



Negotiating on Behalf of Others: Advice to Lawyers, Business Executives, Sports Agents, Diplomats, Politicians, and Everybody Else

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Book Title: Negotiating on Behalf of Others: Advice to Lawyers, Business Executives, Sports Agents, Diplomats, Politicians, and Everybody Else

Chapter Title: "Legislators as Negotiators"

Pub. Date: 1999

Access Date: May 21, 2020

Publishing Company: SAGE Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761913276

Online ISBN: 9781452225524

DOI: <http://dx.doi.org/10.4135/9781452225524.n14>

Print pages: 203-225

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Legislators as Negotiators

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All laws are born of negotiations. Politicians are the negotiators, yet they also act as agents, with constituents and other politicians as their principals. The settings and contexts for these negotiations, however, contrast sharply with those for lawyers, business executives, and sports agents, who are usually blessed with unified principals, quiet negotiation rooms, and the task of completing a single deal. Politicians often negotiate in a bubble, with interest groups, and with the media watching. Their constituents rarely speak with a single clear voice. Negotiations on dozens of issues happen simultaneously, some failing and some succeeding. This chapter introduces the interesting and distinctive world of legislative negotiations within the principal-agent framework. We discuss the role, mission, and authority of political negotiators, and we present a model of the negotiation process that helps us understand why legislators select relatively extreme leaders to negotiate on their behalf.

Politicians are the “human embodiments of a bargaining society,” and their careers depend on successful negotiations to shape laws (Dahl and Lindblom 1953, quoted in Jones 1995). Bargains are struck to pass legislation (about 300 congressional bills become laws every year), and bargains are struck to block legislation (more than 5,000 bills are introduced in a typical year). In almost every instance, legislative entrepreneurs fashion laws to satisfy a multitude of interest groups, committees signal what is likely to happen with a bill, and temporary coalitions are formed. This rhythm is repeated over and over within the country's 50 state governments, 3,043 county governments, 14,422 elected school boards, and 35,935 city councils (Ornstein, Mann, and Malbin 1996:158,160,165).

Legislative negotiations touch nearly every aspect of modern society, from the amount of pollution in our air to the quantities of pesticides on our produce, from the strength of the national defense to the shape of the country's income distribution. The consequences of legislative bargaining can be profound, although we should not lose sight of the fact that politicians negotiate on behalf of principals— voters and moneyed interests—who can punish wayward agents directly or indirectly at the ballot box. Much of the literature applying principal-agent models to politics explores when and why principals take self-interested actions at the expense of their principals (Bianco 1994; Ferejohn 1986a, 1990; Kalt and Zupan 1990; Kau and Rubin 1979). This is an interesting monitoring and reward problem for voters, and it is typically studied only with respect to how legislators vote. Politicians, however, are held accountable only every few years at the ballot box, which weakens the power position of citizen principals. (Presumably, errant-voting legislators can at some point be removed from office.) Voting, however, is merely the final—and usually anticlimactic—act in a long negotiation over a piece of legislation (Hall 1996). Votes are visible and easily monitored by principals, but the shaping of legislation is the art of negotiation, and that is our focus here.

Contrast the negotiating task of politicians with that of business executives bargaining on behalf of stockholders. Stockholders have easily imputed and homogeneous preferences; they all want stock prices to increase. Business executives also want stock prices to increase, regardless of anyone else's wishes. The principals and agents have convergent preferences, and the principals' preferences are substantially homogeneous. The same is true of sports and literary agents, in that their paychecks are maximized by getting clients the most remunerative contracts possible. Agency losses in such situations are minimal.

Politicians, by contrast, are agents for voters with heterogeneous preferences, and a politician's interests may readily diverge from those of the voters. Political agents often run for office because they have deeply held views; such views are never aligned perfectly with those of most of their constituents. Ambitious and sometimes seized by political causes, office seekers are much more likely than voters to view the world from within an ideological framework (Converse 1967). Thus, whereas most agent negotiators have relatively aligned preferences with relatively homogeneous principals, political negotiators may have divergent preferences from most of their heterogeneous principals. The more heterogeneous one's electoral district, the greater the expected agency loss (Fiorina 1974; King 1997a).

Take the case of the 16th California Congressional District, stretching from urban San Jose to the agricultural Santa Clara Valley and represented by Democrat Zoe Lofgren. The principals are ethnically heterogeneous, with a population that is 37% Hispanic, 37% white, and 21% Asian, including the largest concentration of Vietnamese in the United States (Barone and Ujifusa 1995). When Lofgren negotiates on issues that could pit the Hispanic and Asian communities against each other, on whose behalf is she working? At the other extreme is Republican Harold Roger's 5th Congressional District in Kentucky, which includes Middlesboro and Pikeville. Uniformly white and rural, the district is highly homogeneous. This makes Roger's district easier to represent than Lofgren's district, though ethnic diversity is only a proxy for heterogeneity.

The kind of heterogeneity that matters most to agents can be thought of as the variance around a point estimate of public opinion in a district. On a few motherhood and apple pie issues, there is little variance; principals have homogeneous preferences. Few public policy issues, however, yield such a clear signal to politicians. Electoral districts are becoming more diverse, and special interest groups are proliferating. How, representing this mixed and changing constellation of preferences, and given their own preferences, do political agents negotiate?

