TOWARDS A THEORY OF

LEGISLATIVE COMPROMISE

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May 1976

Publication 76-4

This paper is adapted from a presentation made at the Faculty Seminar of the Program on Information Technologies and Public Policy at Harvard University. The author wishes to thank the Program, with which he is associated as a consultant, for providing critical reviews and technical assistance.

This paper is dedicated to the many Members of Congress and the staffs of the Senate and House committees and the Office of Legislative Counsel with whom the author was associated over more than a quarter of a century..

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ACKNOWLEDGMENTS

Special thanks are due to the following persons who reviewed the study plan, supplied data, or who commented critically on drafts of this report. These persons, the Program's affiliates and the sources of student assistantships are not, however, responsible for or necessarily in agreement with the views expressed herein, nor should they be blamed for any errors of fact or interpretation.

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INTRODUCTION

Reaching compromises, or failing to reach them, is one of the most important aspects of the legislative process. Nevertheless, the phenomenon of legislative compromise has been grossly understudied. While some case histories have described and analyzed particular compromises, there has been no effort to secure a better understanding of the phenomenon as such, and to develop a theory of legislative compromise.

There are several reasons why this should be so. The principal long-term, active participants in the compromise-reaching process are legislators. Being practicing politicians, they have better things to do than to undertake abstract analytical studies. Their legislative assistants--career legislative draftsmen and other professional aides--often are fearful of disclosing privileged information in discussing matters pertaining to the legislative compromise-reaching process. Academic scholars, on the other hand, rarely are privy to the compromise-reaching process on an ongoing basis. Furthermore, the process does not lend itself to being studied second hand through the perusal of documents since it is, often purposely, poorly documented. Finally, many scholars share with laymen a prejudice against compromise as a phenomenon, thinking of it as being equivalent to equivocation and thus less deserving of serious scholarly study than wholehearted advocacy of particular points of view.[1]

Consequently, scholarly analyses of the phenomenon of legislative compromises have been notably absent from the pages of academic journals.

The paper which follows attempts to deal with one aspect of the compromise-reaching process: generating alternatives designed to accomodate conflicting positions held on issues raised by legislative proposals. We shall proceed by first describing in general terms several approaches that can be helpful in generating alternatives systematically rather than haphazardly. This will be followed by a presentation of actual cases which exemplify applications of these approaches and cases where acceptable alternatives were not generated. We shall conclude by summarizing what we have presented, and suggesting other aspects of the compromise-reaching process which must be studied to lay a foundation for a theory of legislative compromise.

I. HOW TO GENERATE ALTERNATIVES DESIGNED TO ACCOMODATE CONFLICTING POSITIONS

A. Analyzing Legislative Proposals in Terms of Benefits and Burdens, Issues and Interests

When legislative proposals run into substantial opposition, it is desirable to analyze such proposals for purposes of identifying (1) the benefits and burdens involved for parties-at-interest including legislators and the executive; (2) the issues which such proposals entail in terms of benefits and burdens; and (3) the positions taken by parties-at-interest on these issues for purposes of advancing their respective interests.

The following categories of issues are designed to assist us in achieving these objectives:[2]

(1) WHO is to be benefited or burdened?

(2) WHAT are to be the benefits or burdens?

(3) WHEN are they to begin and terminate?

(4) WHERE are they to be in effect?

(5) HOW--organizationally and procedurally--are they to be effected?

(6) WHY is enactment of the proposal in the public interest?

B. Thinking "Across" Issue Categories

Alternatives designed to accomodate conflicting positions can be generated either within each of the six issue categories or across such categories. Where an alternative leading to an accomodation cannot be

generated within an issue category, i.e., directly, it might be generated indirectly by thinking across to information in another category which might modify information in the original category with regard to which conflicting positions are held. For example, WHO and WHAT information can often be modified indirectly by resorting to WHEN, WHERE, HOW and WHY information.

C. Thinking Alternatively in "More-or-Less" Terms

By thinking alternatively in "more-or-less" terms rather than "either-or" terms, we can generate ranges of alternatives rather than black and white alternatives. We are accustomed to think alternatively in "more-or-less" terms about quantitative matter. In dealing with non-quantitative matter, however, our antonym-prone language tends to make us think in "either-or" terms. Therefore, special mental effort is required to overcome our language-conditioned thought habits.

D. Thinking in "Pro-Legislature" Terms

Since legislatures jealously guard their political power vis-a-vis the Executive, accomodations can often be generated by thinking in "pro-legislature" rather than "pro-executive" terms. Thus, by substituting a "pro-legislature" alternative for a "pro-executive" one, an accomodation may be achieved on a highly controverted issue raised by a legislative proposal. For example, delegation to the executive of broad discretionary authority is often viewed by legislators as being "pro-executive". Eliminating such delegation or narrowly circumscribing it, may generate a "pro-legislature" alternative which brings forth the needed accomodation.

These four methods of generating alternatives designed to accomodate conflicting positions on issues raised by legislative proposals are stated in general and rather abstract terms. The meaning is made clearer as we proceed to describe concrete and specific applications of these methods in actual cases. Most of the cases involve combinations of these four approaches since, in real life, more than a single approach is usually needed to bring forth a desired accommodation. All of the cases involve the U. S. Congress, and questions might well be raised as to what extent the four approaches might be applicable to State legislatures or to legislatures abroad.

II. CONGRESSIONAL CASES ILLUSTRATING ALTERNATIVE-GENERATING TECHNIQUES

A. Appropriation Legislation

Appropriation legislation deals primarily with quantitative matter, namely, money. Ordinarily, the question is "How much money?" and not "Any money or no money?" However, there are exceptions to this rule and we shall discuss some actual cases.

Ordinarily, the legislature either approves the amount of money requested by the executive for a previously authorized activity or it selects an alternative amount above or below the amount requested.

Three factors tend to promote flexible attitudes on the part of legislators and the executive regarding appropriation items, thus facilitating compromise: (1) the prior authorization of the activity in question means that issues concerning such activity have been ironed out, and that the legislators are familiar with any impact that varying levels of such activity might have on their constituents and thereby on their own political futures; (2) a wide range of alternative amounts is available from which an acceptable amount may be selected; and (3) differences between alternative amounts can be measured precisely and objectively.

We should note at this point that these three factors are frequently absent in the case of authorizing legislation: (1) activities to be authorized may be novel, and their impact on constituents and political fortunes of legislators and the executive may be highly speculative; (2) since

authorizing legislation is apt to deal largely with non-quantitative matter, ranges of alternatives are not readily available when issues are stated in either-or terms; and (3) differences between non-quantitative alternatives cannot be measured precisely and objectively.

The combination of these three factors often renders legislators apprehensive and insecure, thus resulting in greater rigidity on their part which, in turn, tends to lead to polarization. Therefore, finding acceptable alternatives designed to accomodate conflicting positions often requires considerable ingenuity.

