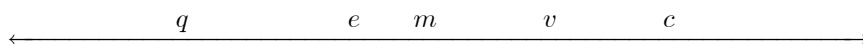
4.3. Blame Game Vetoes

A more recent model argues that vetoes are less a product of legislative uncertainty than they are of “blame game” electoral politics. In Groseclose and McCarty (2001), the legislator agenda setter can use its proposal power to signal that the president has policy views which are out of step with the voters. Vetoes are generated when the agenda setter gets a larger payoff from signalling that the president has extreme preferences than from she does from enacting a new policy. Thus, the electorates uncertainty about the president that is crucial, not the legislators.

For brief exposure to the logic of this model, consider figure 3. The setup is almost identical to the incomplete information model in that the president's position is either m or e . Unlike that model, however, C knows

the true position, but the voter V does not. In the upcoming election, V will be more likely to support P if he has preferences m since those are more in line with her ideal point v . However, assuming C and P are from opposite parties, C may wish to make the voter believe that the president is extreme. If the president is extreme, this can be accomplished by proposing a bill that would be acceptable to m but not to e . A veto will result and the voter will correctly infer that the president is extreme. Therefore, vetoes emerge in the blame game model not because legislators misestimate presidential preferences, but because the legislature is able to use its agenda control to force the president to take an unpopular position. Therefore, the blame game model predicts that vetoes will be more common when there is partisan political conflict across branches. Since the incentives to engage in strategic disagreement are higher proximate to elections, the model also predicts more vetoes close to elections, especially when an incumbent is up for reelection during divided government.

Figure 4



4.4. Empirical Specification

I now turn to specifying the predictive model based on the predictions of the theoretical models. I also include a number of control variables suggested by existing empirical work. I estimate two models of veto usage using different dependent variables. The first model uses only the number of regular public vetoes per congressional term from 1829-1998, while the second includes all public vetoes including pocket vetoes. Both models generate substantively similar conclusions, but the model of all vetoes performs somewhat better statistically so I focus on those results. The independent variables are measured as follows:

- Legislative output

Any reasonable model would predict that veto activity is related to the overall amount of legislation presented to the president. To control for this effect, I use the natural logarithm of the number of public laws passed in a given session.⁶ Of particular theoretical interest is the extent to which veto usage increases proportionately with the number of public laws. Bass (1972) argues that lower levels of legislative activity imply better legislation, thus proportionally fewer vetoes. This would be consistent with

⁶The rationale for using the natural logarithm will be made explicit shortly.

a finding that the coefficient on the logarithm of public bills should be greater than one as the number of vetoes should grow at a higher rate than legislative output. However, both the incomplete information and blame game models can be reasonably interpreted to predict that the number of vetoes should grow at a rate lower than the number of public laws. In the incomplete information model, more interaction should increase the level of information about the president's preferences leading to a lower proportion of vetoes. Alternatively, in the blame game model, the political signalling value of vetoes may be subject to diminishing returns which would predict decreasing proportions of vetoes as legislative activity rises.

- Partisan Division and Preference Divergence

Both the incomplete information and blame game models predict that veto usage should be higher during periods of divided party control, although the mechanisms are quite different. I use two indicator variables for the number of chambers was controlled by a party other than that of the president's. Since these measures capture both partisan as well as policy differences, the findings cannot adjudicate between the two models.

To better capture the specific hypotheses of the incomplete information model, I include a more refined measure of preference divergence. Combining Cameron's veto override model with his sequential veto model, vetoes should be more likely when the pivotal legislator is further from the closer of the expected position of the president (p) or the expected veto override pivot (o) (see also Krehbiel 1998). These pivots are estimated with McCarty, Poole, and Rosenthal's (1997) first dimension DW-NOMINATE coordinates. Presidential positions are also estimated using DW-NOMINATE on a combination of presidential positions collected by *Congressional Quarterly* and by Robert Brookshire and Michael Malbin. The details of the estimation procedure can be found in McCarty and Poole (1995). Using this data, I create the variable *Pivot Polarization* which is defined by $\min\{|c - p|, |c - o|\}$.

- Presidential Standing

While the incomplete information model suggests that public approval of the president should not effect veto usage, a reasonable interpretation of the blame game model predicts that veto usage will be higher when presidential approval is higher. This is because legislators may have greater incentives to use strategic disagreement to undercut popular executives. Without modern approval polls, any consistent measure of presidential public standing from 1829-1998 will be somewhat crude. Therefore, I follow Lee (1975) and use the percentage of the electoral vote the president received in the previous election. To account for those president's who obtained office through vice-presidential selection, I include the indicator *unelected*.

