

## Negotiation Myopia

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In this chapter, we use the term *negotiation myopia* to cover the many ways in which negotiators fail to see their own advantage, sometimes right in front of them, thereby missing an opportunity for coming to agreement. The forms of myopia range from innate cognitive biases that are highly resistant to change to volatile emotional states. All of these forms can sink a negotiation when the issues are in fact tractable and outcomes exist that would benefit all participants. This analysis does not discuss the moments in which parties think that such positive-sum outcomes might exist but in fact the interests of the parties are incompatible.

We begin with “fixed-pie bias,” which many experts consider one of the two most harmful forms of negotiation myopia. Fixed-pie bias keeps negotiators from seeing the ways that they can share information and think together to “create value” for both sides. Several other forms of bias contribute to fixed-pie bias. Yet even a simple set of instructions to “take the perspective of the other side” can reduce this bias dramatically.

We next consider “self-serving bias,” which ranks with fixed-pie bias as one of the two most harmful forms of negotiation myopia. Elements of this bias may be innate. The bias comes in many forms, running from natural overoptimism to deep-seated convictions about justice. Self-serving bias can be greatly reduced through ongoing trustful relationships with others who hold opposite perceptions.

Finally, we consider the anger that often can impede negotiations and we briefly mention other biases that also can interfere with negotiation.

To help legislators combat these biases, we distill many of the lessons from forty years of study of negotiation in business and law schools. A simple way to do this is to summarize a key chapter from a best-selling book on negotiation by David Lax and James Sebenius, *3-D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. In that book, the authors first provide useful advice on how to set up a negotiation and design the deal. They conclude with advice for the negotiation process itself, which is the focus of this chapter. Following are their mostly self-explanatory titles from that section, which take the form of condensed, one-sentence pieces of advice (we provide brief explanations and translations to political negotiation where necessary).

*Move from positional to interest-based conversations.* This is their first and perhaps most important piece of advice. A “position” is the negotiation specialists’ word for the demand one brings to a negotiation. The “interests” are the wants and needs that underlie a position. The goal is to try to determine what the other side really wants and needs and to be open to exploring what you and your constituents really want and need. Work with the other side to get below the surface, with the expectation that the process can help craft solutions to problems that are good for both, find trades that are least costly for each side, and settle on compromises that both sides think are fair.

*Move from blaming and past actions to problem-solving and the future.* This statement requires no explanation.

*Move from high-level assertions to fact-based statements.* In the context of political negotiation, this means moving from generalizations—particularly negative ones about the other side and positive ones about your side—to the facts in the case and the specific needs of constituents or groups that conflict or coincide with the needs of others.

*Adopt a persuasive style.* This recommendation has several important components. A “persuasive negotiator,” according to Lax and Sebenius, “understands the other side’s story,” “is open to persuasion,” “uses reciprocity to build trust,” “matches appeals to the other side’s circumstances,” seeks “agreements that feel fair to both sides,” “recognizes how people process information” through stories as well as

analysis, builds “substantive and relationship credibility,” understands and responds to the best arguments against his or her own side, responds to the other side’s emotions, deals with his or her own feelings, and responds empathetically to the other side’s culture. Crucially, a good negotiator can “write *their* victory speech,” actively helping design some “wins” that the other side can deliver.<sup>1</sup>

Taken together, these recommendations come close to what in this book we call “deliberative negotiation.” In fact, we argue, if *negotiation myopia* is the problem, then *deliberative negotiation* is the solution.

## Successful Negotiation

Oversimplifying here, we have two criteria for a successful negotiation, as follows:<sup>2</sup>

1. If there is a deal to be done, the negotiators do it. That is, if there is a “zone of possible agreement” (ZOPA) between the parties, they in fact agree on an outcome within that zone.<sup>3</sup>
2. If redefining or expanding the issues to be negotiated could improve the outcome for both sides, the negotiators find and exploit those possibilities. In the relatively rare event that the parties can find solutions to conflict that bring benefits to both parties with no loss, the parties find or create those solutions. In the more

1. Distilled and quoted from Lax and Sebenius (2006, pp. 205–24; emphasis added).

2. See chapter 7 for another statement of these two criteria. Each of these criteria requires benefit to both (or all) parties in a negotiation. From the perspective of every party in any negotiation, therefore, these are clear and obvious criteria for success, and all analyses of negotiation success include these two. As chapter 7 points out, we do not discuss herein two other potential criteria—namely, successfully claiming more from the other than the other claims from you, or successfully including all those affected by the decision on fair terms of participation (on this issue see also chapter 5).