Coming back to the usual type of conflict which arises in appropriate legislation we often find a majority of legislators on one side and the executive and a minority of legislators supporting the executive--often halfheartedly--on the other side. For example, in case of the appropriation bill for Fiscal Year 1974 covering the Executive Office of the President, the Treasury Department, the Postal Service and several independent agencies, the House of Representatives appropriated $4.8 billion and the Senate $5.1 billion. The President had requested $5.4 billion.[3]

In cutting the appropriations, the majority in both Houses thought to express their displeasure with the operation of the Executive Office under President Nixon. In reaching a compromise of $5.2 billion, an amount in excess of what either House had voted, a majority of the Senate and House conferees were persuaded by spokesmen for the Executive to relent somewhat.

Occasionally, appropriation legislation involves an "either-or" issue rather than a "more-or-less" issue. For example, appropriations for the Department of Defense for the Fiscal Year 1974 included

funds for the continuation of the war in Southeast Asia. With regard to these funds, no particular amount of money was at issue corresponding to a particular level of activities in Southeast Asia. The wisdom as well as the constitutionality and morality of the war itself were being questioned. No compromise figure could resolve an issue of this nature.

The deadlock between a majority in both houses of Congress and President Nixon supported by a majority in both houses was finally resolved by "thinking across issue categories", i.e., by shifting from the WHAT issue category ("any activity or no activity?") to the WHEN category ("when should activities cease?") An early deadline for stopping the expenditure of funds for the war in Southeast Asia was negotiated between a Congressional majority and the President.[4]

The acceptance of such a deadline, of course, presented a problem for those who argued that U.S. participation in the war without Congressional authorization was illegal and unconstitutional from the beginning. In politics, however, being a little bit pregnant as the result of compromise is not an unfamiliar situation.

Agreement up to then on any particular amount to be appropriated for the war obscured the underlying divergence of views. The compromises reached regarding the amounts did not provide the contending parties with a new ideological middle ground. This is a possible weakness of quantitative compromises: Agreeing on a particular quantity obscures the absence of agreement concerning the value or merit of the proposition. (Incidentally, this is true also of cost-benefit analyses where quantification may hide underlying disagreement concerning the value or merit of quantified factors.)

B. Clean Air Amendments of 1970

The Senate version of the Clean Air Amendments of 1970 contained broad provisions for citizen suits against the Administrator.[5] The House version had no such provisions.[6] When the conferees met, they initially asked the "either-or" question: should the citizen suit provisions be retained or should they be eliminated?

A majority of the House conferees argued against such suits on the grounds that they would interfere with the orderly operation of the Environmental Protection Agency and would place too much control in the hands of plaintiffs. A majority of the Senate conferees countered that citizen participation in the enforcement of the Clean Air Amendments was vital to the success of the program, and that the courts could be counted on to reject unreasonable demands advanced in such suits.

Not until a "more-or-less" question was asked regarding the greater or lesser appropriateness of such suits under different circumstances, did it become apparent that a legitimate distinction might be made between the required duties of the Administrator and his discretionary powers. This distinction became the basis of a compromise which allowed citizen suits "...where there is alleged a failure... to perform any act or duty under this Act which is not discretionary with the Administrator."[7]

The most politically sensitive provisions of the Clean Air Amendments of 1970 concerned automotive emissions. These provisions placed technical as well as financial burdens on an industry which had been a symbol of the American way of life and which resisted strenuously having its freedom of action limited by government regulations. Additionally, the provisions placed financial burdens on millions of car purchasers by increasing the cost of automobiles.

There were great differences between the Senate and House versions of these provisions. The House version continued the authority of the Environmental Protection Agency to set automotive emission standards and deadlines for meeting them. In setting these standards and deadlines, the industry's views as to what was feasible had been given considerable attention. The Senate version sought to establish mandatory numerical standards in percentages by which emissions would have to be reduced over earlier standards, and mandatory deadlines in model years by which such standards would have to be met. An exception authorized the administrator to grant a one-year postponement if he found that in spite of diligent industry efforts the necessary technologies did not exist in time to meet standards and deadlines.[8]

The automobile industry bitterly opposed the Senate version, maintaining that reliable technologies to meet standards and deadlines could not be developed in time. Several House conferees argued that Congress lacked the competence to set technical standards and deadlines, and that this task should remain with the agency. Most of the Senate conferees, under the leadership of Senator Edmund Muskie (D., Me.), argued that in the absence of Congressionally mandated standards and deadlines the industry could not be trusted to develop the necessary technologies (which admittedly were still in a laboratory stage of development), and that the agency could not be trusted to hold fast against industry and Executive Branch efforts to secure less stringent standards and later deadlines.

Compromise proposals offered by the House conferees to reduce the percentage figures of the standards and to set later deadlines were rejected by the Senate conferees. The question, therefore, was how the standards might be made more flexible (and, thereby, less burdensome) without at the same time undermining the principle of Congressionally mandated standards and without delegating standard setting authority to the Executive Branch which was distrusted by many Members of Congress and groups interested in combatting air pollution.

The deadlock was broken by an "escape hatch" provision which left the standards and deadlines fixed by the Senate intact but which opened the door to later changes should they be impossible to meet. The "escape hatch" provision called upon the National Academy of Sciences to appoint a panel of experts to study the technical feasibility of the standards and deadlines.

No formal call for Congressional review of the panel report was included in the "escape hatch" provision but it was assumed tacitly that Congress would have to take a second look at standards and deadlines should the experts conclude that they could not be met. This procedural qualification thus generated an acceptable alternative: the burdens placed on the industry, unchanged in regard to standards and deadlines, were made slightly less burdensome by making them subject to a special kind of review procedure. Thus, while efforts to substitute alternative less burdensome WHAT provisions failed, the addition of new HOW provisions made the WHAT provisions sufficiently less burdensome and, therefore, more acceptable. Thus "thinking across-categories" resulted in producing an acceptable alternative version of Congressionally mandated standards which were considered "pro-legislature".

while delegation of authority to the executive to set standards was considered "pro-executive".

This compromise did not undercut Senator Muskie's reputation as "Mr. Clean" who had persuaded the Senate that specific standards and deadlines set by Congress itself were necessary as well as practical. (It will be remembered that at that time Senator Muskie was considered, and he considered himself, a potential presidential candidate on the Democratic ticket. Thus, he and his staff had a special personal interest in this legislation.) The compromise formula also made it possible for Members of Congress who had bona fide doubts about the feasibility of the Congressionally mandated standards and deadlines to support them in the expectation that they would be revised if the panel of experts of the Academy found them impractical. Finally, the automobile companies felt that their views had not been completely ignored, and, therefore, they did not feel utterly defeated--an important aspect of any legislative compromise.

C. Federal Hospital Construction Grants and Federal Hospital Standards.

The Hospital Survey and Construction Act of 1946[10] established a program of Federal grants to the states to survey their needs for additional hospital beds, to plan for the construction of additional hospitals, and to grant federal matching funds to assist states, local governments and private non-profit organizations in the actual construction of additional hospitals.