The Politics of Legislative Negotiations

Consider two aphorisms: (1) Politics makes strange bedfellows, and (2) in politics, one has no permanent friends and no permanent enemies, just permanent interests. Both imply fluid coalitions supporting various policy proposals. The fluidity of issue-by-issue coalitions is partly the result of a society comprising many small factions or interest groups, and legislatures are designed for factions to coalesce in the pursuit of voting majorities (Weingast and Marshall 1988). Agriculture bills in Congress, for instance, combine the interests of dairy producers, cotton farmers, peanut growers, and cattle ranchers. The dairymen—on their own—could never hope to gain a legislative majority. Cotton, peanut, and cattle interests are likewise permanent minorities. In collaboration, however, minority interests can constitute a majority through logrolling votes and creating committees that institutionalize their cooperation (Ferejohn 1986b).

Such is the nature of legislative coalition building in Western-style legislatures. Strange bedfellows fashion temporary voting majorities as one-bill stands, and enemies on one vote may be needed as friends for a subsequent skirmish (Riker 1962). Fashioning these temporary coalitions is often done through staff. Staff are omnipresent in the U.S. Congress. The average House member has 17 personal staff members at his or her disposal, which adds another layer of agents on top of agents, though most are loyal to their bosses because their fortunes rise or fall with them. Staff, however, play a much less central role in school boards, city councils, and state legislatures. Accordingly, we limit our discussion to three crucial elements of legislative negotiations that virtually all these institutions have in common: They are subject to open meetings laws, meaning that negotiations are done “in a bubble”; most proposed laws die; and there are strong pressures to pass legislation before elections, making it seem as if there is a big “sell by” date looming over the bargaining table.¹

Politicians Negotiate in a Bubble

Negotiations are usually private affairs, held behind closed doors while the news media and interested observers wait outside for shards of information about prospects for a settlement. Consider how the news media cover labor talks during a strike, with cameras poised for sweaty negotiators to emerge from a hotel room after hours of give-and-take to issue some code words, which are then read like tea leaves. In contrast, much legislative negotiating is done in a bubble, with all the world able to watch. (Because few people do watch, the media stand guard and tell the public when something important happens.) Beginning in the late 1960s, sunshine laws opened political deliberations to public view. Before 1970, most votes in Congress were not recorded, television and radio coverage of committee hearings was prohibited, and citizens were barred from learning how their representatives voted in committees. By the end of that decade, all committee hearings

and votes—including conference committees between the House and Senate—were opened to the public (Rieselbach 1994).

Two arguments were used in support of opening political negotiations to public scrutiny. First, open negotiating was intended to educate citizens about the merits and demerits of public policies.² Second, public negotiating was intended to ease the monitoring of legislators so that constituents would have a better sense of whether their representatives should be rewarded or punished at the next election (Bianco 1994).

Openness comes with costs, some trivial and others severe. For legislators, the trivial cost is having to endure the public grandstanding of one's colleagues. The presence of C-SPAN cameras in a hearing or conference committee promotes puffery and posturing.³ This stretches out the proceedings and makes them somewhat more difficult to interpret. The more serious cost, however, may be in limiting the kinds of solutions that are possible. If politics is the art of crafting temporary coalitions of strange bedfellows, those awkward embraces may be more difficult when the public is watching. It is important to compromise, but it is also politically risky to be seen compromising.

To the extent that negotiators can choose where they are along the principal-agent continuum, negotiating in a bubble likely drives them toward the agent end. This is because as voters learn more about what their legislators are doing, voters are more likely to reward them for being pure agents. In an illuminating experimental study, a group of political scientists led by Lee Sigelman presented voters with descriptions of two types of legislators: delegates and trustees, sometimes called “puppets” and “pied pipers” (Sigelman, Sigelman, and Walkosz 1992). This is a crucial distinction employed by political theorists, with delegates (puppets) behaving as perfect agents, doing their constituents' bidding moment to moment (Pitkin 1967).

Trustees, on the other hand, seek to do what they think best for their constituents in the long run, sometimes ignoring the vocal preferences of their constituents. This is the type of representation that John F. Kennedy praised in *Profiles in Courage* (1956). Sigelman and his colleagues found voters saying that they want their own lawmakers to look after long-term concerns, yet when the same respondents voted—in an experimental simulation—they rewarded delegates, not trustees.⁴ The implication for political negotiations is that the more public bargains become, and the easier they are to monitor, the more likely agents will remain faithful to their principals on an issue-by-issue basis. The downside is that negotiations in a bubble may take longer, may be harder to conclude, and probably limit chances for politicians to act as trustees.⁵

Most Proposed Laws Die

Lawmakers, from school board and city council members to U.S. senators, have ample opportunities to kill legislation. Laws are like frogs: Out of dozens of tadpoles, only a few survive. In the House of Representatives, for instance, the average member submits 8 bills per year, yet only 7 out of every 100 bills become law. What happens to the other 93 bills? It is difficult to say precisely, but a significant number of bills never have a chance; they are introduced for purely political purposes. A number of additional bills become the subject of negotiations but perish because negotiators fail to reach compromises.

In *Strategic Disagreement*, John Gilmour (1995) identifies three reasons for failures to compromise in political negotiations. First, politicians need to be distinct from their competitors in the next election; they need to differentiate their product in the political marketplace.⁶ Negotiations that resolve political differences between political parties can make it much more difficult for some players to get elected. Second, the kinds of voters who follow political negotiations most closely are ideologically concerned, least in favor of compromise,

and most likely to cast stones. The most politically interested observers would, in general, rather be “right” than win (McCann 1996), and that enthusiastic supporters of an idea may regard compromise as a display of weakness (Gilmour 1995). Third, despite the dictum “half a loaf is better than none,” taking half a loaf today may preclude getting the whole loaf in a future negotiation. Momentum is crucial in politics, and ameliorating problems by compromise may lose an issue its moment on the agenda.