3. The ZOPA is sometimes called simply the “zone of agreement,” the “contract zone” or “bargaining range.” It refers to the zone between the two parties’ reservation values (that is, the points at which it would be better for the party to walk away from the deal). Agreements that have only win-lose zero-sum possibilities within a ZOPA are called *distributive* agreements or solutions, with distributive negotiation “*claiming value*” within that range.

common case in which the problem contains several issues or other issues that can be brought into the negotiation to create overall benefit, the negotiators find those issues and trade the high priorities of one side against the low priorities of the other side.<sup>4</sup>

Over time, negotiation scholars have discovered that ordinary people and even trained professionals sometimes have trouble coming to agreement, even when there is a clear zone of agreement on the table. They most frequently have trouble discovering or even looking for the other possible issues on which mutually beneficial trades can be conducted. These problems result from the forms of negotiation myopia that we discuss in this chapter.

### Fixed-Pie Bias

At least in the United States, many people enter into even commercial negotiations with the expectation that “their gain is our loss.”<sup>5</sup> They see the “pie” to be negotiated as of a fixed size and all outcomes as zero-sum. In almost every negotiating course in the United States, whether in business or law or policy schools, this is the first bias that an instructor tries to address. The environment of competitive politics accentuates this bias.

However, in many negotiations—particularly legislative ones—the pie is not fixed. The parties can improve the benefits for *both* sides by delving more deeply into the wants and needs of each of the sides and by looking for issues on which the parties have different valuations. If they can find any such issues, they are in a good position to craft a

4. Agreements that expand beyond the original ZOPA are called *integrative* agreements or solutions, with integrative negotiation “*creating* value” outside that original zone. In chapter 5, we distinguish between “*fully* integrative” solutions, in which a solution is good for all with no loss, and “*partially* integrative” solutions, in which mutually beneficial trades can be made but each side also loses something. In chapter 5, we also show that deliberative negotiations may have what we call “purely deliberative” moments, in which the parties, for example, simply are trying to ascertain the facts or to coordinate on conceptions of justice. At the same time, those negotiations may have distributive zero-sum moments in which the parties try to find or craft a fair compromise.

5. Bazerman, Baron, and Shonk (2001, chap. 2).

solution that allows the parties to trade on issues of high value to them but of low value to the other—or even occasionally devise a solution that is good for all with no loss to any. This process generates integrative solutions that, in the standard negotiation language, “create value,” “expand the pie,” or produce “joint gains.”

A commercial example from an examination in a course on negotiation clarifies the point. In this example, the owner of a service station is willing to sell it for anything more than \$500,000, but the buyer is unwilling to buy it for more than \$400,000. Thus, there is no ZOPA. However, the description of the case mentions in passing that the seller also wants a job when he returns from an extended trip that he is planning. The buyer could offer \$395,000 plus a job as manager of the service station when the seller returns, thereby obtaining an agreement. In an experiment using this question, only 39 percent of the pairs of MBA students playing the roles of buyer and seller in this situation discovered the integrative possibility and concluded the deal. However, simply giving the students playing the buyer instructions to “take the perspective” of the seller in the negotiation and to “try to understand what he is thinking, what his interests and purposes are in selling the station; try to imagine what you would be thinking in that role” increased the likelihood of their making a deal from 39 percent to 76 percent.<sup>6</sup>

To obtain these joint gains, negotiation texts instruct students to ask many questions and look for differences in valuation between the parties. In the service station case, the future job was valuable to the seller but relatively costless to the buyer, who would have had to hire someone to manage the station anyway. The most important differences to look for are those in the valuation of the issues; the expectations of uncertain events; and the attitudes toward risk, time preferences, and capabilities.<sup>7</sup>

6. Example and data are from Galinsky et al. (2008). Instructions to “take the perspective of the service-station owner; try to understand what he is feeling, what emotions he may be experiencing in selling the station; try to imagine what you would be feeling in that role” proved less effective, generating a non-statistically significant improvement (that is, an increase to 54 percent of those seeing the possible joint gains).

