

Introduction: Strategies of Disagreement

There's nothing in the middle of the road
but yellow stripes and dead armadillos.

—*Jim Hightower*

Passing important national legislation in the United States almost always requires contending parties and factions to accept compromises that give them less than they really want. The hundred days under Franklin D. Roosevelt stands out as an exception, but normally no party or faction has sufficient dominance over Congress and the presidency to enact unilateral solutions, and thus they must bargain with contending interests to assemble a broad supporting coalition.¹ One might think that politicians would accept as inevitable compromises that help a bill to pass—even when they are distasteful and water down a proposal—provided the resulting legislation improves on existing policy from their point of view. Yet politicians frequently reject compromise because the political advantages of maintaining disagreements outweigh the benefits of a modestly better policy achieved through compromise.

Political negotiations can be extremely difficult to conclude successfully because politicians need to maintain and satisfy the coalition that elected them, yet the actions calculated to generate constituency loyalty tend to undermine negotiations. The converse is true as well. A willingness to compromise, essential to reaching an agreement,

does not inspire the loyalty of constituents and can erode support for the politicians who negotiate compromises.²

This is a book about strategies of disagreement, the efforts of politicians to avoid reaching an agreement when compromise might alienate supporters, damage their prospects in an upcoming election, or preclude getting a better deal in the future. The phenomenon is not extremely common but has important consequences because the issues affected are among the most conspicuous, including health care, education, welfare, and the budget deficit. Strategies of disagreement can delay the enactment of significant legislation, to the detriment of the intended beneficiaries, and can lead to a perception of paralysis when the government does not respond to perceived problems.

Politicians may prefer disagreement to compromise for several reasons. Explaining the necessity of compromise to enthusiastic followers can be difficult, and consequently, leaders who initiate and support compromise sometimes find themselves reviled as traitors rather than praised as pragmatic leaders. Politicians also like to maintain their distinctiveness from their competitors on issues where they believe they have an advantage. Agreeing to a compromise reduces their distinctiveness and diminishes their advantage over rivals.³ Moreover, there are times when accepting half a loaf can make it difficult or impossible to get the whole loaf later on; therefore, politicians will avoid compromise when they believe they will be able to get all they want later.

Strategic disagreement takes a variety of forms. In the most common, a party that has an advantage in an issue refuses overtures from the other side, even when the compromise offered improves on the existing policy. If the contending parties are persistent in efforts to outdo each other, a bidding war can result. Under divided party government, the party controlling Congress can underscore the differences between the parties by provoking a veto, that is, by passing a bill they know the president will have to veto. In another scenario,

when a serious problem demands attention and requires expensive solutions, contending parties and factions may refuse to engage in serious negotiations and instead issue self-serving proposals that informed people know cannot possibly be adopted. Their actions further a stalemate that will produce a catastrophic outcome, far worse than an unpleasant compromise.

A preference for disagreement over compromise can result occasionally in crazy bidding wars that produce unfortunate legislation, but more often it prevents bills from passing. By adding yet another obstruction to the enactment of legislation, enhancing an already impressive list provided courtesy of the Constitution, strategies of disagreement contribute to a traditional disorder in American national government—a susceptibility to stalemate, deadlock, and (in the current terminology) gridlock.⁴ These diagnoses are normally prompted by a lack of legislative response to significant problems, or by the appearance of unseemly conflict in government. It is important to note that strategies of disagreement are but one, albeit important, cause of government inaction, analytically distinct from other causes.

The underlying cause of deadlock is a fragmented political structure in which factions are able to block legislation and which consequently requires broad agreement for legislation to pass. Important legislation generally passes by overwhelming margins because it is only through the accommodation of divergent views that legislation of widespread impact can pass.⁵ Whether you approve or disapprove of this feature of American politics depends primarily on whose ox is being gored at the moment. Liberals complained in the late 1950s and early 1960s, when the liberal agenda was being blocked, but after Ronald Reagan's election as president in 1980, liberals were pleased to avail themselves occasionally of obstructionist tactics in order to stand up to a conservative onslaught.⁶ The government structure explains why stalemates easily result, but not why particular cases result in stalemates. To understand that, we must look more

carefully at the preferences of the members of Congress, and the manner in which they bargain.

