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President Obama's Negotiating Technique
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Barack Obama campaigned as a person who believes that discussion with others who hold views different from his own would reduce domestic and international rancor. This outlook prompted him to state during the primary campaign that he was prepared to have talks without preconditions with leaders of Iran, Venezuela, and other foreign countries. He stated repeatedly that he would work with Republicans to take their sentiments into account on domestic legislation. He may have modified his view in light of failures of reconciliation on both foreign and domestic issues, although this is by no means clear. He still shows willingness either to compromise his stated positions or refrain from fully articulating them on important matters in order to seek consensus. This has been evident on issues such as health care, greenhouse gases, and financial restructuring. This discussion will deal with domestic and not foreign policy.

President Obama made a great effort at the outset of his administration to convince congressional Republicans that large economic stimulus measures were needed to prevent a deep recession. This had also been the position of Henry Paulson when he was secretary of the treasury in the closing months of the Bush administration. The stimulus bill for \$818 billion passed the House of Representatives on January 28, 2009, but, despite Obama's repeated and well-publicized urgings, not a single Republican voted for it. To this day, Republican legislators and partisans criticize stimulus measures as spending too much, too fast, and adding to federal debt. Obama's efforts to bridge the divide between the parties on the economy has failed, certainly so far.

Three other major pieces of domestic legislation are on the table: health care; financial restructuring; and energy, with particular attention to a cap-and-trade system. On health care, the most controversial provision is whether to create a public option to stimulate competition with private providers.¹ Most

¹ The major argument against a public option has been that it provides unfair competition with private health insurance companies. My recollection is that a key argument for moving ahead with the Tennessee Valley Authority was to provide a public option to compete against private companies that provided electricity. The strategy worked and helped in the vast expansion of electricity generation that followed.

Democrats support this position, as does the public, according to opinion polls. Most Republicans oppose it on various grounds: that it would force private health maintenance organizations out of business; that this would reduce the choice of providers; and that it would not provide adequate health care. Obama has defended the public health care option but then also said during a press conference that he has drawn no lines in the sand. This is an ambiguous position at the start of a negotiation and raises the question of whether Obama sincerely believes that a public option is an essential element of the legislation.

On greenhouse gas emissions (GHG), the House bill is replete with compromises and loopholes. The main compromises are to distribute most trading permits at no cost, rather than to auction them and attract government revenue; and doing little to reduce reliance on coal, a high emitter of GHG, to generate electricity (50 percent of U.S. electricity generation comes from coal). The Bush administration did not attempt to enact legislation to deal with GHG emissions, and Obama dramatically changed this position. The overwhelming majority of experts on global warming support the Obama position to take this issue seriously; and many of them seem to have concluded that even though the House bill is less pathbreaking than they had hoped for, it is better than nothing. The Senate bill is expected to be even weaker than that of the House in order to reduce the cost. Unless President Obama takes a strong position to prevent this from happening, the final legislation may be of little value—and, if so, this would give the United States a weak hand in the negotiations on this issue at the global conference in Copenhagen in December.

The administration's White Paper released in June that lays out the specifics of the financial restructuring is replete with self-negotiation on many crucial issues, and it puts off many of these issues to some indefinite future. This is not a reassuring strategy because the administration's leverage will almost certainly be weaker the further away the actual negotiation is from the financial collapse itself. Issues on which weak or no current positions are set forth include management compensation, reform of rating agencies, lack of an independent federal entity for insurance oversight, maintenance of overlapping oversight bodies, and restructuring

of government-sponsored entities such as Fannie Mae and Freddie Mac. The proposal recommends that mortgage and other originators of securitized credits need have only 5 percent “skin in the game” (rather than being able to sell all the credit instruments), and this is not a powerful deterrent to repetition of what originally brought on the credit problems of the banks. Either the administration is unprepared to make recommendations on these issues, or it represents a replay of Obama’s desire to win the support of with those who disagree with his positions rather than to first enter into hard negotiations with them. The odds are that Obama will once again fail to attract the support of Republicans on financial restructuring despite the compromises made to mollify his adversaries.

I write this as a person who respects Obama’s intelligence and admires most of his positions. Several counterarguments to those set forth above can be made about his negotiating technique. One is that important legislation has been enacted; the economic stimulus may not be as strong as Obama might have wanted, but it has nevertheless been valuable in stimulating the economy. It still remains likely that bills on health care and reduction of global warming will become law—although much weaker than those originally proposed. Without compromises, even this much might not be possible. Obama faces powerful opposition on measures included in the financial restructuring package, especially the creation of a Consumer Financial Protection Agency, and not merely on those excluded for current action. In sum, politics, after all, is about securing legislation, not about making a good try that fails.

Not all bipartisan legislation is desirable. Many Democrats supported the Bush tax cuts in 2001 (28 in the House, 12 in the Senate), and a united and vehement opposition would have served the country better. Bank regulation decreased in the 1980s and 1990s, and the country has paid a high price for the largely bipartisan sentiment that existed. Politics in the United States has long been an adversarial game. Bill Clinton raised taxes in 1993 without Republican help. There have always been legislators from both parties who stray from a strict party line on legislation. Obama attracted some of this, particularly the three Republican senators who supported his stimulus package. However, his predecessors frequently attracted support from the opposing party without all the hoopla about reducing party rancor.

Negotiation is a discipline that has been studied in its own right and, consequently, a large literature has developed looking at negotiation in different settings. The first sentence of an essay by a respected analyst is that “Negotiation takes place when neither party in a conflict is strong enough to impose its will or to resolve the conflict unilaterally.”²

² William Zartman, “The Structuralist Dilemma in Negotiation,” Research Group in International Security, January 1997. The setting

President Obama’s objective is different, namely, to resolve issues by bringing in the weaker party (the Republicans) in order to reduce political disagreement. This has not been successful. It is doubtful that it will work no matter how consistently it is tried because it strays too much from normal political practice. It tries to overcome an opponent’s conviction by empathetic handling and is more likely to be received as condescension than participation. Just as no good deed goes unpunished, good intentions carry little weight.

There are, of course, other ways to negotiate that would allow President Obama to play the central role in setting forth his own positions rather than giving the opposition a large opportunity to set the terms of the debate. In the years after World War II, when the U.S. government wished to significantly reduce world trade barriers, the technique used was to put the maximum U.S. tariff reduction offer on table while making clear at the outset that potential concessions would be withdrawn if other developed countries did not make comparable reciprocal offers. This is the opposite of what Obama is doing in that the United States set the parameters of the negotiations and not the countries that were reluctant to move full speed ahead in liberalizing trade.

Major changes in activities that consume a large proportion of U.S. spending, both public and private, will inevitably require compromises. This is particularly the case for the three major domestic issues now on the table—health care, energy pollution, and finance—in which vested interests are powerful. The best spokesman for change is President Obama because of his great rhetorical ability and the fact that his public popularity is higher than that of either his supporters or opponents. The time for compromise should be after Obama makes his own case for his proposals. Early compromise is more likely to beget further compromise rather than to convince his opponents that their positions have been taken into account. Unfortunately, the earlier in the legislative process that compromises are made, the more likely it is that the “what-have-you-done-for-me-lately?” syndrome will dominate end-game discussion.

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of the article is a two-party negotiation, one strong and the other weak, and it seeks to explain why the weaker party often emerges with greater payoffs.