7. Thompson (2005, p. 84).

The point of fixed-pie bias is that many people entering into a negotiation are not looking for ways to “create value” or “expand the pie.” Thus, on average, people fail to see the issues in the negotiating situation on which they have compatible interests about half the time.<sup>8</sup> The fixed-pie assumption is in place before the parties even meet or begin to talk with one another.<sup>9</sup> It also can be difficult to challenge.<sup>10</sup> Describing the task as “problem solving” rather than “bargaining” has no effect.<sup>11</sup> Without the appropriate background in mutual trust and commitment to a solution, few parties to a negotiation will offer information about their own interests, and fewer still will ask about the other’s interests, even though such an information exchange has been shown repeatedly to improve negotiation performance.<sup>12</sup>

In politics, fixed-pie bias is likely to be even stronger than it is in commercial negotiations. First, “the fixed-pie perspective is more likely to be a problem in group negotiations than in dyadic [that is, two-person] negotiations.”<sup>13</sup> Second, competitiveness increases the bias. Simply being told to take a side in a negotiation increases fixed-pie bias, compared with being told simply to observe,<sup>14</sup> and the competitive dynamic in politics is far stronger than simply being assigned a

8. In a meta-analysis of thirty-two experiments, Thompson and Hrebec (1996) found that on average the parties in a negotiation failed to identify 45.5 percent of the compatible issues. In an average of 20 percent of the cases, the parties did not conclude deals that would have left both better off (see also chapter 7).

9. Thompson and Hastie (1990).

10. Thompson and DeHarpport (1994).

11. *Ibid.*

12. Thompson, Peterson, and Brodt’s (1996) experiment revealed that only about 20 percent of the parties to the negotiation offered any information about their own situation and only 7 percent asked the other side for information. For experiments demonstrating how greatly information exchange contributes to improved performance, see Pruitt and Lewis (1975); Thompson, Peterson, and Brodt (1996); and Weingart et al. (1990), cited in Thompson and Hrebec (1996, p. 405).

13. Neale and Bazerman (1991, p. 107).

14. Among the subjects who were induced to become relatively involved in the negotiation, those told to assume a side were “most likely to maintain the fixed-pie belief; in contrast, highly involved nonpartisan observers were the most accurate” (Thompson and Hrebec 1996, p. 405).

role in an experiment. Bazerman and his colleagues concluded that “the ‘myth of the fixed pie’ is pervasive in many political situations.”<sup>15</sup>

It turns out, however, that the fixed-pie bias has a relatively easy fix. If the negotiating parties trust one another, they will not necessarily see the pie as fixed. If they have a solid problem-solving orientation, they will look for creative ways of obtaining joint gains. As chapter 5 reports, in helping to craft the Clean Air Act of 1990, Senator Timothy E. Wirth, a Democrat, and Senator John Heinz, a Republican, both found it perfectly natural as longtime friends to engage in what we call “deliberative negotiation.”<sup>16</sup> As a matter of course, they did everything that Lax and Sebenius suggest a “persuasive negotiator” should do. They asked questions, they interacted openly with each other, and they shared information; the result was a greatly expanded pie.

### Self-Serving Bias

*Self-serving bias* is the tendency of the human psyche to interpret the world through a lens that favors our own position or self-image. Everyone has this bias. More accurately, almost all of us have this bias: research shows that depressed people have more accurate self-assessments than the average overly optimistic person does.<sup>17</sup> This

15. Bazerman, Baron, and Shonk (2001, p. 46).

16. Individuals who are *too* close (for example, married and romantically involved couples) may achieve fewer joint gains because they compromise too soon instead of pushing for creative solutions in which they could both get more of what they wanted (Fry, Firestone, and Williams 1983; Schoeninger and Wood 1969). Negotiating partners who are simply friends, however, tend to produce more joint gains than others (Thompson and DeHarpport 1990; Valley, Neale, and Mannix 1995). In one set of experiments, the greatest joint gain came from subjects playing the role of representatives who were both accountable to others (for example, constituents) *and* had good relations with one another based on the expectation of future cooperation (Pruitt 1983). For an overview, see Bazerman and Neale (1995).