The blame game model predicts that greater electoral vote percentages will lead to great veto usage and that unelected presidents will use the veto less often.

- Electoral Cycle

Again the incomplete information model predicts that the electoral cycle should not influence veto usage, but the blame game model predicts more vetoes in election years when there is partisan inter-branch conflict. To capture these effects, I include a dummy variable for those Congresses preceding a presidential election. However, since the blame game model predicts that veto activity should be higher when an opposition president is running for reelection, I include an indicators for incumbents running for reelection and I interact with divided government (two opposition chambers). Since the incumbent represents the electoral effect during unified government, the blame game model predicts that it will be negative, while the interaction effect should be positive.

- Military and Economic Conditions

I also include variable to indicate those Congresses where the U.S. is engaged in a major international conflict or civil war. To capture the effects of economic performance, I include a measure of economic shocks which is measured as the absolute change in the rate of growth in the consumer price index over successive congressional terms. Thus, it captures both the effects of inflation as well as deflation.

- Temporal and Presidential and Party Specific Effects

To capture any secular increase in veto usage I include a linear time trend. To test arguments about partisan differences in the propensity to use the veto, I include an indicator for Democratic presidents. Finally, since the veto usage of two presidents, Cleveland and Franklin Roosevelt, are such statistical outliers, I also include indicators for their administrations.

4.5. Estimation

Since veto usage can be measured in terms of the number of such events over a fixed interval of time, a Poisson model is an appropriate starting point for building an empirical model (Shields and Huang). Under the assumption that vetoes are generated as Poisson random variables, I can model the natural logarithm of the expected number of vetoes as

$$\ln \lambda_t = \beta' \mathbf{x}_t$$

where λ_t is the expected number of vetoes at time t , \mathbf{x}_t is a vector of independent variables, and β is a vector of coefficients.

Given this specification, each coefficient represents the percentage change in veto usage given a one unit change an independent variable. However, if the independent variables are also in logarithmic form, each coefficient represents the percentage change in vetoes given a percentage change in X . Given this interpretation, the Poisson nests a model where a constant proportion of bills are vetoed in expectation. This model corresponds to one where the coefficient on the logarithm of bills equals one. However, unlike a log-odds or grouped-logit model, this property is not imposed.

A statistical difficulty in the application of these models is that Poisson random variables have the property that their means and variances are equal. However, this is typically not the case with veto usage as the variation in veto usage often exceeds its mean level. This problem is known as overdispersion. There are a number of reasons to suspect that veto counts of the sort I use would be prone to this problem. First, there may be idiosyncratic factors that lead to veto activity that is not explained by a parsimonious set of explanatory variables. Secondly, vetoes may differ in terms of their legislative significance (Cameron, 2000). Vetoes of less significant legislation might represent “noise” that is difficult to capture in a simple model. Ideally, one would only use significant legislation, but making these judgments on different legislation across a span of 150 years can be quite arbitrary.

Fortunately, there are well developed statistical techniques for dealing with this problem, which untreated can lead to mistaken inferences. The most common is to assume that

$$\ln \mu_t = \ln \lambda_t + \ln \varepsilon_t$$

where μ_t is the observed count, λ_t is again the true expected count, and ε_t is a measure of unobserved heterogeneity. If we assume that ε_t is distributed according to the gamma distribution, then likelihood function corresponds to that of the negative binomial. As with the Poisson, λ_t is the expected number of vetoes conditional on \mathbf{x}_t , but now the conditional variance is given by $\lambda_t (1 + \theta \lambda_t)$ where θ is a measure of overdispersion. When $\theta = 0$, the model reduces to the Poisson, but I consistently find that this null-hypothesis can be rejected. However, the substantive effects of overdispersion are quite small as the Poisson and negative binomial models tend to generate very similar results.

Table 2 restates the key predictions of the incomplete information and the blame game models while the estimates of both models can be found in Table 3. The model produces a number of substantively interesting findings. First, we find that the number of vetoes grows less than pro-

portionally to the number of public laws, although we can reject the null hypothesis of proportionality only for the sample containing both regular and pocket vetoes. The evidence thus contradicts Bass's conjecture that more legislation should make vetoes disproportionately more likely.