What one could casually observe as failure by political negotiators—the high death rate of bills, for example—may be a calculated loss by political agents. This creates a dilemma for legislators who have to give occasional reports to their principals. Although “no deal” may be better for the principals in the long run, “any deal” is often more politically expedient.

Elections as a “Sell by” Date

The political need for a victory, even a symbolic one, is keenly felt by lawmakers the closer they come to an election. For a typical election, more than a third of all voters—and the majority of the independent “swing” voters—decide whether and how to vote in the final two weeks of a campaign. News coverage and campaign literature will focus on recent legislative victories and defeats; this places a premium on concluding last-minute bargains.

Compounding the electoral incentive to negotiate before elections is the rule in most legislatures that all bills automatically expire when elections are held. A bill could make it 99% of the way through the legislative process, past public hearings, through the committees, beyond passionate debate in the chamber, and yet still die if not signed by the mayor, governor, or president before the legislature adjourns for an election. After an election, negotiations must begin anew, with a new bill, new public hearings, new committee votes, and new passionate debates in the chamber.

Negotiators of all stripes set deadlines, such as strike deadlines and target dates. These may be good disciplining devices for focusing the attention of bargainers, yet if a business agreement is not settled by some deadline, the deadline often can be pushed back if some progress has been made. This cannot happen in legislatures if an election is coming. Every negotiation is stamped with an indelible “sell by” date.

In Congress, the final days are sometimes called “crazy time,” with Capitol halls labeled the “bargain basement.” The trade-off between advantageous outcomes and getting something done often tips toward the latter; bargains are much more likely to be struck. Deliberation presumably suffers in this last rush of negotiating, but it can also be a moment of great creativity as nongermane bills are linked together and deals are concluded (Connor and Oppenheimer 1993). Typically, an omnibus package—a collection of largely unrelated bills—passes as one of the last congressional acts. “Christmas tree” bills tend to proliferate, so called because there are presents under the tree for virtually everyone, and these omnibus bills provide the most likely hiding places for special tax breaks, new bridges and federal buildings, and other spoils of patronage.

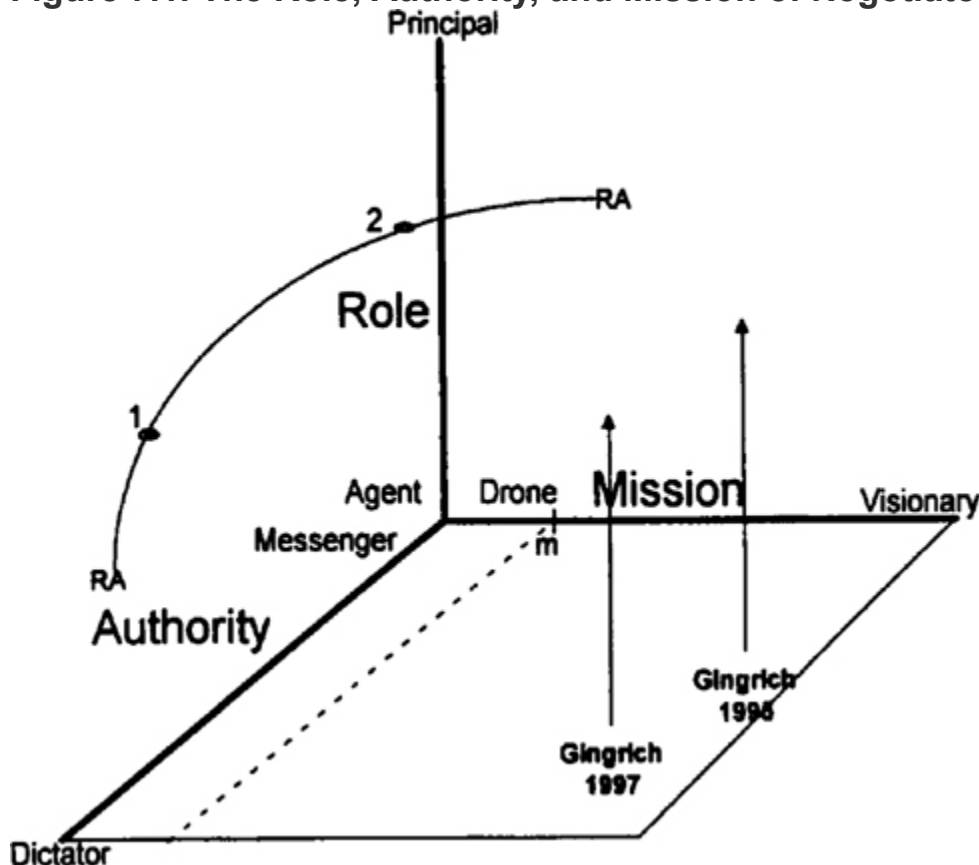
The Role, Authority, and Mission of Legislative Negotiators

Being a legislator is a do-it-yourself type of business. The legislator is supposed to be a jack of all trades. Although he can have advisers or implementers, he is supposedly the one who weighs the evidence, makes his decisions, and casts his votes. Visible delegation of responsibilities is discouraged.