17. See Taylor and Brown (1988); Seligman (1991); Greenberg et al. (1992). Kahneman and Tversky (1995), however, point out that in the executing of a plan, optimism tends to increase effort, commitment, and persistence in the face of difficulty; in the setting of goals and plans, it tends to favor excessive risk taking.

bias is strongest when there is ambiguity—as there so frequently is in politics—about the very nature of the problem, the relevant facts, and which conceptions of justice or fairness apply.<sup>18</sup>

Self-serving bias applies to many features of a negotiation: from the selection and perception of facts, theories of reality, and concepts of justice and the common good to recollections of past events, to estimates of our own and others' motivations, to the reasons we give for our own and others' successes and failures, and even to estimates of our own and others' biases.

Most people, for example, are unrealistically optimistic about their chances for success. On election night in 2012, when Karl Rove refused to recognize the Fox News analysts' expertise and disputed their decision that Ohio had gone for Obama, he was responding the way most of us respond under uncertainty: he overestimated the strength of his position. Not surprisingly, when both parties in a negotiation overestimate how much they can get in a negotiation, they are less likely to reach agreement. This overoptimism applies across the board. Babcock and Loewenstein have pointed out that people generally overestimate their personal contribution to joint tasks, and “well over half of survey respondents typically rate themselves in the top 50 percent of drivers, ethics, managerial prowess, productivity, health, and a variety of desirable skills.”<sup>19</sup> In their experiments, simply being given a role on one side or the other before—rather than after—making one's initial assessment in a negotiation created a self-serving bias and reduced the eventual agreement rate from 28 percent to 6 percent. Neither reading a paragraph “on the extent and consequences of the self-serving bias” nor writing an essay “arguing the opponent's case as convincingly as possible” resulted in a significant improvement.<sup>20</sup>

18. Bazerman, Curhan, and Moore (2002).

19. Babcock and Loewenstein (1997, p. 111). See also their real-world examples from negotiation. In one example, the degree of difference between the self-serving factual estimates by school board presidents and union leaders of the annual salaries in school districts they considered “comparable” to their own predicted the number of past strikes in the district.

20. *Ibid.* (pp. 114–15). In another experiment, however, listing the weaknesses in one's own case substantially reduced the rate of impasse from 35 percent to 4 percent. We would expect rules, institutions, and friendly interactions that

Self-serving bias applies as strongly, or more so, to perceptions of justice and fairness. Self-serving judgments of fairness can keep negotiators from reaching agreement in several ways.<sup>21</sup> First and most obviously, self-serving judgments of what is fair to expect from the other side may simply eliminate any ZOPA, even when a third party might identify such a zone from the underlying interests. Worse yet, people's perceptions of fairness make them dig in because most people "are strongly averse to settling even slightly below the point they view as fair."<sup>22</sup> Finally, if the parties believe that their own understanding of fairness is impartial and the other side *must* see that, then each will interpret the other side's bargaining moves not as an attempt to get what they see as fair but rather only as an attempt to gain strategic advantage. This perception dangerously undercuts a negotiation because, as Babcock and Loewenstein have explained, negotiators usually care not only about what the other side offers but also about its motives.<sup>23</sup>

Judgments of motivation are highly susceptible to self-serving bias. People tend to attribute injurious intentions to their adversaries even when the adversary's behavior could have been plausibly attributed to other motivations. They also tend to interpret their own motivations as pure. This mismatch does not help the parties constructively explore their options.

Everyone falls prey to these biases, including individuals of good will and public spirit. We all find self-serving bias particularly difficult to detect in ourselves because we tend to see our own views as close to objective reality, whereas our adversaries' views are influenced by biases.<sup>24</sup> Our biases about our biases then escalate the spiral of conflict,

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make one aware of the weaknesses in one's case to have the same effect in the political world.

21. We take the following paragraph directly from the analysis of *ibid.* (p. 110).

22. *Ibid.*, citing Loewenstein, Thompson, and Bazerman (1989).