The effects of partisan opposition are as expected. Opposition party control of the House and Senate lead to larger amounts of veto activity. Opposition party control of a single house raise veto activity approximately 35% for regular vetoes and 16% for all vetoes, although this effect is not quite statistically significant. However, opposition of two chambers increases both regular and total vetoes from 56-80%. However, contrary to the predictions of the incomplete information, I find that the polarization between the House median and the veto pivot is negatively related to the number of vetoes, although the effect is not statistically significant.⁷

Table 2: Key Predictions

	Incomplete Information	Blame Game
Log of Public Laws	$\beta < 1$	$\beta < 1$
Divided Government	$\beta > 0$	$\beta > 0$
Pivot Polarization	$\beta > 0$	$\beta \approx 0$
% Electoral College	$\beta = 0$	$\beta > 0$
Un-elected President	$\beta = 0$	$\beta < 0$
Incumbent for Reelection	$\beta = 0$	$\beta < 0$
Incumbent for Reelection*Divided	$\beta = 0$	$\beta > 0$

⁷I also used polarization between the veto pivot and the median of the majority party. This produced nearly identical results.

Table 3: Public Vetoes from 1829-1996

	Regular		All Vetoes	
	(1)	(2)	(3)	(4)
Constant	-11.216 (5.260)	-9.260 (5.036)	-10.782 (3.683)	-8.228 (3.694)
Public Bills (log)	0.625 (0.256)	0.733 (0.243)	0.648 (0.179)	0.798 (0.177)
One Oppostion Chamber	0.324 (0.256)	0.313 (0.258)	0.160 (0.185)	0.153 (0.192)
Two Oppostition Chambers	0.576 (0.316)	0.602 (0.318)	0.461 (0.221)	0.483 (0.233)
Pivot Polarization	-0.870 (0.734)		-1.211 (0.504)	
% Electoral College	2.094 (0.672)	2.119 (0.678)	2.038 (0.488)	2.056 (0.511)
Un-Elected President	-0.503 (0.285)	-0.462 (0.285)	-0.523 (0.202)	-0.482 (0.210)
Presidential Election Year	0.427 (0.266)	0.406 (0.268)	0.373 (0.193)	0.330 (0.201)
Incumbent for Reelection	-1.104 (.379)	-1.019 (0.373)	-0.819 (0.259)	-0.708 (0.265)
Re-election*Divided	1.089 (.392)	0.970 (0.380)	0.884 (0.269)	0.745 (0.274)
Economic Shock	1.808 (1.378)	1.678 (1.386)	1.917 (0.972)	1.742 (1.016)
War	-0.018 (0.207)	0.003 (0.208)	-0.018 (0.146)	0.009 (0.154)
Democrat	0.100 (0.224)	0.093 (0.226)	0.072 (0.158)	0.064 (0.166)
FDR	0.824 (0.370)	0.816 (0.374)	0.746 (0.250)	0.764 (0.264)
Cleveland	1.114 (0.421)	1.021 (0.419)	1.674 (0.290)	1.506 (0.297)
Year	0.004 (0.003)	0.002 (0.003)	0.004 (0.002)	0.002 (0.002)
Overdispersion	0.317 (0.079)	0.325 (0.081)	0.145 (0.042)	0.171 (0.046)
Pseudo-R ²	0.142	0.139	0.183	0.174
χ^2	73.17	71.78	110.73	105.29
N	85	85	85	85