The legislator's role as negotiator may also be multifaceted. Different legislative negotiators have different situations and talents. Moreover, different circumstances call for different negotiation strategies. Thus, the same

legislative negotiator may sometimes locate at one point, sometimes at another, even within the same legislative session. We find it helpful to classify negotiating representatives in general on the three dimensions of role, authority, and mission, as shown in [Figure 7.1](#)⁷ Where legislators will locate themselves in role–authority–mission (RAM) space will depend on their personal qualities, the issue at hand, and the security of their position. Thus, agents from secure districts will have more freedom to be visionaries, to work as principals, and to make their preferences (not those of constituents) those that matter. Congressman Rogers, from Kentucky's homogeneous 5th district, might capitalize on such a job description.

Figure 7.1. The Role, Authority, and Mission of Negotiators



Within legislatures, the role and authority of a negotiator often trade off against one another. In [Figure 7.1](#), we have drawn the possibility frontier for role–authority combinations for a legislator of modest vision—*m* on the Mission scale—as curve *RA*. When negotiating on behalf of a large group of fellow legislators, a frequent task for a majority or minority leader, she would need authority if the negotiation is to be conducted fruitfully. To be ceded such authority, however, she would have to constrain her role and act more in the role of agent than of principal, and thus locate at point 1 in the figure. By contrast, when the coalition is small, as it might be among party members on a committee, the legislator leading a party's negotiations on an issue—though having less authority—may be able to push her own interests, to act more like a principal. This role is illustrated by point 2.

Although a legislator can easily respond to circumstances in selecting his authority and role, mission—particularly at the visionary end—may be less subject to choice. The potential to be a visionary is given to few and depends very much on a legislator's personal capabilities. Representative Harold Rogers (D–KY), for example, is not known as a visionary leader in any field of legislation. Senator Paul Wellstone (D–MN), by contrast, despite being elected by a razor–thin margin in his first term, set forth an innovative, extremely liberal agenda. The more conservative citizens of Minnesota, despite the gap between their preferences and his, reelected

him by a comfortable margin in 1996, presumably rewarding his vision.

Whatever the consequences back home, being a visionary has severe consequences for one's negotiation potential. We distinguish heavenly from earthbound visionaries. A visionary whose wisdom derives from the heavens may be perceived as being less likely to modify her position and is indeed less likely to do so. She is less likely to strike a deal, but if she does, it probably will be on more favorable terms to her. A down-to-earth visionary, by contrast, may be hurt in her bargaining position because she is capable of convincing those behind her to compromise and may feel that she should be persuasive in this fashion. Such visionaries mix the moral and the practical in the spirit of Mahatma Gandhi. By foreseeing the consequences of compromise arrangements for their constituents, these practical visionaries may prove to be great leaders and may well serve their constituents.

We placed Speaker Newt Gingrich (R-GA) twice on [Figure 7.1](#), once for 1995 and once for 1997. Readers may disagree with how we place him in RAM space, and we welcome the dialogue. We simply want to observe that there are trade-offs across the dimensions, and different circumstances may call for different roles. In 1995, when he first became Speaker of the House, Newt Gingrich was widely hailed as a "visionary," and he took to the speaker's rostrum like a missionary trying to convert the natives. He delegated the day-to-day running of the House to Richard Armey (R-TX), the majority leader. The strategy was not very successful, as measured by legislation passed, by public opinion ratings of the speaker, or by the vote total for Robert Dole in the 1996 presidential election. By early 1997, Gingrich tried to reinvent himself as a new kind of leader. In the fall of 1997 until after his resignation after the midterm elections in 1998, Gingrich—having survived a summer purge—showed himself willing to sacrifice on both role and mission, to garner authority, and concomitantly to pass important legislation.

The RAM model stresses the richness in the potential negotiating roles of legislators. Legislation, as we stated at the outset, is born of negotiations. Given the complexities of those negotiations, the multitude of issues, and the heterogeneity of constituents, effective negotiating representatives are needed. The rules of the legislative game—legislators do the work—do not permit fancy lawyers or specialized agents, who play such a strong role in business-related bargaining, to conduct the negotiations. Each legislator must play for himself; hence, the negotiating legislator may be messenger or dictator, agent or principal, drone or visionary. No less than a Kabuki actor, legislator/ negotiators need to play multiple roles, all within the public spotlight. Such versatility is an extraordinary challenge.

The Ideology of Legislative Negotiators

Every few years, one or another political theorist proposes that legislatures be composed of a random sample of citizens, plucked from every occupation, race, gender, and sexual preference group (Fishkin 1995). Such a legislature would maximize "descriptive representation," recognizing that elections are imperfect methods for sending a cross section of citizens to city councils, state legislatures, and so on. Indeed, in 1995, 171 of the 435 House members listed "law" as their previous occupation, 162 listed business or banking, 75 education, 20 agriculture, and 15 journalism. (Ornstein et al. 1996:23). At least in terms of its descriptive makeup, the Congress underrepresents nonlawyers and nonbusinessmen significantly, to say nothing of women and minorities.

There is more to representation than fostering legislatures that "look like" their constituencies. Economists and political theorists are especially fond of assessing representation in terms of the preferences of the median citizen. Imagine a single policy dimension, from 0 to 1, over which a legislature chooses how much money to spend. With public policies designed to reflect the median citizen's preferences, half the population would want the legislature to spend more, half less. The median is a stable political (and philosophical) solution because any move away from it will make a majority worse off and will be voted down (Downs 1957). As we noted earlier, however, candidates for office tend to have fiercely held and more ideologically consistent views

than most citizens. Their views may be nonmedian, even though the median position is what political theorists might desire, or what the field of positive political economy might predict.