23. *Ibid.*, citing Blount (1995), Rabin (1993), and Kagel, Kim, and Moser (1996).

24. Pronin, Lin, and Ross (2002). This bias is reinforced by *confirmation bias*, which leads people to interpret events in ways that confirm their earlier theories. It is also reinforced by *attribution bias*, which leads people to interpret the negative qualities of adversaries as fundamental to their person or ideology rather than produced by the situation, but their own negative qualities as situational rather than personal.

which works as follows. First, our faith in our own lack of bias leads us to view our adversaries as even less rational and more immune to reasoned argument than they actually are. Therefore, judging them as biased, we tend to use threats and bribes in our interactions rather than cognitive appeals to what we see as the benefits the deal can give them. They then perceive us as nonresponsive to good arguments and respond with threats and bribes. This behavior confirms our perception of them as not working on the plane of rational argument.<sup>25</sup>

A physical experiment with two people putting pressure on each other's fingers shows how unconscious assessments of one's own purity and the others' relative malevolence can create a spiral of conflict. In this experiment, each participant was instructed to apply pressure to the other's finger with "the same force on the other participant that had just been exerted on them." As each pressed the other's finger, each consistently overestimated the amount of outgoing force required to match the incoming force. The result: a 38 percent mean escalation at each turn.<sup>26</sup> We overestimate others' negative actions toward us and underestimate our own negative actions toward them, while also overestimating our own positive actions toward others and underestimating their positive actions toward us.

What can be done to correct self-serving bias? Quite a lot. Any form of "anchor" located outside ourselves can help overcome self-serving bias. In politics, governmental fact-finding bodies, independent think tanks, bipartisan commissions, relatively neutral media commentators, and even elections can serve the function of giving both sides in the negotiation a mutually acceptable set of facts.

In chapter 3, Binder and Lee report that the nonpartisan fact-finding bodies established within the legislative branch, including the Government Accountability Office and the Congressional Budget Office, have only a limited impact on current negotiating processes in Congress. Yet many negotiation specialists report that impartial fact-finding institutions can play a key role in negotiation by allowing participants to work from mutually accepted facts (Bazerman et al. 2000, p. 284). If such institutions are not available, the parties must spend much of their negotiation time simply agreeing on the facts and not working

25. Kennedy and Pronin (2008).

26. Shergill et al. (2003).

out possible deals. In such instances, negotiation specialists often advise spending the first part of a negotiation—perhaps even the first year—in a joint fact-finding exercise.<sup>27</sup> This exercise not only provides the set of facts from which the parties can then negotiate; it also involves the parties in a task that, to a certain degree, provides a common good (even when that good is contested), thereby building mutual trust in the process. When society as a whole is so polarized that no fact-finding group, third party, or institution can be considered nonpartisan, this crucial resource becomes unavailable.

The most important anchors outside the self, however, are not usually institutions but rather other people. When people engage in trusting interactions with others who have different perspectives, interests, and opinions, they typically soon realize that people of intelligence and goodwill can hold different conceptions of both the facts and justice. Thus, one key anchor to perceptions outside one's own brain is simple contact with the opposing parties in any context that facilitates accurate communication. By contrast, discussion with only members of one's own party tends to (1) increase subjective certainty at the same time that it (2) decreases objective accuracy and (3) moves the group assessments toward opposite extremes.<sup>28</sup> For this reason, informal ongoing interactions across party lines in legislatures should play a major role in decreasing self-serving bias.

### Other Forms of Cognitive and Emotional Myopia

We have focused here on only two of the most salient cognitive biases that reduce negotiators' capacities to reach agreement when it is possible. Researchers have demonstrated a host of other biases.