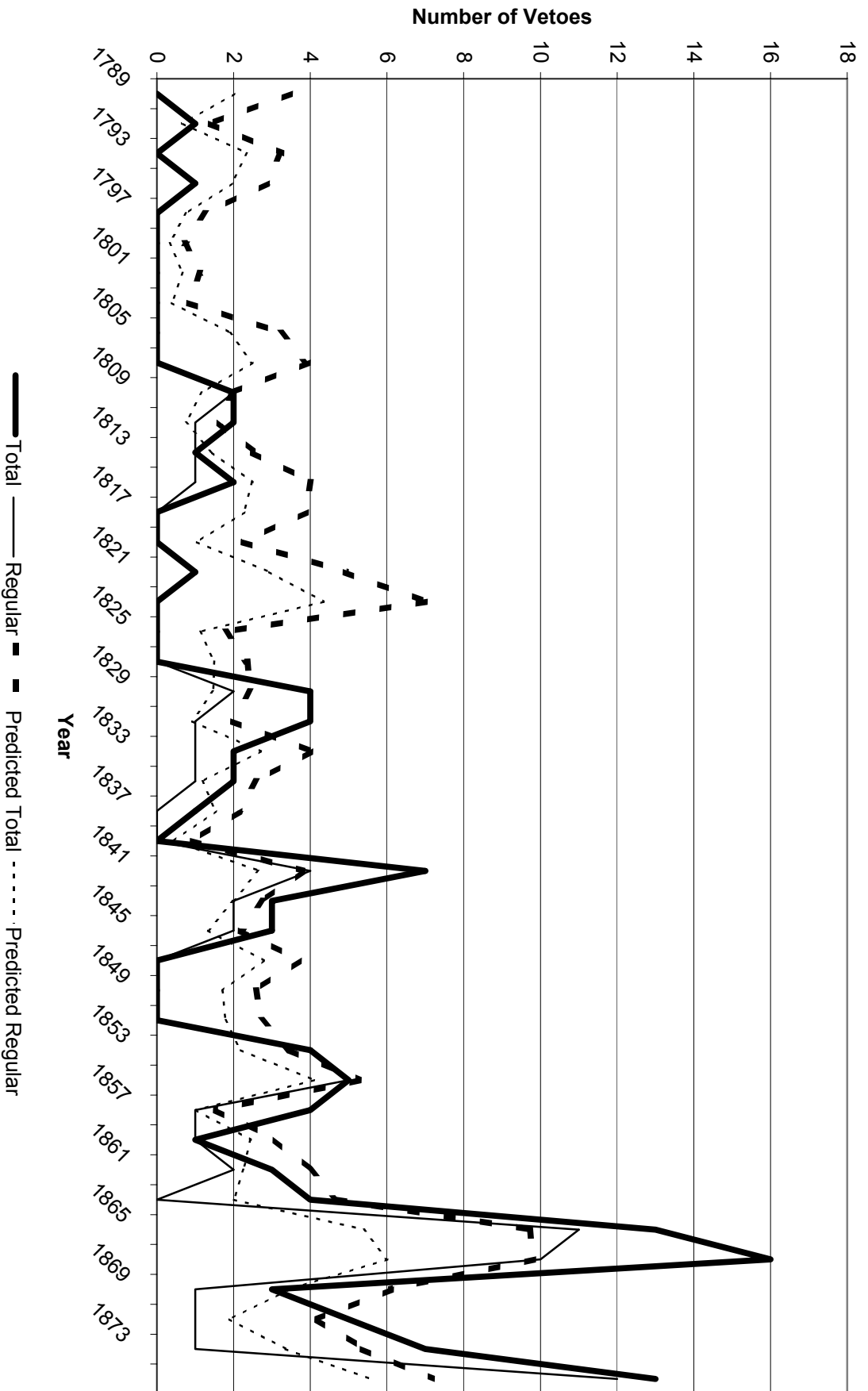
Consistent with the blame game model, the effects of electoral politics are quite strong. Across specifications, a one percentage point difference in electoral college success translates into 2% percent more vetoes. Given that this variable ranges from .5 to .96 in the post-Jackson era, this effect accounts for a substantial proportion of the variance in veto usage. The politically weakest presidents, those who were succeeded to office by means other than election, vetoes 40% less often. The results also suggest that veto usage is generally higher in congressional terms preceding presidential elections only when the an incumbent is running for reelection against an opposition congress. The coefficient on election year is positive, though just sort of statistical significance. However, I find that presidents running for election behave very differently depending on whether congress is in opposition. The results indicate that a president running for reelection during a unified government vetoes about 65% fewer bills than a lame duck. However, during divided government, incumbents seeking election veto from 200-400% more bills than incumbent running under unified, depending on veto type and specification.

As predicted by blame game politics, I find that presidents that were electorally more successful in the last election veto more. A 10 percentage point increase in the electoral college share generates about 20% more vetoes. Conversely, I find that unelected presidents veto about one-half as often. The results for economic and military conditions are mixed. An unexpected change in the price level of .01 leads to about a 2% increase in the number of vetoes. However, the standard error of this estimate is large enough for statistical significant to be borderline under conventional criteria. There is very little evidence that wars have an impact and there seems not to be partisan differences in usage, at least controlling for the two outliers who were both Democrats. Finally, there is little evidence for a secular increase in veto activity. The greater usage in the 20th century can be accounted for by increased levels of legislative activity and more divided government.

Given my model of “modern” veto usage, I turn to the question of the extent to which early presidential and legislative behavior differed. In figure 5, I plot the number of vetoes predicted by my model with actual veto usage. This figures reveals that every early president except Madison vetoed far fewer bills than the model would predict. The model predicts that 54 total vetoes and 33 regular vetoes should have occurred through the end of the John Quincy Adams administration, yet only 10 and 8 were invoked, respectively. For no other period do the predictions differ from actual practice more in absolute or proportional terms. This is compelling evidence that patterns of veto usage did change dramatically during the mid-19th century.