The original bi-partisan bill, introduced by Senator Lister Hill (D., Ala.) and Senator Harold Burton (R., Ohio), would have authorized the Surgeon General to make allotments for construction to

the states on the basis of population, relative financial need, and relative need for additional hospital beds. These standards would have given the Surgeon General a great deal of discretion in disbursement.[11]

At the time this legislation was being considered in Congress, other bills calling for a comprehensive national health program, including compulsory national health insurance, had been introduced with the strong support of President Truman. These bills were actively opposed as "socialized medicine" by the American Medical Association and by conservative Members of Congress. These Members felt that the national health insurance legislation was tantamount to "legislating. . . . socialized medicine. . . . into law piece-meal".[12] On the other hand, supporters of Truman's broad national health program viewed the hospital construction legislation as inadequate to meet national health needs, and at best a mere opener for more far-reaching health care legislation.[13]

Given this wide range of views, the Senate sponsors of the hospital construction legislation had to attract as much support as possible from the conservatives without jeopardizing liberal support. Among the conservatives, views ranged from all-out opposition, partly on the grounds that states and cities were in better financial shape than the federal government, to qualified support of the legislation provided Congress would "give the money to the States . . . [and] . . . retain just as little Federal controls [sic] as possible."[14]

Conservative members, among whom Sen. Robert Taft (R., Ohio) was most prominent, had argued that the discretionary authority of the Surgeon General would have increased Federal power vis-a-vis state

and local governments, increased Executive power vis-a-vis Congress, and increased power of bureaucrats vis-a-vis elected state and local officials. The conservatives argued further that these powers might be used for partisan purposes through preferential treatment of states and municipalities.

The question therefore was how the political and ideological burdens which the conservatives resisted as much as the financial burdens that the legislation would impose on the Federal government, might be reduced. The answer was found in a complex mathematical formula reflecting population, relative financial need of the States, and relative need for additional hospital beds.[15] By eliminating the discretionary authority of the Surgeon General and by substituting the formula, Congress itself was able to specify the WHO and WHAT information, i. e. each State's share of the funds appropriated annually for construction grants.

The original Senate bill authorized the Surgeon General to establish the terms and conditions which recipients of Federal construction grants would have to meet. This would have included closely drawn technical standards which the hospital facilities would have to meet. The Surgeon General would have been required to appoint an advisory group with which he would consult before issuing rules and technical standards.[16]

The conservatives objected to his provision on the same grounds as before: the result would be increased Federal power, particularly increased bureaucratic power. Furthermore, local governments and private non-profit organizations operating hospitals and interested in expanding them or building new ones, were apprehensive that the Surgeon General's standards might be too burdensome. Since it was impractical for Congress to write highly technical and detailed standards into the

legislation, the creation of a Federal Hospital Council in which the beneficiaries would have a voice and which would have to concur with the Surgeon General in the standards to be issued, was considered the best available substitute for Congressionally mandated standards.[17] Thus, organizational and procedural provisions falling into the HOW category, instead of Congressionally determined standards falling into the WHAT category, were used to meet the objections of the conservative Members of Congress and the beneficiaries under the legislation.

President Truman and his supporters in the Congress objected strongly to the requirement that the Council approve regulations and standards proposed by the Surgeon General. This requirement, they argued, vested governmental powers in a part-time body which was "accountable to nobody, responsible to nobody, controlled by nobody." A Senate floor amendment to delete the council-veto provision was defeated. When the bill reached President Truman, he signed it in spite of his strong objections to the provision.

The legislation became known as the Hill-Burton Act. Its passage laid the foundation for Senator Hill's national reputation as the Senate's "Mr. Health". Senator Burton's prestige as a constructive middle-of-the-road Republican led to his appointment by President Truman to the Supreme Court. Senator Taft, who wanted to be known as "Mr. Republican", could claim credit as well for limiting the growth of Federal power.

The compromise was achieved by making the legislation less burdensome to those members who were strong adherents of conservative ideologies regarding the proper role of the Federal government. By stressing the anti-executive and anti-bureaucrat aspects of the compromise amendments, the conservatives were persuaded to go along with the preposed expansion of the Federal role in the health care delivery field.

D. Federal Support for Basic Scientific Research

The principal purposes of the National Science Foundation Act of 1950[19] were to encourage and support basic research and education through contracts, scholarships, and fellowships, and to correlate the research programs of the Foundation with those of other public agencies and private groups. Because the proper limits of relations between the Federal Government and basic research institutions were highly controversial, and because there were numerous and diverse beneficiaries, it took more than half a decade to work out a compromise. Apart from the issue of the composition of the administering agency, four principal questions emerged from the debate: How to divide funds among the varied scientific disciplines? What geographical distribution plan to follow, if any? How to allocate funds between public and private institutions? How to divide funds among big, well-heeled institutions and smaller, struggling institutions?

One of the early Senate bills earmarked for distribution among the States at least 25 per cent of appropriated funds, two-fifths in equal shares and the remainder on the basis of population.[20] This provision was abandoned in committee on the grounds that the bill was not aimed at subsidizing educational and research institutions throughout the country but rather to support specific projects of basic research in various scientific fields. The committee, however, was concerned with achieving some measure of equity in the distribution of funds both geographically and among the various sciences. In an effort to achieve this objective, the bill reported by the committee provided for adequate representation of various scientific groups throughout the country.[21] Thus, the committee resorted to a more indirect, general, organizational approach by way of HOW provisions (which delegated to an executive agency broad discretion in distributing available funds) rather than a more direct, specific, substantive approach of earmarking by way of WHAT provisions (which would have limited the agency's discretion).

The legislation, as finally enacted, however, sought to make more stringent the organizational provision recommended by the Senate committee, and added a procedural provision as well.[22] It provided for the submission to the President of recommendations for nominations to the Foundation's board by the National Academy of Sciences, the Association of Land Grant Colleges and Universities, the National Association of State Universities, or by other scientific and educational organizations. It requested the President, in making nominations, to give consideration to any such recommendations. In addition, the legislation required approval by the Foundation's board of actions by the

director with regard to scholarships, fellowships and contracts. As explained in the conference report, this provision was included to assure that such benefits would not be unduly concentrated in a few institutions or in a limited area of the Nation.[23] Almost ten years later, Congress eliminated this procedure, having become satisfied that the Foundation was distributing funds fairly.[24]

Another issue involved the Director of the Foundation. Should he be appointed by the President, by and with the advice of the Senate (as demanded by President Truman and his supporters in the Congress), or should he be appointed by the Foundation (as demanded by those policymakers and potential beneficiaries who feared political influence in the operation of the Foundation)? The compromise which resolved this issue provided for the appointment of the Director by the President but only after the Foundation had had an opportunity to make recommendations.[25]

These three compromises involved thinking "across categories"; using procedural HOW provisions to modify organizational HOW provisions, and using both types of HOW provisions to modify WHAT provisions.

E. Geographical Distribution of Radio Broadcasting Licenses

The Radio Act of 1927[26] offers another example of Congressional efforts to achieve substantive objectives more indirectly and less specifically through the use of organizational HOW provisions. There was great concern by Members of Congress from the South and West that the distribution of radio licenses was favoring the North and East. The Senate bill, because of the voting strength of Southern and Western

Senators, called for the appointment of a commission with five members, each a resident of one of the five geographical zones of approximately equal population into which the country would be divided. The House bill would have left the regulation of the industry to the Secretary of Commerce but would have created a five-member part-time commission to which the Secretary could refer any matter and to which aggrieved parties could appeal any decision of the Secretary for a de novo hearing. Efforts by one Southern member of the House to secure adoption of a floor amendment calling for a full-time commission in order to counteract the maldistribution of licenses were defeated.