We mention only in passing agency problems raised by the self-nomination of political candidates. Political parties do not dictate which candidates may run in their primaries, and the parties have little influence over which citizens become activists. Empirically, we know that the more extreme one's views, the more likely one is to become a political activist, to give money to candidates, and to run for public office (Aldrich 1983). The more distant the nominees of both parties are from one's ideal position—say, from the median American voter—the less likely one is to trust the government to do the right thing, and the more willing one is to vote for third-party candidates (Hetherington 1997; King 1997b). The problem for citizen principals is to select faithful agents from a menu of biased candidates. The challenge is to find qualified and willing candidates who reasonably represent the median voter's preferences within a district.

Once elected, legislators confront a similar dilemma in selecting the leadership of their parties. Party caucuses—exclusive clubs for Democrats or Republicans—play an important role in legislatures (Cox and McCubbins 1993; Kiewiet and McCubbins 1991; Rohde 1991). The House of Representatives' Republican caucus assigns members to committees, punishes some members who stray too far from the party, and drafts bills through its policy committees. Likewise for the Democratic caucus. The presiding officers of the House and Senate (the Speaker of the House and the Senate Majority Leader) are selected by their party caucuses. Likewise for every state legislature—except, trivially, the Arkansas House and the nonpartisan Nebraska legislature (American Society of Legislative Clerks and Secretaries 1991). Party caucuses influence much about how legislatures run and who runs them.

In the House of Representatives, the critical party leaders are the speaker, the majority and minority leaders, and the majority and minority whips. The Senate leadership structure is the same, except that the majority leader also assumes a role similar to the Speaker of the House. Although one's image of a party leader may be someone like Robert Dole (R-KS), who served 16 years in various leadership positions, or Sam Rayburn (D-TX), who was speaker for 17 years, in practice legislatures select leaders nearly every year. From 1901 to 1990, 94 individuals served in one or more of the nine House and Senate leadership positions. These jobs come under the general heading "leadership," but little of the work falls under any conventional leadership category. Marches are not in their repertory, and their major speeches are more often directed to the public than to their supposed followers in the legislature.

A primary task of these major party figures is to negotiate. They negotiate with the other party, but also within their party, and at times with the president. Obviously, a party wants its stalwarts to be negotiating wizards, serving as agent or principal, messenger or dictator, as the particular legislative situation requires. To be a visionary as well, should the appropriate occasion arise, would be a lagniappe. Most great legislative leaders have superb negotiating skills, which include the capability to move about in RAM space. Party leaders play their most important roles in controlling the legislature's agenda, in laying out the broad outlines of initial agreements with the other party, and in overseeing all major negotiated policy settlements.

Party Leaders and the Caucus Median

In selecting legislative negotiators, should we expect the party caucuses to choose leaders whose preferences align closely with the caucus median, or should we expect the party caucuses to select someone "off center?" If the latter, should they be more extreme or moderate than the caucus median? Tim Groseclose (1995) examines this through the lens of a "blame game" model in which party leaders stake out positions that are more extreme than their own party's median so as to embarrass the other party's leaders. This approach hints at a bargaining model, which we develop more fully in this chapter. Naive extrapolation of standard economic theory—as an extension of Harold Hotelling's work on the spatial location of firms (Downs 1957; Hotelling 1929/1952)—would have us expect leaders reflecting median caucus members' preferences.

Similarly, pluralism scholar David Truman argued that “the likelihood of getting elected and of performing effectively as an agent of the party both [hinge] on being a ‘middleman’ “ (quoted in Kiewiet and McCubbins 1991:49). According to Truman (1959), a leader would be a middleman “not only in the sense of a negotiator but also in a literal structural sense. One would not expect that he could attract the support necessary for election unless his voting record placed him somewhere near the center in an evenly divided party” (quoted in Kiewiet and McCubbins 1991:49). Prophecy failed Truman. He wrote those words in 1959, about the time Everett Dirksen (R–IL)—a staunch conservative—was elevated to Senate Republican whip. Senate Democrats countered with liberal whip Mike Mansfield (D–MT). Future Democratic Senate whips included Hubert Humphrey (D–MN) and Edward Kennedy (D–MA). Both, like Mansfield, were considerably to the left of their party caucuses.

Regardless of Dirksen, Mansfield, Humphrey, and Kennedy, the intuitive plausibility of the “median leader” hypothesis has been persuasive to most scholars. It is the received wisdom among political scientists, and it has been formulated within a principal–agent framework by Kiewiet and McCubbins:

To the extent that party leaders are able to move legislative outcomes closer to their own ideal points, potential agency losses are greatest when leaders' preferences are extreme or idiosyncratic. In order to minimize such losses, congressional members should select leaders whose preferences are as representative as possible of the caucus as a whole. (1991:48)

Kiewiet and McCubbins briefly examined the ideology of congressional leaders (excluding whips), finding mixed support for the median leader hypothesis. After acknowledging that the data are not consistently supportive of the median leader hypothesis, they concluded that “most leaders of both parties, however, have clearly tended toward the caucus median” (1991:51).

We take issue with the median leader theory and evidence marshaled in its support. Indeed, by Kiewiet and McCubbin's own data examining the ideology of Senate majority and minority leaders from 1947 through 1984, four of seven Democrats were more liberal than the Democratic caucus median, and seven of eight Republicans were more conservative than their party's median. In some cases—Howard Baker (R–TN), for example—leaders were more extreme than their party median, but just barely. Perhaps Howard Baker should count as a party leader who “tended toward the caucus median.” A more appropriate test would be to see whether the set of party leaders—taken as a group—is more extreme, through a difference of means test.