Figure 5

Predicted and Actual Vetoes



It is not simply the case that there were uniformly fewer vetoes during the first 40 years. The vetoes that did occur do seem to be correlated with the same factors as they would have been under modern usage. For example, neither Monroe's dominance of the electoral college nor the economic dislocations coming at the end of his administration did not make him more prone to use the negative. Washington's only vetoes occurred when his Federalist backers controlled both houses. His veto pen was silent against the Republican controlled third House. There is approximately a zero correlation between predicted and actual veto usage over the first 40 years of the Republic.

These results provide reasonably compelling evidence that the "modern" veto had not fully developed until the 1830s. Not only was the use of the veto far less frequent, the tendency for policy and partisan conflicts did not generate veto activity the same way it does now.

5. WERE PRE-JACKSONIAN PRESIDENTS WEAKER?

Perhaps the most important implication of the view that presidential veto usage was constrained is that presidents prior to 1830 should have had less influence on legislation, *ceterus paribus*, than later presidents. In particular, the absence of a broad veto power would imply large amounts of legislation should have passed that was opposed by the president. However, once contemporary veto practices emerged all legislation should have been supported either by the president or a 2/3's supermajority. In the modern parlance of legislative studies, the president should have been "rolled" more often before 1830 than after. In this section, I assess this implication both qualitatively and quantitatively. The qualitative evidence comes in the form of a reexamination of a case that has often been proffered as evidence of a president being rolled by constitutional norms – Monroe's decision to sign the Missouri Bill in 1820. I follow this analysis with a statistical model of presidential rolls on final passage votes from the House of Representatives.

5.1. The Missouri Compromise

If in fact early presidents were constrained in the use of the veto, one should be able to find particular pieces of legislation which the president opposed, passed by small enough majorities that a veto would have killed it, and yet the presidents signed it. Monroe's decision to sign the Missouri Compromise is often put forward as just such an example. The standard

view is that he opposed restricting slavery in the territories, yet had limited options given the norms of proper presidential behavior. Binkley (1947) provides a clear statement of this view:

The outstanding conflict during Monroe's eight years was the prolonged struggle over the admission of Missouri, which terminated in the famous compromise. There is no doubt of the President's deep concern over the nation-rocking controversy and the fierce sectional feeling it provoked. Unlike Jefferson, but like Madison in such circumstances, he kept aloof of congressmen, merely holding in reserve his veto power if the measure as finally enacted should appear to be unconstitutional (p. 60 see also White 1951 and Skowronek 1993).

Monroe's behavior on the compromise issue would seem to be strong evidence for the effectiveness of the constraining norms. The compromise was extremely unpopular with the people of Monroe's home state of Virginia. There is ample evidence that he opposed restricting slavery in the territories as well. He even drafted a veto message and polled his cabinet as to the constitutionality of the measure. When his entire cabinet (even John C. Calhoun) conceded that Congress could regulate slavery in the territories, he signed the measure. Presumably, had Monroe not been bound by the narrow conception of his veto rights, he would have vetoed the legislation and the history of the republic might have been quite different.

However, the basis of such arguments seem far less clear when the evidence is looked at more closely. Historians generally concede that Monroe's preferences on sectional issues were far more moderate than his fellow Virginians. Moore (1953) claimed

Monroe who was more conciliatory than other Virginians, found himself on the horns of a dilemma. He realized that the compromise was as advantageous to the South as any settlement that could be obtained, and he was sympathetic with those Northern Democrats who were jeopardizing their careers to support it (p. 234).

His draft veto message focuses almost entirely on arguments against making restrictions on slavery conditions for Missouri's admission to the union. It did not address the constitutionality of the final compromise which only restricted slavery in the northern portions of the Louisiana territory. Monroe was also probably far more proactive in supporting the compromise than he is given credit for. He communicated his preferences for a compromise to Virginia Senator James Barbour (the president pro tempore) and his son-in-law George Hay, who was also a prominent Virginia politician (Cunningham 1996, p. 97). His intention to veto restrictions on slavery in Missouri were also well known. That he supported a compromise was leaked to the Virginia Republican convention in Richmond which had met

to nominate electors for the 1820 election.⁸ When news reached the convention of Monroe's desire for a compromise, the meeting quickly adjourned with the delegates refusing to nominate Monroe supporters. The emerging influence of electoral politics on the veto is apparent in the following observation by Representative William Plumer Jr. to his father:

This Missouri question has given rise to some movements in Virginia which show how little estimation the President is held in his native state. They are about to select candidates for electors; & it is there, & here, distinctly announced, that, if Mr. Monroe consents to the bill which it is thought to pass both Houses, restricting slavery in the territories, they will look out for a new president. Should the bill pass, it will place the president in a sad dilemma. If he rejects it, acting under his threat he loses all of the north, where his best friends – if he approves it he is at open war with Virginia and the South. (reprinted in Brown 1926, p. 10).