A compromise between the Senate and the House established the commission with zonal residence requirements for the commissioners for a period of one year with authority regarding license grants, renewals, and revocations. Subsequently, the commission was made permanent and the residence requirement was eliminated.[27]

This compromise used WHEN information to modify an organizational HOW provision.

F. Protecting Small Meat Packers

Another example of efforts (rather feeble ones) to achieve substantive objectives by more indirect and less specific organizational HOW provisions may be found in the 1958 amendments to the Packers and Stockyard Act.[28] The Western Meat Packers Association claimed in 1957 that unfair trade practices of the large national packers in the nine Western states had resulted in a reduction of the market share of the smaller regional packers from seventy percent to fifty percent. The

proposed remedy was to transfer jurisdiction over unfair trade practices in the meat industry from the Department of Agriculture to the Federal Trade Commission which the smaller packers considered more sympathetic to their complaints than the Department of Agriculture. This would have reversed a Congressional decision made in 1921 in the Packers and Stockyard Act which took jurisdiction over unfair trade practices of packers from the Federal Trade Commission and placed it in the Department of Agriculture along with jurisdiction over unfair trade practices of stockyards.[29]

The American Meat Institute - a nationwide trade association - some farm organizations, and the Department of Agriculture opposed the proposed transfer. Other farm organizations, several trade associations, including the Western Meat Packers Association, and the FTC supported the transfer. The compromise divided the jurisdiction along functional lines. The FTC was made responsible for policing retail transactions; the Agriculture Department for wholesale activities. The FTC was also made responsible for trade in manufactured forms of meat and meat products while the Department of Agriculture retained jurisdiction over livestock and livestock products. Further, the compromise legislation directed the Secretary of Agriculture to set up a separate unit to enforce the unfair-trade-practices provisions of the Packers and Stockyard Act.[30] This provision gave a positive identification to the Agriculture officials with the immediate responsibility for enforcement.

The House committee report observed candidly that there was no one method - the method obviously desired - which would resolve to the

satisfaction of all concerned the controversial organizational HOW issue which involved the division of authority between two agencies which were considered more (FTC) and less (Agriculture) friendly to small packers.[31] The substantive WHAT question--how the market share of the independent Western meat packers might be increased--thus was "solved" by indirect and general rather than direct and specific legislative provisions.

G. Federal Standards for Pesticide Residues and Food Additives

Another example of the use of organizational and procedural HOW provisions in lieu of specific substantive WHAT standards can be seen in the regulation of pesticide residues and food additives. To assure the safety and wholesomeness of food, Congress had to consider the risks from pesticide residues left on raw agricultural products and from food additives used in the production of processed foods. It was recognized that the state of scientific knowledge did not make absolute proof of safety possible.[32] The setting of safe tolerances involves informed judgments based on educated estimates by qualified scientists and experts. Therefore (except for cancer risks where the statutes contain absolute prohibitions), the substantive safety standards are very general and highly flexible. Under these circumstances, the affected farm and industry groups were greatly concerned with the organizational and procedural provisions dealing with the selection of the scientific decision-makers and the procedures that they would follow in implementing the substantive standards.

The 1954 law, dealing with the establishment by the Agriculture Department of safe tolerances for residues of pesticide chemicals on

raw agricultural commodities, provided for an informal, nonadversary proceeding before a supposedly neutral body of decision-makers. The law authorized referral of petitions to establish such tolerances to an ad hoc committee of disinterested scientific experts selected by the National Academy of Sciences. This provision was designed to provide a forum where scientists could reach scientific judgments, and, if possible, a consensus on disputed questions of the safety of pesticide chemicals. This organizational and procedural feature had the active approval of the affected parties.[34]

In that same year, food-additive legislation was enacted providing for traditional formal adversary proceedings before the Food and Drug Administration.[35] This came about because some of the affected industry groups objected strenuously to the informal non-adversary proceedings. The industry groups thought their interests would be protected best by the right to cross-examine scientists in a formal on-the-record proceeding conducted by the regulatory agency.

In order to insure against the agency's determining tolerances on the basis of "alarmist" testimony representing the views of a scientific minority, the industry groups insisted on two procedural safeguards which the Congress wrote into the law: (1) a requirement that the agency findings be based on the entire record made at the agency hearing, and (2) the right of judicial review of the entire record in lieu of the more limited traditional judicial review under which the courts upheld agency findings based on substantial (though possibly minority) views of the experts.[36]

The judicial review provision was designed to guard against the court's considering minority views sufficiently substantial to uphold very low or zero tolerances established by the agency on the basis of minority views.

Congress accommodated different approaches based on different experiences by different affected parties and their attorneys with different agencies of government having different procedural traditions. Consequently, the statutes contain different organizational and procedural HOW provisions to deal with substantially identical substantive WHAT issues.

H. Financial Aid for Schools of Public Health

The last four examples demonstrated the use of HOW information for the purpose of modifying WHAT information. The following example demonstrates the use of WHY information for the same purposes. WHY information supplies the rationale deemed acceptable to legislators and their constituents as to why benefits should be given to whom and why burdens should be imposed on whom.

When in the late 50's schools of public health were incurring large deficits which forced many of them to cut back or ultimately shut down altogether, the schools sought legislation authorizing $1 million annually in Federal grants-in-aid. Since such grants would have constituted Federal aid to education - at that time highly controversial - it was argued by the sponsors of the legislation that the schools presented a special case in that they trained personnel exclusively for governmental and non-profit institutions, and that the private schools of public health, unlike medical and law schools, could not look to

wealthy alumni to provide needed financial support. These arguments, however, failed to persuade those members of Congress who were fearful of setting a precedent for grants-in-aid to other educational institutions.

Proponents of the bill established that the schools incurred substantial losses ($2.3 million annually) as a result of training public health personnel under Federal training programs which paid only the tuition charged by the schools but not the actual costs of providing such training.[37] A substitute proposal developed to meet the apprehensions generated by the original proposal took account of the losses caused the schools by the Federal training programs. Thus, by changing the rationale (i.e., the WHY information) for Federal payments from "aiding schools" to "reimbursing schools", a less inclusive, less threatening, and, therefore, more acceptable alternative was developed.[38] Two factors re-inforced one another in making this alternative more acceptable: (1) shifting to reimbursement put an automatic ceiling on Federal payments to the schools, while aid to the schools to meet their needs would have been largely open-ended, and (2) reimbursement was not considered a dangerous precedent for Federal aid to education in general, while the precedent of aid to schools of public health might have brought in its wake demands for aid to other types of schools.

I. Medicare and Medicaid

Efforts to enact legislation for federally funded health benefits (including costs of hospitalization and doctors' services) for all citizens, or more particularly, for the poor, began in 1939 with

Senator Robert F. Wagner's (D., N. Y.) National Health Insurance bill. These prolonged efforts met with their first partial success in 1965 when President Johnson signed into law the Medicare-Medicaid legislation.[39]

The most significant event, perhaps, on the road to passage came with an alternative developed by the then chairman of the House Ways and Means, Rep. Wilbur D. Mills (D., Ark.). At that time three basic proposals were being considered.