*Loss aversion.* This bias leads us to value outcomes that are framed in terms of loss more than we value exactly the same outcomes framed in terms of gain. Thus, we value what we have (even if we were randomly given it only a minute ago) more than we value what we can get; therefore, we find it difficult to envision future gains.<sup>29</sup>

27. See Karl, Susskind, and Wallace (2007) and citations therein.

28. Mnookin and Ross (1995, p. 18); Sunstein (2006).

29. Kahneman, Knetsch, and Thaler (1991).

*Availability bias.* This bias leads us to extrapolate forecasts and judgments from easily accessible cases—our own histories or sensational stories in the media—rather than from a systematic study of similar events. It also makes it easy to ignore second- and third-order effects; therefore, we find it difficult to move beyond the evidence of our own stories.<sup>30</sup>

*Reactive devaluation.* This bias leads us to devalue an offer only because it was made by an opponent; therefore, we reject such offers without exploring their potential.<sup>31</sup>

*Regret aversion.* This bias leads us to distort our decisions to avoid facing evidence later that might cause regret.<sup>32</sup> This aversion is multiplied many times both as a bias and as recognition of reality when a challenging candidate might capitalize on a mistake at the next election.

Emotions, although less well studied, also interfere with our capacity to reach agreement. When negotiators are in a positive mood, they are more likely to discover the possibilities that lead to joint gains in a negotiation. Anger, in tandem with lack of compassion, demonstrably reduces the capacity to achieve joint gains.<sup>33</sup> Malhotra and Bazerman (2007) concluded, as most of us can attest from personal experience: “Anger prevents people from staying focused on the substantive issues about which they care deeply.”<sup>34</sup>

Like fixed-pie and self-serving bias, most of these cognitive and emotional barriers to agreement can be reduced, sometimes dramatically, by repeated positive interactions with parties on the opposing side whose perspectives and personal and constituent stories differ from one’s own.

30. Tversky and Kahneman (1973).

31. Ross (1995).

32. Malhotra and Bazerman (2007, pp. 136–38).

33. For the classic experiment, see Allred et al. (1997); they cite Carnevale and Isen (1986) and Kramer, Newton, and Pommerenke (1993) on mood.

34. Malhotra and Bazerman (2007, p. 272).

## Strategic Overreaching

*Strategic overreaching*, common when parties are in difficult competition, compounds the constraints on negotiation that derive from the fixed-pie and other cognitive biases. Individuals in negotiation rightly recognize that the tactics of intransigence and deception can sometimes improve their bargaining positions. Yet these tactics often keep participants from making deals that are to the benefit of all.

*Intransigence.* This is an obvious winning “hardball” strategy when one party rightly sees deadlock as a good alternative to a negotiated agreement. However, even when deadlock is costly in the present, skilled strategists may choose intransigence as a strategy, accepting immediate losses for future gains. Those who strategically use intransigence by refusing to compromise are usually trying to weaken their counterpart’s position and set themselves up for larger gains in the future.<sup>35</sup>

*Deception.* This tactic, including the misrepresentation of one’s goals or reservation price through silence and innuendo, is a relatively common and often successful hardball move in commercial negotiation. In legislatures, where ongoing interactions and reputations are at stake, outright deception is relatively rare. However, negotiators may guard closely the information they have regarding intensity of preferences—suggesting, for example, that party members or constituents for whom they are negotiating have stronger preferences than in fact they have. Parties and factions within parties in Congress may also have an incentive to appoint a negotiator with intense and possibly extreme views, falsely signaling greater intransigence than the party median, to improve their bargaining positions.<sup>36</sup>

In the long run, these tactics can harm both parties. First, aggressive negotiators have been shown to see fewer value-creating opportunities that come from creative ways of bringing new issues into the negotiation.<sup>37</sup> Second, hardball tactics inspire reciprocal hardball

35. Ross and Stillinger (1991, pp. 390–91).

36. King and Zeckhauser (2002). For hardball tactics more generally, see Mnookin and Ross (1995) and Mnookin, Peppet, and Tulumello (2000, pp. 24–25).

37. Lax and Sebenius (1986) give the name “negotiator’s dilemma” to the tension between the open, inquiring, creative, and disclosing stance required to

responses that increase transaction costs. In politics, the pattern is familiar and in the United States has become more intense since the 1990s. When one party breaks established norms of reciprocity, the other party retaliates, and the norms disintegrate.<sup>38</sup> Third, in politics as in commerce, irreversible investments in hardball reputations may escalate conflict even after all of the parties consciously realize that a resolution based on compromise would leave them better off.<sup>39</sup>

### **If Negotiation Myopia Is the Problem, Deliberative Negotiation Is the Solution**

Chapter 5, which discusses deliberative negotiation, argues for the democratic value of deliberation based on mutual respect and mutual justification and the search for fair processes and outcomes. Here we suggest that such deliberation also has clear practical advantages for uncovering and creating joint gains.