In examining stalemate and deadlock, we can distinguish between two important categories—those in which there is no zone of agreement among the parties whose consent is needed, and those where a zone of agreement exists. Let us say that, to deal with a certain problem, there is one set of policies that Democrats are willing to adopt, and another that Republicans would support, and that the assent of both is needed to pass a bill. The overlap or intersection between these two sets is the “zone of agreement,” the set of all possible proposals that could be adopted. Where there is no zone of agreement, failure to reach an agreement reflects the preferences of the parties and the constraints imposed by the political system. Where there is a zone of agreement, failure to reach an agreement reflects problems of bargaining.⁷

No zone of agreement exists when prominent policy proposals are extremely far apart. For most of the 1950s, the dominant liberal wing of the Democratic party endorsed some form of health insurance for the aged. President Eisenhower, leader of the Republicans, insisted that no problem existed for which a government solution was required. In this case, no zone of agreement existed because Republicans were satisfied with the status quo and saw no reason to change.

A zone of agreement exists when there is a possible policy change that would bring the existing policy closer to the prominent policy proposals of both major parties or contending factions. In 1960, when the Eisenhower administration endorsed an ambitious health care plan, though one not identical to the Democratic plan, there was a zone of agreement. Since the existing policy was no program at all, to the Democrats even the imperfect Republican plan represented a vast improvement over the status quo.

Apart from the difficulties imposed by the Constitution, the most durable impediment to a negotiated settlement of important public

problems is simple disagreement on what to do—the absence of any zone of agreement. When no one faction or party can impose its preferred solution, it must negotiate with rivals to produce a proposal that is satisfactory to everyone with the power to block it. It may be that while one side sees a terrible problem, the other finds existing policy entirely satisfactory. This was the case concerning health care for the elderly throughout much of the 1950s. Liberal Democrats saw a crisis in health care for the aged, but Representative Charles Halleck of Indiana, a leading conservative voice, denied there was a problem with his characteristic sensitivity and understanding: “If people were dying left and right for lack of medical care, you’d read about it in the papers.”⁸ With a fundamental disagreement about what should be done, or even whether anything should be done, action is unlikely. Over time, as an idea “germinates,” a greater measure of agreement is likely to develop and the conditions for a negotiated solution improve.⁹

If both sides recognize there is a problem, disagreement about the means of solving it can make legislation impossible. In a common scenario, liberal Democrats propose a regulatory scheme to deal with a problem. Republicans may be so horrified by interference with market incentives, or by costs imposed on business or government, that they cannot go along with the Democratic plan. Or it may be that while both sides agree there is a problem, they so sharply disagree about its severity and the cost of inaction that no agreement is possible.

When the cause of government inactivity is real disagreement between competing factions, the problem is not of bargaining or negotiations, but rather of too much conflict in the government, or of a government structure that penalizes slim majorities. In these cases there are a number of solutions of varying feasibility, among them: holding a new election in hopes of producing a decisive majority, amending the Constitution to limit the ability of minorities to obstruct, reducing social conflict, or generating broader areas of agree-

ment. Probably the best way to forge an agreement is to make a problem worse or more obvious, or to increase public awareness of it, which tends to increase the cost of not acting and to make solutions that are less than perfect seem preferable to inaction.¹⁰

An aspect of political bargaining that often discourages agreement, or at least minimizes pressure on negotiators to reach a settlement, is the absence of a deadline for an agreement on most issues. Without a consensus, a decision can normally be delayed indefinitely until an agreement emerges. This is good in that it allows contentious issues to be deferred, reducing the level of conflict in government; but without pressure on them, negotiators may become unwilling to accept compromises and may hold out for the perfect deal.¹¹

There are also cases where a zone of agreement exists but the contending parties never reach it. This is a bargaining failure. Bargaining failure occurs when Congress and the president do not reach agreement on measures that, considered from the standpoint of the disagreeing parties, represent an improvement over existing policy. Such bargaining failures are serious matters, for they represent lost opportunities that may not be redeemed for years. Constituents are deprived of the benefits of legislation.