Only after his son-in-law got his permission to promise that he would veto any restrictions on slavery in the territories did the Richmond convention reconvene to support Monroe (Moore pp. 236-237).

In sum, the experience of the Missouri Compromise looks a lot like modern veto politics. Not only did Monroe make his preferences against slavery restrictions in Missouri known to help force a compromise, but the link between the veto and presidential electoral politics began to emerge.

5.2. Presidential Rolls

I now turn to a statistical test of the hypothesis that presidents were rolled more often before 1830. This test is based on all successful final passage votes on bills before the House of Representatives from 1789 to 1998.⁹ Ideally, I would like to have data on whether or not the president supported each bill. All of the motions that pass which he opposed could then be classified as presidential rolls. However, it is impossible to have such data especially over long historical periods. Therefore, I have used two different indicators of likely presidential opposition. The simplest is to measure whether or not the president's party was rolled. In other words, did the bill pass even though a majority of the president's party opposed it? Then the obvious test of the norms hypothesis would be to discern whether after controlling for its size, the president's party was rolled less often after 1830.

There are some obvious problems with this test. First, it assumes that the president's preferences coincide with those of the median member of his party. This is a reasonable assumption for certain periods of American history, but quite inaccurate in others. To deal with these problems, I use the presidential NOMINATE scores described above to impute presidential

⁸The leaked evidence of his support of compromise was a letter from Barbour to Virginia Assembly member Charles Yancey (Cunningham 1996 p 98.)

⁹I thank Keith Krehbiel for help in compiling this data.

preferences on specific votes. To do this, I combine these scores with the estimated yea and nay outcomes from DW-NOMINATE to compute the president's expected utility of each alternative, U_{yea} and U_{nay} (see McCarty, Poole, and Rosenthal 1997). Then a presidential roll is a successful passage vote where $U_{nay} > U_{yea}$. As a control variable, I include the president's utility of the median House member. This is because he should be rolled less *ceterus paribus* when his preferences are close to the House median.

Fortunately, these two measures produce very similar results so I will focus primarily on the results generated from the NOMINATE scores. For other control variables, I used essentially the same variables I used in the predictive veto model. I also use a negative binomial regression to predict the number of rolls. Table 3 presents the estimates of the model from 1829-1998.

As above, I use the estimates from Table 3 to compute predicted rolls from 1789-1829. The actual and predicted rolls are plotted in Figure 6. The results strongly refute the norms hypothesis. In fact, the actual number of rolls was generally less than predicted by the post-1829 model. If anything, early presidents were quite successful in avoiding legislation that they opposed.