Party Leaders as Negotiation Anchors

Established research traditions treat leaders as within–party representatives, influencing committee assignments, party agendas, and the like. The negotiation role has been forgotten. The theory of the median leader—whether stemming from the pluralist, Downsian, or principal–agent tradition—must recognize the critical role of leaders as negotiators. Our model of agent negotiators is fully consistent with leaders being more extreme than their party caucuses.

We view party leaders as the primary negotiators for their parties, interacting with leaders of the other party (in a two–party setting, such as the United States). Accordingly, the negotiation game between leaders of different parties is similar to the “dance of negotiation” described by Howard Raiffa (1992:chap. 4). In a negotiation dance, such as bargaining over the price of a rug at an open air market, the buyer starts with a low bid and the seller starts with a high bid. After tugging and hauling, they dance closer together and end up near the middle of the original offer range.

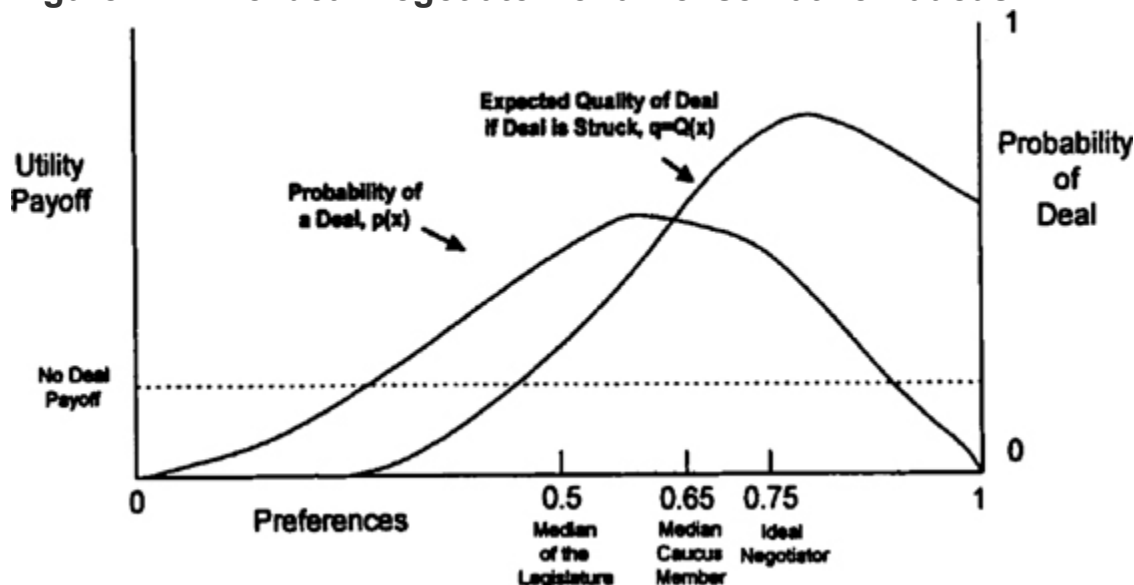
Similarly, imagine a legislature composed of lawmakers who can be arrayed along an ideological dimension

from 0 to 1, with a chamber median of 0.5. Assume both parties elect leaders who represent their party's median—0.4 for the left party and 0.6 for the right party. If the parties have equal agenda-setting powers and equal voting strengths, one would expect the results of negotiations to settle on the chamber median. If the party of the right knew that the left party's negotiator would bargain beginning at 0.4, however, the right party would elect a negotiator at 0.8. The midpoint between 0.4 and 0.8 is 0.6—or the right party's median. Likewise, anticipating that the party of the right's negotiator would begin at 0.8, the left party should elect a negotiator at 0—the most extreme person in the party—yielding a midpoint of 0.4. The centrifugal force of this dance leads to electing the two most extreme members of the party caucuses.

There is a countervailing centripetal pull that keeps the parties from settling on their most extreme negotiator. An extreme negotiator does not achieve a better outcome by magic. He simply refuses or prevents deals that other leaders might accept. Hence, the more extreme a negotiator, the less likely a deal is to be secured. Thus, a caucus would be unwise to select its most extreme member; probably nothing would get done.

[Figure 7.2](#) displays the calculus of a conservative caucus. The caucus median (0.65) lies to the right of the chamber median and the other party's median. The calculus involves two curves and a horizontal line. One curve, judged from the standpoint of the median caucus member, shows the expected quality of a deal conditional on a deal being consummated with the other party. Denote this value as q , where $q = Q(x/\text{deal})$, hereafter abbreviated as $Q(x)$. It is constructed assuming some location for the negotiator in the other party and a negotiating process of the type described by Raiffa. Its payoff is in measured in "utils," or more technically as a von Neumann–Morgenstern utility.

Figure 7.2. The Ideal Negotiator for a Conservative Caucus



The second curve gives the probability of a deal, $P(x)$, which falls over the relevant range for x as the conservative negotiator moves to the right. Its probability values are shown at the right of the diagram. (This curve rises at the far left because the conservative would not support such a moderate leader.)

The dashed horizontal line represents the status quo, No Deal. It represents the expected value in utils of doing nothing. Possibly nothing will happen in the future, or a new deal may be struck.

In choosing among candidates for negotiator, a caucus member will compute the expected value his ideology will bring. With a negotiator at x , the expected payoff will be

$$P(x)Q(x) + (1 - P(x))ND. \quad [1]$$

Rearranging terms, we get

$$P(x)[Q(x) - ND] + ND. \quad [2]$$

To maximize this, the member effectively maximizes the probability of a deal times the gain in the deal over the status quo. In the diagram, for the median voter at 0.65, the ideal negotiator is at 0.75.