(1) H. R. 1, the King-Anderson bill and 45 identical bills which sought to establish a hospital insurance program for the aged under the social security system. The bills were based on principles of (1) compulsory participation, (2) exclusive Federal control, and (3) nationally uniform benefits. These "Medicare" bills had the support of President Johnson and numerous private groups and organizations, including the labor unions. This legislation was opposed strenuously bye the American Medical Association.

(2) H. R. 3727 and H. R. 3728, identical bills introduced by a Democrat and Republican respectively, and 24 identical bills submitted by conservatives of both parties, were known as "Eldercare." This legislation had the support of the American Medical Association. It was designed to offer an alternative (not a complement) to the Medicare legislation by liberalizing Federal-state programs and by authorizing any state to provide medical assistance for the aged under voluntary private health insurance plans. Additionally, the legislation would have provided tax incentives to encourage prepaid health insurance for the aged. The bill was based on principles of (1) voluntary participation, (2) substantial state control, and (3) benefits varying from state to state.

(3) H. R. 4351 and 13 identical bills introduced with broad Republican support were referred to as "Bettercare". This legislation was not supported by the A. M. A. These bills were considered substitutes for "Medicare" and "Eldercare", and would have established a program of voluntary comprehensive health insurance for all persons aged 65 or over. Unlike the "Eldercare" legislation which would have placed the disposition of the subsidies in the hands of state governments, the "Bettercare" legislation would have left the disposition of such subsidies to the Federal government. Thus the bill was based on (1) voluntary participation, (2) substantial but not exclusive Federal control, and (3) some nationally uniform benefits and some benefits varying from state to state.

Members of Congress and organizations opposed to "Medicare" criticized the limited in-hospital benefits provided, and stressed the far broader benefits under the "Eldercare" and "Bettercare" bills. Chairman Mills sought to meet this criticism and to generate greater support for the "Medicare" proposals by proposing that the hospital insurance program for the aged under the Social Security Act provided for in H. R. 1 should be supplemented with a voluntary health benefit program and an expanded program of medical assistance based on the principles of H. R. 4351, the third, "Bettercare" approach, now called "Medicaid". This alternative was embodied in a new bill sponsored by Mills (H. R. 6675). It was this new bill, with certain modifications made by the Senate and in conference, that President Johnson signed into law.[40]

Two factors combined to make this alternative acceptable. First, a majority of Members was ready to support federally funded health care if a way was found to compromise the conflicting proposals, and second, the desire to resolve conflicts over the level of benefits and the methods of distributing them was strong enough to make the resulting higher financial burdens politically acceptable. Indeed, the desire to overcome conflicts was so strong that Congress failed to put a ceiling on payments, a chicken which came home to roost later.

Still, the compromise demonstrated the importance of probing carefully, when confronted with supposedly polar propositions, whether the propositions are perhaps complementary rather than mutually exclusive.

III. CONGRESSIONAL CASES ILLUSTRATING FAILURES TO REACH COMPROMISES

The following cases illustrate failures to reach compromises. In these cases, no acceptable alternatives were generated in spite of diligent efforts to do so. These cases raise questions as to the reasons for such failures.

Failure to generate through explorations and negotiations an acceptable alternative to the positions held by the contending parties, does not necessarily mean that no legislation will be enacted. As the first case will illustrate, one of the contending parties--the House of Representatives-- saw fit to give in to the other party--the Senate. For reasons deemed sufficient by each of the two parties, one stood fast and the other surrendered.

A. War Claims Legislation

After World War II, Congress was faced with the question of whether and how to compensate American citizens for losses incurred on account of enemy action. The issues were: should the entire question of compensation for war claims be left to the Executive Branch to settle by peace treaties with former enemy governments? Should Congress attempt to enact general legislation authorizing payment of war claims out of Treasury funds appropriated for this purpose in the--perhaps vain--hope that the Treasury might be repaid out of reparations imposed on enemy governments in future peace treaties? Or should Congress enact piecemeal legislation to take care of those

war claims which it perceived as most urgent (such as claims of former prisoners of war and civilian internees who had suffered physically and mentally at the hands of enemy governments), and should Congress use for this purpose the proceeds resulting from the sale of vested enemy property located in the United States?

The Senate and the House of Representatives gave widely divergent answers to these questions. The House bill provided for emergency relief payments out of general Treasury funds to civilian internees (but not to prisoners of war) and established the principle of letting a future Congress decide (after receiving a report from the War Claims Commission established by the House bill) to what extent war claims should be paid out of Treasury funds. The bill prohibited the return of vested enemy property to former owners, and ordered the liquidation of such property and payment of the proceeds into the general funds of the Treasury.

In spite of strenuous objections that the private property status of vested enemy property should be respected, the House committee held that the "no-return" policy did not violate concepts of international law and international morality since for several years before World War II the governments of Germany and Japan had imposed rigid controls over the private property of their nationals to accomplish national objectives. The committee rejected proposals to keep the proceeds resulting from the liquidation of enemy property in a separate Treasury account on the grounds that no legal or logical relationship existed between "vested" enemy assets and war claims against enemy governments. The committee argued that if sufficient assets could not be secured from

enemy governments by way of reparations to pay war claims, Congress would have to determine after considering the recommendations of the War Claims Commission whether and to what extent such claims should be paid out of the Treasury.[41]

The Senate Judiciary Committee also called for "no-return" of vested enemy property and the establishment of a War Claims Commission, but instead of merely making recommendations to Congress, the commission was to process and pay the claims of civilian internees, prisoners of war, and certain religious organizations in the Philippines which had furnished facilities and services to the armed forces of the United States and to civilian American citizens. Instead of paying the proceeds resulting from the liquidation of vested enemy property into the general funds of the Treasury, such proceeds were to be paid into a special trust fund to be known as the War Claims Fund. This fund was to be used only for war claims authorized by this or future legislation, and war claims were to be paid only to the extent that money would be available in the fund.[42]

The establishment of a special fund to be used for war claims conflicted with the views of the House committee that there was no legal or logical relationship between vested enemy assets and war claims against enemy governments.

During the closing days of the session, the House accepted the Senate bill in toto because it did not want to delay payment of the claims of civilian internees imprisoned by the Japanese after the fall of the Philippines.[43] Unlike former prisoners of war (who received a measure of Federal payments from the Armed Forces or the Veterans Administration), civilian internees were not entitled to any Federal payments.

The high priority accorded by the House to the prompt payment of the relatively limited claims of a relatively small class of war claimants induced the House to abandon the principle advocated by it of paying war claims, if necessary, out of the general funds of the Treasury, i. e., taxpayers' moneys. The case illustrates how in the case of "package" legislation affecting numerous and diverse classes of beneficiaries (or persons to be burdened), the importance politically of one class can affect--favorably or adversely--all other classes included in such legislation.