In U.S. national politics in an earlier era—that is, Congress from at least 1940 to 1970—long stays in Washington, cross-cutting cleavages within the parties, a multiplicity of venues for informal interaction, closed committee hearings, and many informal norms of civil interaction made what we call deliberative negotiation a daily possibility. As chapter 2 demonstrates, however, the polarization of the parties and the closeness of their electoral competition for control of the House and Senate have destroyed many of these cross-cutting cleavages while increasing the strategic incentives for obstruction. Today, the party system is less likely to produce legislators like Jack Heinz and Tim Wirth, discussed in chapter 5, who engaged in highly constructive negotiation to help craft the Clean Air Act. Instead, congressional leaders at the head of polarized and highly competitive parties currently play the main roles in negotiation, with the assistance at cru-

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“create value” by bringing in new issues in the “integrative” moments of a negotiation and the closed, competitive stance required to “claim value” in the “distributive” moments.

38. Moe (1987).

39. Bazerman et al. (2000); Fukuno and Ohbuchi (1997); Thompson and DeHartport (1994); Thompson and Hastie (1990); Bizman and Hoffman (1993); Diekmann, Tenbrunsel, and Bazerman (1999); Keltner and Robinson (1993).

cial moments, particularly in the Senate, of ad hoc “gangs”—that is, small bipartisan groups of legislators outside of the formal committee system (see chapters 2 and 3).

The journalist Ronald Brownstein (2013) recently commented that these gangs “represent an evolutionary adaptation to Congress’s increasing rigidity.” The congressional committees, he wrote, “were never entirely immune from the partisan gales that buffeted Congress, but historically many were somewhat sheltered from the storms. Through long hours mastering complex issues, panel members built personal relationships across party lines that didn’t always produce agreement but did allow for candid and substantive negotiation.” Now that the committees have been open to the public for decades and are “as balkanized and as ideologically divided as the parties in general,”<sup>40</sup> some of the responsibility for what we call deliberative negotiation has passed to the small ad hoc gangs whose members often have ongoing personal relationships and therefore can discuss issues in a way that is respectful, based on mutual justification, and open to both new ideas and fair compromise. This is what we call deliberative negotiation.

Deliberative negotiation is our solution to negotiation myopia. Respect, mutuality, openness, and a commitment to fairness on both sides open up participants to exploring new ideas that can create joint gains and “expand the pie.” These conditions also undermine self-serving bias because parties with repeated, strong, and informal as well as formal relationships soon discover that their selection and interpretations of the facts or the justice of a situation are not always the same as those of their counterparts. Although we have no laboratory research on this subject, it is highly likely that discussions with respected others also help overcome the framing effects of loss aversion and availability bias. When participants think of the members of other parties less as opponents and more as partners in a problem-solving venture, they also will be less subject to reactive devaluation. When they are aware of the political needs of members of the other parties, they can help craft wins for the others to use when they and

40. Brownstein (2013), quoting Michael Franc, vice president for government studies at the conservative Heritage Foundation, on the balkanization in congressional committees.

their parties face reelection. Embedded in ongoing relationships and at respectful ease with one another, they will be less likely to feel anger at the others' suggestions or positions and more likely to ask questions and explain their own positions. In settings of deliberative negotiation, in short, they can more easily put campaigning behind them and get on with the business of governing.<sup>41</sup>

As chapter 2 demonstrates, the United States is in a structural position today that, more than any time in the past century, promotes stalemate. Thus, Congress accomplishes less; as crises build, the legislative branch is not able to solve them. By default, the power to do so will migrate to the presidency and the courts. We know this to be true. This analysis of negotiation myopia shows, in addition, that the conditions for stalemate in Congress not only produce inaction; they also stifle the creativity, innovation, and capacity to forge solutions that take into account more features of reality. The loss is in our capacity to act and, even more problematically, in our capacity for collective intelligence. Human beings already suffer from a natural myopia as they enter negotiations. Our democratic institutions should help us collectively to see better, not further fog our vision.

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