Taking derivatives and maximizing Equation 2, we get

$$P'(x)/P(x) = -Q'(x)[Q(x) - ND].$$

At the optimum, the elasticity of the probability with respect to the negotiator's location must equal the negative of the gain from a deal with respect to the negotiator's location. The implication is that a caucus will choose a more extreme leader/negotiator the less this affects the probability of a deal, the more it affects the quality of a deal, and the better is the no deal outcome. What the example illustrates is that it often will be desirable for a caucus to select a legislative negotiator who is substantially more extreme than its median member.

Empirical Evidence on Leader Ideology

We are confronted with several possibilities. Perhaps legislative negotiators—defined here as elected party leaders negotiating on behalf of their party coalitions—reflect the median member of their party. This is the conventional wisdom among most scholars. None of the theories predicting median party leaders, however, explicitly accounts for how legislators negotiate. Neither party exists in a vacuum, and laws are passed by holding onto one's own party base while attracting as many members of the opposing party as possible. Temporary coalitions are built bill by bill, but party leaders anchor the negotiations. Accordingly, we suspect that partisans elect negotiators who are more extreme than their caucus medians—yet not so extreme that no credible deals can be completed.

Evidence consistent with this explanation is found in the ideology of the 94 lawmakers elected as party leaders in Congress from 1901 through 1990, or from the 56th to 102nd Congresses. The data were compiled by Tim Groseclose (1995), and we reanalyze them here within the negotiation framework.

A legislator's ideology is measured using Poole–Rosenthal NOMINATE scores. These scores come from factor loadings from a factor analysis of all recorded House and Senate votes in a given Congress. Although dependent on the magic of a factor analysis machine, NOMINATE scores are widely used and accepted as indicators of legislators' ideology, and the scores correlate highly with other measures—such as interest group ratings by the Americans for Democratic Action (Poole and Rosenthal 1997). For example, by their NOMINATE scores, the most liberal House members in the 104th Congress (1995–1996) were John Conyers (D–MI) and Ron Dellums (D–CA), and the most conservative were Mel Hancock (R–MO) and John Shadaggy (R–AZ). Owen Pickett (D–VA) was the purest ideological centrist.

Following Groseclose's approach, we measure the ideological extremity of a leader relative to the party caucus by reporting the percentage of the leader's caucus who have NOMINATE scores more extreme than the leader. We use NOMINATE scores from the year prior to when a member was elected leader. This is done to get a measure that is not confounded by the leader's votes on behalf of—or in opposition to—the president. Accordingly, we only report the member's ideology before he is elected to the position of whip, leader,

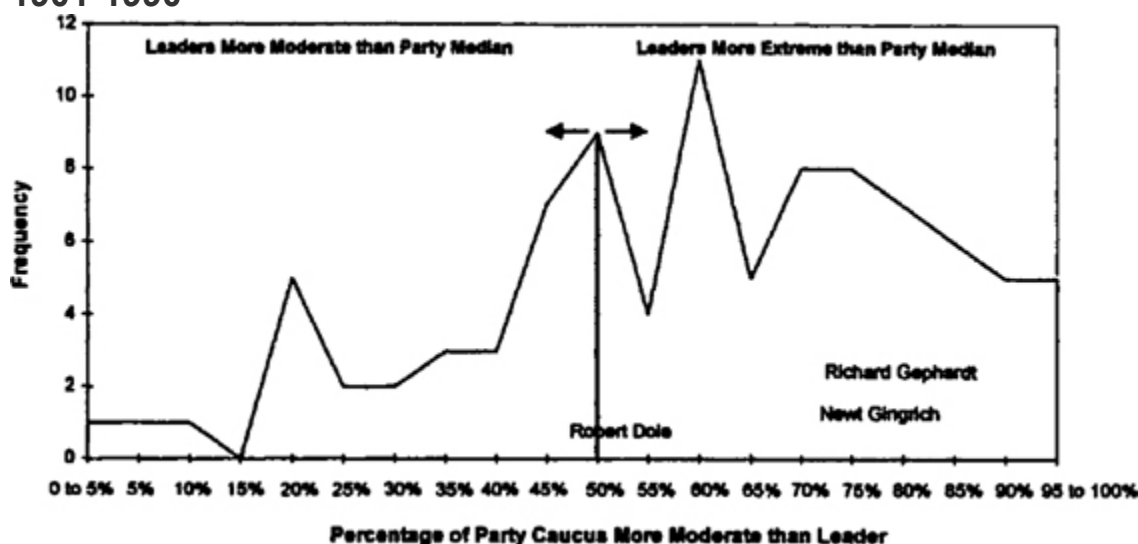
or Speaker of the House. We do not report a member's extremity when moving between leadership positions (as, say, from minority whip to minority leader, as Newt Gingrich did in 1993, or from minority leader to Speaker of the House, as he did in 1995). Furthermore, by tradition the speaker rarely votes on the House floor, undermining any measures of ideology based on floor votes after he has been elevated to speaker.⁸

To illustrate our measure of extremity, consider the ideology of three recent House Republican leaders when they were first elevated to the party whip position. When Trent Lott (R-MS) reached that status in 1981, just 20.5% of his party's caucus was to the ideological right of him. Lott was elected to the Senate in 1988 and was replaced as House minority whip by Richard Chaney (R-WY). Just 6% of the Republican caucus was more ideologically extreme than Chaney. After Chaney resigned to become President George Bush's Secretary of Defense, Newt Gingrich (R-GA) was elected as the new whip. Gingrich was more moderate than Chaney, although he was still more extreme than the median, with 33% of the caucus on Gingrich's right.