B. Guaranteed Minimum Annual Income.

Another example of "package" legislation where no acceptable alternative could be generated may be found in President Nixon's Family Assistance Plan.

The Nixon Plan sought to provide a minimum guaranteed annual income to poor families with dependent children without regard to the employment status of the heads of such families. In other words, in the interest of the children as well as of the Nation's economy, the Plan sought to put a floor under annual income regardless of whether the heads of such families were employed, unemployed but able to work, or unable to work for whatever the reasons might be.

The guaranteed minimum income was to be nationally uniform.

The poor families that would have been entitled to benefits under the Plan were divided into two broad categories: (1) the welfare poor who were recipients of relief payments under various Federal-state programs, with relief payments varying from state to state; and (2) the working poor who had not been covered under previous programs.

The welfare poor included mothers with dependent children. The manner in which this particular category of welfare recipients had been handled under Federal-state programs gave rise to a demand in the Congress that the "welfare mess" be straightened out. This the Plan was supposed to do, although there was a great deal of controversy over the Plan in that respect.

With respect to the working poor, the Plan would have affected, in particular, Southern families where the family heads were employed in low-paying jobs. This feature in particular was objected to by Southern Senators and Representatives who were fearful that the nationally uniform cash benefits contemplated under the Plan would deter many poor fathers and mothers from continuing in, or accepting, low paying jobs.

This opposition necessitated modifications of the Plan. "Work willingness" requirements were developed, and benefits would be denied to those fathers and mothers who failed to meet these requirements.

The House of Representatives was satisfied with these modifications, and passed the Plan twice (during the 91st and 92nd Congresses) by substantial majorities. The Senate Finance Committee, however, refused to act on the Plan because in the opinion of a majority of that Committee it failed "to clean up the welfare mess" and "would pay people not to work." Sen. Abraham Ribicoff (D., Conn.), who had been very active in efforts to devise compromises to make the Plan more palatable to the conservative Members of the Committee, charged that the failure of the Committee to act during the 92nd Congress was due not to any inadequacies of the compromises proposed but to the abandonment of the Plan by the Nixon Administration. However, no matter who was to be blamed, no acceptable alternative incorporating the novel concept of a nationally uniform guaranteed minimum annual income for all classes of the poor, including the working poor, was found to satisfy the Senate Committee.[44]

CONCLUSIONS

An understanding of the process of legislative compromise is essential to an understanding of the process of legislation, for without compromise often there would be no legislation. While this point is clear to legislators, it is less clear to other actors and observers. This encourages the academic tendency to view legislative compromise as being unworthy of respect and serious scholarly study.

This paper has been concerned with techniques for developing alternatives on the basic issues involving benefits and burdens which recur in legislation: WHO? WHAT? WHEN? WHERE? HOW? and WHY? The techniques involve--

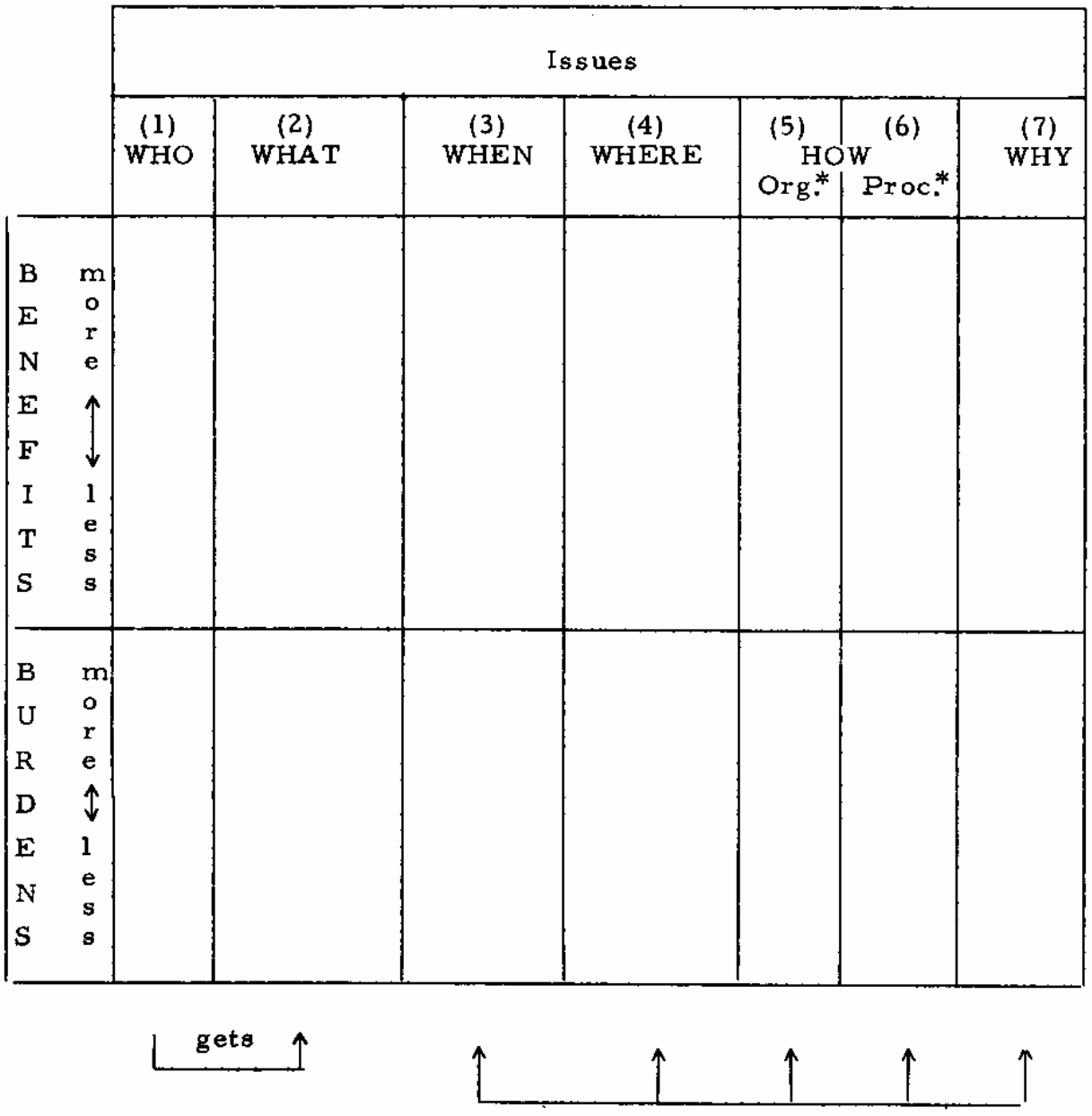
(1) Identifying the parties-at-interest and their respective positions regarding these issues;

(2) Thinking "across" issue categories as well as "within" such categories, since information in one category may be used to modify information in another one;

(3) Thinking alternatively in "more-or-less" rather than "either-or" terms regarding these issues; and

(4) Thinking in "pro-legislature" rather than "pro-executive" terms in connection with these issues.