Figure 6

Presidential Rolls

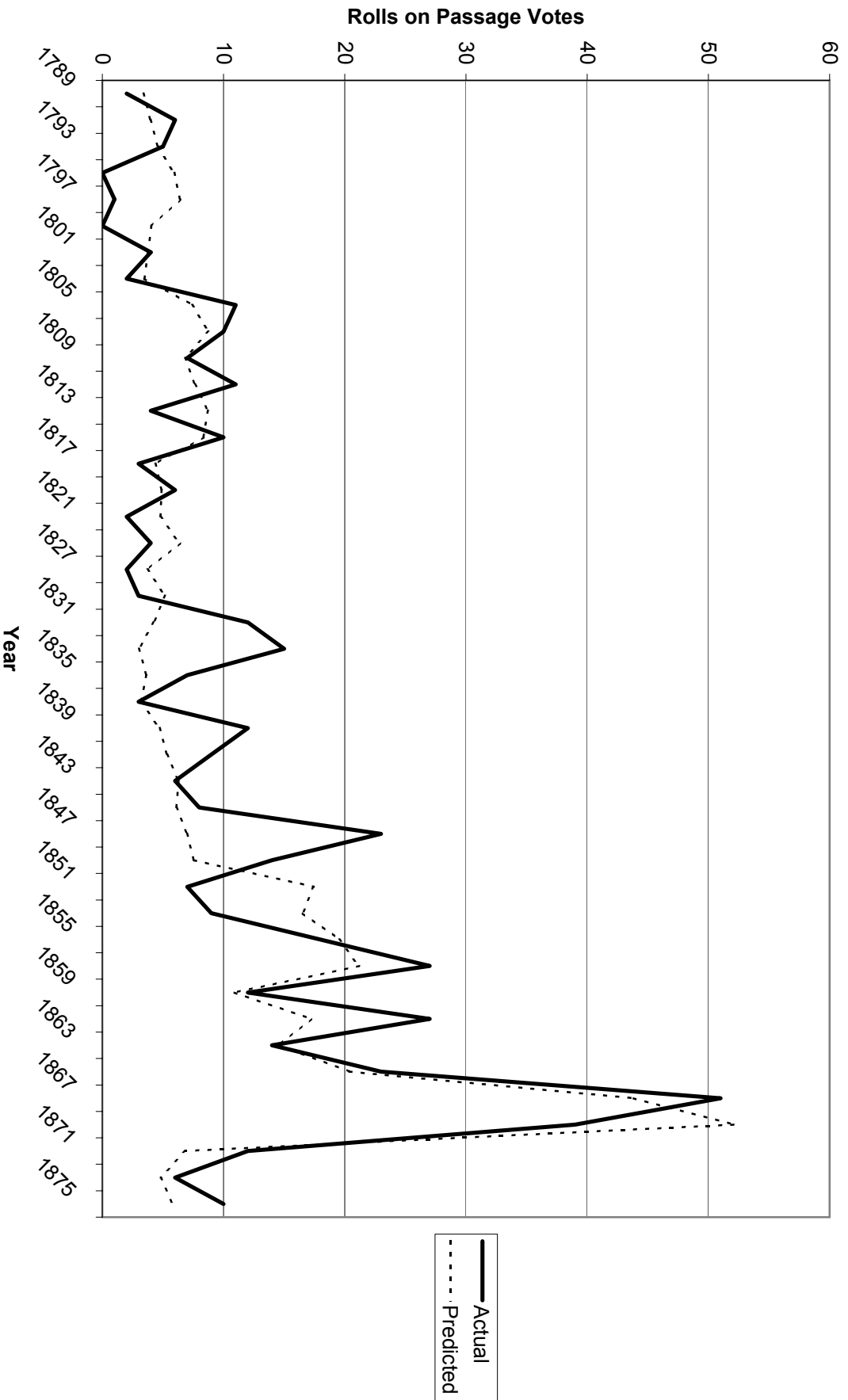


Table 3: Presidential Rolls

Intercept	1.920 (.725)
Natural Log of Passage Votes	.512 (.115)
Median Utility	-.647 (.104)
Senate Control	-.064 (.152)
Election Year	.175 (.201)
Incumbent for Reelection	-.258 (.257)
Incumbent*Divided Gvmt.	.381 (.255)
% Electoral College	1.059 (.466)
Unelected President	-.242 (.205)
War	.091 (.159)
Economic Shock	1.497 (.974)
Overdispersion	.215 (.051)
N	83
psuedo- R^2	.184
χ^2	120.64

6. DISCUSSION

In this paper of I have provided a variety of evidence for four main claims. First, I find little evidence that constitutional norms substantially affected the use of the veto prior to 1829. Second, the quantitative evidence shows that *ceterus paribus* veto usage was lower and qualitatively different in the early republic. Third, the analysis of presidential rolls indicate that presidential influence on legislation was no lower as a consequence of less veto activity. Fourth, data on vetoes since 1829 indicate that electoral politics was an important in generating executive-legislative conflict.