Lott, Chaney, and Gingrich provide three cases, although one could select anecdotes showing the opposite tendency. George Mitchell (D-ME), the Senate Majority Leader in the early 1990s, reflected his party's median almost precisely (.490 as opposed to .500), and Speaker Thomas Foley (D-WA) was even closer to his party's median (.494). Mitchell's and Foley's scores mark them as slightly more ideologically moderate than their party's median, although not by much. Across all 94 leaders in our sample, however, 70 scored more extreme than their party's median. The average ideological gap between the party's median and the leader (62.4% compared to the 50% base) strikes us as large, and we can safely reject the hypothesis ($p < 4.9 \times 10^{-6}$) that leaders reflect the median.

Our results are shown in [Figure 7.3](#). Leaders on and to the right of the solid line at 50%, were more extreme than the median of the party caucus that elected them. At the time that Robert Dole was elected Senate Majority Leader in 1981, he was virtually at his party's median (52.6% of his party was more moderate than he). The present House leaders, Richard Gephardt (D-MO) and Newt Gingrich (R-G A), are more extreme than their party medians.

Figure 7.3. Ideological Extremity of Elected Party Leaders in Congress, 1901-1990



The evidence reported in [Figure 7.3](#) is consistent with our model of legislative negotiators. On average, legislative negotiators are—definitively—more extreme than their party medians. The median party member

may be willing to support more extreme leaders, and experience the presumed agency loss of having them represent the party in multiple arenas, because party members anticipate the “dance of negotiation” and the importance of anchoring initial positions.

Party leaders have been, about 25% of the time, more moderate than their party medians. Although this is outside the predictions of our model, we notice that parties tend to elect moderate leaders following the tenure of especially extreme leaders. Perhaps these occasional retreats to moderation reflect the trade-off between the probability of concluding a deal (which declines with the most extreme leaders) and the quality of a deal.

Summary and Conclusion

Legislative leaders are the prime negotiators shaping our laws—on a daily basis and at every level of government. As negotiators, they are agents for themselves, their constituents, and their fellow party members.

The negotiation of legislation is a do-it-yourself job, in part because it is conducted beneath the public eye. Public attention rewards grandstanding and puffery, and it punishes concessionary compromise, which makes serious legislative action more challenging. Many bills are not serious; they are products of conspicuous introduction to impress constituents. Elections for legislative negotiations, like contract expiration dates for labor negotiations, serve as deadlines and spur deal making. The responsibilities of the effective legislative negotiator meander in what we label RAM (role, authority, mission) space, depending on circumstance.

We focus particular attention on the ideology of legislative negotiators. Conventional wisdom suggests that a party leader's ideology will align well with that of a median member. If leaders are negotiators, however, their personal ideologies will serve to anchor negotiations, implying that parties will have incentives to appoint extreme leaders. In effect, presumed agency loss actually secures more favorable outcomes. The need to reach legislative agreements, however, constrains tugs to the outside. Empirical analysis of 20th-century legislative leaders finds them to be more extreme than their parties, presumably to tug legislation in a favorable direction.

Legislation is born of negotiations. Thus, it is no surprise that arm twisting and staking out positions are as much the repertoire of great legislative leaders as managing agendas and crafting legislation.

Geometry underlies median voter models and RAM-space strategies. Negotiation underlies legislation. Political scientists and politicians could work a beneficial exchange: more negotiation analysis for the former, more geometry for the latter. Both the description and the performance of legislation would be improved.

Notes

1. There are similarities to the strike date in a labor negotiation. With most business negotiations, by contrast, “do or die” dates have to be manufactured.
2. Woodrow Wilson, a political scientist long before he went to the White House, argued the point in the 1880s. “The chief, and unquestionably the most essential, object of all discussion of public business,” wrote Wilson, “is the enlightenment of public opinion; and of course, since it cannot hear the debates of the Committees, the nation is not apt to be much instructed by them” (Wilson 1885/1981).
3. For example, the average number of hours per day that the Senate spent in session in the 10 years before TV cameras were allowed on the Senate floor was 6.6; in the 10 years afterward, it increased to 7.3 (Frantzich

1996).

4. Respondents also indicated that they wanted their legislators to consider national interests, but they rewarded those who voted parochially for the district.

5. Because legislators only get voted on periodically, however effective monitoring is, any dynamic equilibrium will engender some self-interested behavior—for example, catering to friends and overweighting personal re-election probabilities. Demonstrably faithful individuals are rarely available to challenge incumbents.

6. For example, in fall 1997, the Clinton administration negotiated what it thought was a final compromise with Congress on Internal Revenue Service reform. The lack of reform, Republicans anticipated, could be a good issue to distinguish the party from Democratic opponents. Two weeks after the compromise was fashioned, Republicans moved to a more hard-line position, putting the White House in an “awkward spot” (see Schlesinger 1997).

7. This framework is presented as a commentary on the predecessor paper to the chapter by Joel Cutch-er-Gershenfeld and Michael Watkins in this volume. That paper offers a two-dimensional framework.

8. Example: 32 roll call votes were made in the House of Representatives between October 23 and October 30, 1997. Speaker Gingrich voted on just three. Most rank-and-file members vote on every measure.

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- senate

<http://dx.doi.org/10.4135/9781452225524.n14>