The following figure is designed to visualize the first three techniques:



*"Org." stands for "organizationally"
"Proc." stands for "procedurally"

When we speak of "benefits" and "burdens" in connection with the several issue categories, we try to identify the subjective assessments by the interested parties. The terms are not used in the sense of "costs" and "benefits" as in a (supposedly) objective cost/benefit analysis. Subjective assessments and not objective evaluations from the point of view of "neutral" observers are the principal building blocks of legislative compromise.

For example, taxes are ordinarily considered a burden by those who must pay them, and who ordinarily may be expected to oppose an additional tax burden. Fuel and other special taxes levied under the highway and airport construction acts,[45] are placed in special trust funds to be expended only - at least until recently - for highway and airport construction. Truckers and airlines who pay these taxes are in an excellent position to pass them on to shippers and airline passengers. Furthermore, truckers and airlines are the principal direct beneficiaries of trust fund expenditures. Therefore, they see these taxes as benefits rather than burdens.

Similarly, product and manufacturing standards are ordinarily considered burdens by the manufacturers affected by such standards. To the extent, however, that the costs of compliance can be passed on to consumers, all manufacturers may consider such burdens relatively light. Small or marginal manufacturers may encounter technical and financial difficulties in meeting such standards, and they are likely to consider them threats to survival in the market place. Larger, better equipped manufacturers with ample financial resources might view such standards as benefits for the same reason because the imposition of such standards might reduce competition. Thus, similar groups may differ in their assessment of benefits and burdens.

On the other hand, so-called benefits may be considered burdens by some. Federal matching grants, for example, may be considered burdens by officials of those states and localities which face difficulties in securing matching funds. The Federal government, by dangling matching grants in front of the affected local interest groups, brings pressure on state and local officials to assume financial obligations which they would prefer not having to assume. Actually, acceptance of such "benefits" may entail considerable political risks for the officials involved. Furthermore, acceptance of such grants may carry with it burdens in the form of Federal controls. Thus, such grants usually are considered a mixed blessing.

If we view changes made in an original proposal from an objective vantage point, we may conclude that the changes are cosmetic rather than substantial. This should not trouble us, however, because compromise is brought about when subjective assessments of interests regarding particular issues are brought together. In this context, reactions to change in a proposal may be as important as the content of such change.

We have presented a broad spectrum of legislation ranging from appropriations to health care to guaranteed minimum annual income in order to demonstrate a number of recurring techniques of compromise. The fundamental inference that we have drawn from these cases is that no legislative compromise is possible unless the information presented in legislative proposals suggests a number of options in some form. You can't make bricks without straw, and you can't make compromises without graduated, non-polarizing information. Proposals stating novel

concepts in sharp, polar terms will not pass unless a majority favors passage at the time of introduction, or unless the proposal can be restated in a way that does not have the same polarizing effect.

Conversely, quantitative information presented in some types of proposals is naturally graduated and non-polarizing, and the concepts embodied in them are routinely familiar, presenting a range of alternative answers to "more-or-less" questions. Members faced with an appropriation bill will very rarely be inclined to vote it up or down. Rather, they will seek to raise the amount appropriated, if they favor the activity for which the funds are intended, or to reduce it, if they do not. Opponents use the same familiar terms, i. e., dollars, in discussing their differences and striking a bargain. A compromise typically consists of agreeing on a figure somewhere between the extremes. Although no party to the compromise may get what he wanted, all can accept the final figure as reflecting accurately and clearly their efforts, since all parties have confined themselves to asking "more-or-less" questions.

Appropriation items involving "either-or" issues (such as continuation of the war in Southeast Asia) rather than "more-or-less" issues have to be compromised by resorting to more complex compromise techniques than simply splitting the difference. Such items are not concerned with quantities, but with polarized views on the presence or absence of constitutional authority or moral justification.

In the case of authorizing legislation involving primarily non-quantitative information, asking "more-or-less" questions and asking them "across" issue categories entails fairly sophisticated thought processes. In the public-health school controversy, less inclusive,

less precedent-setting and, therefore, less threatening WHY information enabled Members who refused to vote in favor of aid to the financially troubled schools to vote to reimburse the schools for their services to the federal government, a major cause of their financial troubles. In the citizen-suit controversy, "less" of such suits was accepted by Members who opposed such suits in principle. In the pesticides and additives controversies, different HOW information regarding organizations and procedures made broad (and therefore vague) standards (i.e., WHAT information) acceptable by reducing the risks perceived by the affected parties regarding the vagueness of the standards.

Generating alternative answers regarding non-quantitative information is comparable to trading in a market place relying on barter. Getting a buyer and a seller together on their subjective evaluations of the goods they are offering requires much greater effort than getting them together when money provides a convenient, objective, and precise measure of value and exchange.[46] On the other hand, compromise on a non-quantitative issue can be like a successful swap in which both parties feel better off than before. Such compromise may be valued highly because it may be considered a happy medium between two less happy alternatives, and may become the favored choice, as did the citizen-suit compromise, for future legislation.

Too much novelty and too little familiarity which we discussed earlier also may play important roles in the market place. As Chrysler's Airflow styling in the thirties and Kaiser's Henry J. compact car after World War II demonstrate, too much novelty can lead to strong consumer

resistance, and may have to be abandoned in favor of more familiar products. Congressional experience thus parallels experience in the market place: proposals presented in too novel terms may have to be transformed by using more familiar concepts or face defeat as did President Nixon's too novel minimum guaranteed annual income proposal.

The most varied and productive category for modifying information in the WHO and WHAT categories is the HOW category which is actually a dual category - (1) HOW organizationally and (2) HOW procedurally.[47] An almost infinite variety of "more-or-less" questions concerning information falling into the HOW category may be asked. The questions may relate to such subjects as Congressional delegation of authority (should Congress itself specify in lesser or greater detail information concerning WHO and WHAT, and, correspondingly, should Congress delegate more or less authority to some agency to do this?); composition of boards and commissions (should interested parties be given more or less representation?); and agency procedures (should their findings be more or less reviewable? should their proceedings be more or less adversary? or more or less formal?).

The subjective assessments of legislative actors (rather than "objective" evaluations based on criteria derived from political science, public administration, economics, etc.) are the building blocks of legislative compromise. Each compromise consists of an exacting and delicate balance of the conflicting egoes and perceptions of some highly autonomous actors operating in a variety of settings.

Therefore, when attempting to lay a foundation for a theory of legislative compromise, we have to go beyond considering techniques for developing acceptable alternatives to accomodate conflicting positions on legislative proposals. We shall have to study the impact on the compromise-reaching process of the individualities of legislators and of the institutional settings in which the process takes place.

Members of Congress who play leadership roles in the compromise process are likely to be influenced not only by their own political ambitions and alliances with outside interests, but also by their personality traits. Personality traits are likely to influence relations with other individuals, work habits, as well as preferences for particular ideologies. The combination of all these is often referred to as the "style" of an individual. While the styles of recent White House occupants have been studied by political and social scientists,[48] psychologists, journalists and political writers, relatively little has been done to study styles in the legislative process.

Activism or passivism, personal security or insecurity, and extroversion or introversion constitute three pairs of personality traits which have significant impact on the shaping of different styles.