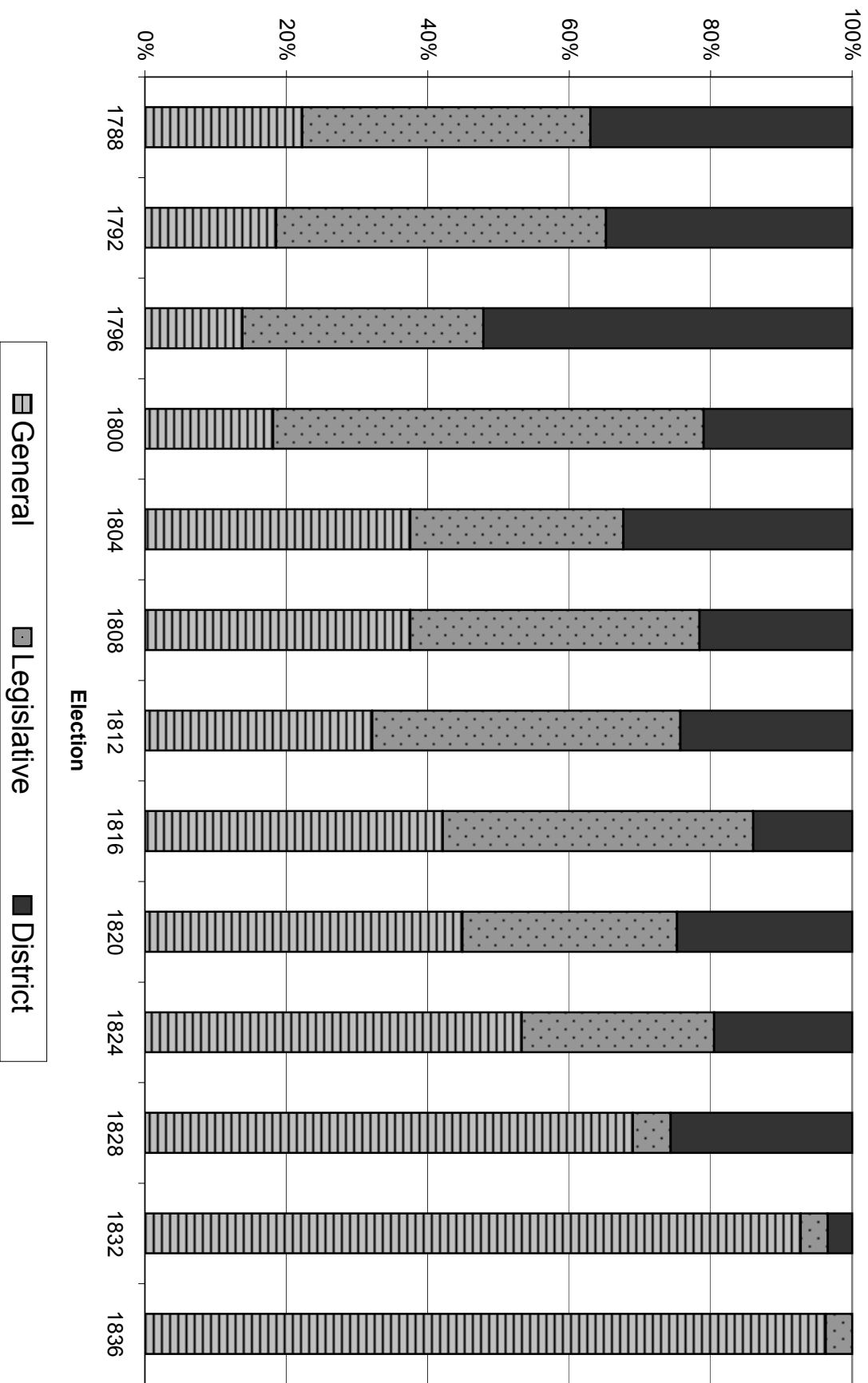
The missing component of my story is to explain why there electoral politics did not create more vetoes before the Jackson presidency. My answer is simple. In the elite politics of presidential selection during the

Federalist and Republican eras, the position-taking incentives that produce strategic disagreement were less salient. Consider the tightly contested presidential contest of 1800. In every state except Vermont, the franchise was restricted to either property owners or taxpayers (Keyssar 2000). Over 60% of the Electoral College was chosen by state legislators. Even in states where voters did participate in the selection, the choice of method (district or general ticket) was manipulated by state leaders to maximize the electoral support of their allies (McCormick 1982). Ultimately, the final decision in the election was made by the House of Representatives.

The scope of popular participation in presidential politics broadened little over the next two decades. Although the franchise broadened some, the collapse of the Federalists meant the absence of partisan competition. Since the Republican congressional caucus controlled the selection of the party's candidate, Congress had as great a role in choosing the executive as a modern parliament. Only after the debacle in 1824 when the caucus failed to select a candidate and the election was thrown back into the House did the system begin to crack. Over the next four years, the franchise expanded, legislative selection of electors all but disappeared (see Figure 7), and bipolar, if not quite partisan, competition for the presidential office emerged. Presidents and legislators had to adapt to a new style of politics. Staking out policy positions before the electorate became an important activity. I argue that it was these new incentives that transformed the veto.

Figure 7

Allocation of Electoral Votes Across Selection Methods



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