Bargaining failures come in two varieties. The first is when incompetence, poor communication, or other misadventure prevent negotiators who are otherwise so inclined from reaching an accommodation. Tactics can go awry, with one party employing a hard-nosed style that so puts off the other side that negotiations break off and never resume. The solution is better bargaining and the study of books such as *The Art and Science of Negotiation*, the writing of which was stimulated by the author's view that there is a great deal of inept bargaining.¹²

A second kind of bargaining failure occurs when there is a zone of agreement, but at least one side deliberately avoids it. Here we enter the realm of strategic disagreement. The very existence of these

strategies is problematic and puzzling. In some cases it may involve a betrayal of the fiduciary responsibility of representatives to their constituents. The bargaining failures that result, while possibly beneficial to the elected officials who cause them, come at the expense of the intended beneficiaries of laws that do not pass. Democrats, who avoided compromise with Republicans over Medicare legislation in 1960, were not able to pass their preferred form of the law until 1965.¹³ Liberals refused to support Nixon's welfare reform proposal in 1969, deeming it pathetically inadequate despite its increase of billions of dollars in spending on the poor. That opportunity has passed forever, for neither Nixon nor any of his successors has been able to pass a similar bill, and the prospect that such a bill will pass in the future now appears close to nil.¹⁴

The strategies discussed in this book are quite diverse, ranging from stalemates to bidding wars. Their underlying unity lies in the fact that all strategies follow from the efforts of one group, or possibly two, to avoid the best agreement that can be gotten under the circumstances in order to seek political gain. Pursuit and avoidance strategies occur when one group or party tries to take away or diminish the advantage enjoyed by its opponent in a policy area. Rather than take advantage of the new flexibility of its formerly recalcitrant opponent to pass a bill, the threatened party holds itself aloof and refuses compromises, or even increases its bid in order to avoid an agreement that would improve on the status quo. In another set of cases agreement between the two sides is needed to avoid an unthinkable disaster, and for both sides a compromise involving mutual concessions is better than disaster. Yet stalemate results because neither side wishes to make the necessary concessions, and so the problem, for which the solution is obvious, goes unresolved. By contrast, strategic encroachment is not a bargaining failure; the behavior of one side only makes it appear that there is a zone of agreement when in fact there is none. Strategic encroachment may occur when one side expects that the other will strategically disagree. This side tries

to gain favor with constituencies by offering a legislative proposal it does not want passed, hoping the other side will not allow it to pass.

Chapter 1, "A Bill or an Issue?" identifies reasons why politicians, under certain conditions, prefer disagreement to compromise. First, political parties and politicians want to be distinct from their competitors, especially on issues where they have an advantage (as the Democrats currently have in the health care area). This is akin to product differentiation in marketing. If a party accepts a compromise, it ceases to be clearly distinguishable from its competitor and loses a valuable advantage, including the ability to attack and criticize the opposition. Second, even though compromise may be absolutely essential to reach an agreement, and an agreement will make followers better off, politicians often find it difficult to explain to supporters why compromise was needed. Compromise can easily be interpreted by enthusiastic supporters of an idea as a sellout or weakness. Competing politicians can accuse those who commit the crime of compromise of betrayal and try to steal their supporters. Third, accepting half a loaf today may preclude getting the whole thing at a later date. Piecemeal reform can, by alleviating the worst consequences of a problem, undermine the support needed to implement more sweeping changes later. Thus, supporters of comprehensive reform often oppose meliorative measures.

The rest of the book is an application of this perspective, an explanation of the kinds of political bargaining produced by a disinclination to compromise, with special attention to the differences between divided and unified party government. Two chapters ("Strategies of Pursuit and Avoidance" and "The Strategy of Encroachment") deal with situations in which one party is perceived to have an advantage with a given constituency group, and the other would like to minimize or erase that advantage. Each chapter characterizes a situation and the pattern of bargaining associated with it, and analyzes several important cases in depth.

"Strategies of Pursuit and Avoidance" analyzes patterns of bidding

and bargaining when politicians of varying ideologies compete for the favor of a single, popular constituency—such as the elderly. A party that seeks to overcome a political disadvantage pursues its opponent by making a proposal that puts them relatively close together, a form of “strategic agreement.” Then, rather than lose an advantage, the other party avoids an agreement by one of several means. Typically, Republicans and conservative Democrats are disadvantaged in their efforts to win the loyalty of elderly voters because they cannot propose spending increases as readily as liberal Democrats. Democrats seeking the presidential nomination of their party may compete among themselves to see who can offer the most to the elderly. In competition between the parties, Republicans can try to outbid the Democrats in an effort to show that Republicans are as reliable in their support as Democrats. Unwilling to sacrifice their leadership, the Democrats often bid up the Republican offer still further. I consider pursuit and avoidance in general terms and examine it in specific situations, including: a bidding war over Social Security benefits in 1972; strategic avoidance of an agreement on Medicare legislation by Democrats in 1960, which helped delay the adoption of Medicare until 1965; and Senator Edward Kennedy’s efforts to avoid an agreement on health care legislation with President Jimmy Carter, as part of his effort to win the Democratic nomination in 1980.

When the supporters of federal action to deal with a problem begin to win favor with a valued constituency, the opponents can work to offset that advantage by means of “strategic encroachment,” discussed in chapter 3. Even politicians who want no bill at all recognize that it may become dangerous to be seen wholly in opposition, and unwise to allow supporters of action to have an issue all to themselves. In this devious ploy, the stand-patters make a proposal that positions them close to, but short of, the activists. Many of the ostensible supporters of this proposal do not want to see it adopted, and they count on stubborn activists to reject compromise and keep a bill from being passed. Taking a position allows them to limit their polit-

ical damage on the issue and keep their opponents from getting all the credit. When the activists do not accept the compromise proposal, stand-patters can say it was activist unreasonableness that killed the bill. It can be awkward for the stand-patters should the activists unexpectedly agree to the proposal, for then those who really prefer to do nothing will be forced to fight their own bill. This has happened on several occasions, most prominently in 1957 when the Democrats unexpectedly accepted a Republican substitute amendment to a school construction bill, forcing the Republicans to kill their own amendment.

Chapter 4, "Provoking a Veto" examines efforts of one party to increase or enhance its advantage in an issue area by passing a bill that a president of the other party will be compelled to veto. It has sometimes been a deliberate strategy to provoke a veto in order to show in the clearest possible way the difference between the two parties.

Chapter 5, "Stalemates and Summit Negotiations," considers another class of disagreements that results when Democrats and Republicans find themselves appealing to different constituencies in a policy dispute. In budgetary disputes, for example, the Republicans may assert their credentials as a party of low taxes while the Democrats strive to show themselves as the leading protectors of Social Security and other programs. In seeking to ingratiate themselves with these different constituencies, the parties will tend to adopt extreme positions and, rather than move closer together, may actually move further apart over the course of negotiations. This produces an extremely durable stalemate. In certain cases, where the failure to act will bring about horrific consequences, a compromise that hurts both sides similarly is better for both sides than not acting and allowing catastrophe to occur. But both sides may prefer disagreement to a compromise that will hurt their standing with constituents. Summit negotiations conducted in private can be very useful in overcoming such stalemates, for they allow negotiators to obscure the origin of

necessary compromises. In this chapter I treat several cases in detail, among them the Social Security stalemate and summit of 1981–1983, and the budget impasse of 1987, which was ultimately broken by use of summit negotiations. I conclude that summit negotiations work best when the alternative to an agreement is an inevitable, tremendous disaster that will hurt both sides.

Chapter 6, “Advice to Moral Politicians,” concludes the book with a plainly normative argument that politicians should not engage in strategic disagreement when it risks delaying the enactment of legislation that could do some good for constituents. I take particular issue with the notion that enacting a modest program today can prevent the enactment of a better plan later. First, enacting a modest plan may make it easier, not harder, to adopt improvements later, especially if having a program in place helps to mobilize a constituency to lobby for improvements. Second, eschewing a modest plan today in favor of a better one later can be terribly risky, for the opportunity to adopt a better plan may be much further in the future than expected.