Activist members often strive to place their personal imprint on legislative compromises. They welcome such opportunities because of their general desire to play national roles rather than just state or district roles. Passive members are content with the latter roles.

Members who have a general sense of psychological security are more inclined to be judicious and flexible, to trust other members and staffs, and to deal with essentials rather than trivia. Generally insecure members are likely to be more arbitrary and rigid, more distrustful of others, and to become enmeshed in details.

Extroverts, and most Members are extroverts, are likely to respond spontaneously (positively or negatively) to individuals rather than to issues, and to oral rather than written communications. Introverts are more willing to study lengthy written analyses of issues, and less likely to be swayed by last minute oral communications coming from individuals who seek to influence them.

Character traits and the styles that go with them constitute important variables in the compromise process, and awareness of them is essential to understanding the intricate process of legislative compromise.

The institutional forces which have an impact on the process have procedural and organizational aspects. Like an iceberg, the process of legislative compromise is largely hidden from public view. For the most part, it is carried on in off-the-record conversations. Public records describe the results of such conversations in terms of changes in bills made in committee or on the floor. These records often fail to disclose the real reasons for such changes. Under these circumstances, the process remains mysterious, arousing suspicion and at times outright cynicism.

In recent years, committees increasingly have made their executive sessions public. It remains to be seen, however, whether the real bargaining will be carried on in public or in private. It must be remembered that such bargaining involves not only the fate of the legislation, but also the general standing of the Members of Congress who lead in the bargaining. In some cases, these Members may be putting their careers on the line. It is understandable then that such Members might be loath to jeopardize their standing with their various constituencies by revealing too many details of the bargaining.

The process is materially affected by the procedural rules of the Houses of Congress. For example, in the Senate the threat of a filibuster is a bargaining tool for minority Senators seeking concessions from the majority. This tool is not available in the House of Representatives. In the House, however, the Rules Committee ordinarily has to grant a rule before legislation may be brought to the floor for consideration. The power of refusal to grant a rule places Members of the Rules Committee in an excellent position to exact concessions from the members of committees concerned with the substance of the legislation.

Organizational features, such as joint legislative committees, affect the process of compromise because the Senate and the House are less likely to adopt different versions of legislation if a particular version has been reported favorably to both Houses by a joint committee. Thus, joint committees are likely to reduce incidents of disagreement between the two Houses because they provide an earlier forum for compromise.

Institutional settings, including differences between the Houses and between committees, and the roles played by Congressional staffs and auxiliary organizations such as the Library of Congress and the General Accounting Office, have received some attention from scholars, but little attention has been paid to the impact of various institutional settings on the compromise-reaching process.

It should be evident from what has been said that we are a long way away from reaching our goal--a theory of legislative compromise. It is hoped, however, that in attempting to deal in this paper with various

techniques for generating alternatives designed to accomodate conflicting positions on issues raised by legislative proposals, we have taken one small step down a long road.

NOTES

1. The several meanings of the word "compromise" result in the word being used in a confusing way. Dictionaries give as the primary meaning of the word "a reciprocal abatement of extreme demands or rights resulting in agreement" but also give "a prejudicial concession" or "surrender" as possible meaning. Webster's New International Dictionary of the English Language, Second Edition, (1945); Oxford English Dictionary, (1933). Thus, the word signifies both facts and negative opinions regarding such facts.

   The opposing meanings of the word are illustrated by the views on compromise of two English politicians known both as statesmen and writers. Edmund Burke, in his speech in support of Resolutions for Conciliation with the American Colonies (Edmund Burke, Orations and Essays, D. Appleton and Company, New York, (1900)) was eloquent in praise of compromise: "All government, indeed, every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter. We balance inconveniences; we give and take; we remit some rights, that we may enjoy others; and we choose rather to be happy citizens than subtle disputants. As we must give away some natural liberty, to enjoy civil advantages, so we must sacrifice some civil liberties, for the advantage to be derived from the communion and fellowship for a great empire." (supra, p. 126).

Burke's most distinguished nineteenth-century biographer, John Morley, took a different view in his essay, "On Compromise". (Chapman and Hall, London, Piccadilly (1874)). Morley saw compromise as the general disinclination of Englishmen at the time to think freely and act independently. Moreley conceded that there was such a thing as "legitimate compromise" in politics where "we have an art in which development depends upon small modifications" (supra, p. 159), but he warned that even here "a small and temporary improvement may really be the worst enemy of a great and permanent improvement" (supra, p. 176).

There is also the specific legislative use of "compromise" as a synonym for "log-rolling". Log-rolling is defined as "trading of votes by legislators to secure favorable action of interest to each one". (Webster's Seventh New Collegiate Dictionary, (G and C Merriam Company, Springfield, Mass.) 1969). In other words, in a log-rolling compromise, the propositions involved in the give and take relate to different problem areas. This distinguishes it from other compromises which involve differing approaches to a single problem area. It should be understood, however, that the scope of a single problem area may well become an issue in a legislative controversy, and the resolution of that issue may require a compromise which does not involve log-rolling.

2. Those familiar with the political science literature will be aware of the author's indebtedness to Harold D. Lasswell's classic Politics--Who Gets What, When, How (McGraw Hill, New York, 1936).

3. H. R. Rep. No. 570, 93rd Cong. 1st Sess. (1973).

4. Pub. L. No. 93-52, 87 Stat. 130 Sec. 108 (July 1, 1973): "Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by the United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia."

5. S. 4358, 91st Cong. 2nd. Sess. Sec. 304 [as reported by the Committee on Public Works] (1970).

6. H. R. 17255, 91st Cong. 2nd Sess. (1970).

7. H. R. Rep. No. 1783, 91st Cong. 2nd Sess. (1970) Sec. 304; Pub. L. No. 91-604, 84 Stat. 1706 (1970) 42 U. S. C. Sec. 304 (1970).

8. S. 4358, 81st Cong. 2nd Sess., Sec. 202 (1970).

9. H. R. Rep. No. 1783, 91st Cong. 2nd Sess., Sec. 202 (1970).

10. Pub. L. No. 79-725, 60 Stat. 1040 (1946), as amended, 42 U. S. C. Secs. 291-291n.

11. S. 191, 79th Cong., 1st Sess., Sec. 623 (1945).

12. 92 Cong. Rec. 10212 (1946) (Remarks of Congressman Jensen).

13. Sen. Rep. No. 674, 70th Cong. 1st Sess., 20-21 (1945) (statement of Senator Murray). For the Senate debates on S. 191, see 91 Cong. Rec. 11710, 11790 (1945).

14. 91 Cong. Rec. 11722 (1945) (Remarks of Senator Taft).

15. Pub. L. No. 79-725, 60 Stat. 1040 (1946) 42 U. S. C. Sec. 291 (1970); see S. 191, 79th Cong. 2nd Sess., Secs. 624, 631(a) (1946).

16. S. 191, 79th Cong. 1st Sess. (1945).

17. Pub. L. No. 79-725, 60 Stat. 1041 (1946), as amended, 42 U.S.C. Sec. 291(k) (1970): The Federal Hospital Council had to concur in any rules or standards to be issued by the Surgeon General. The Surgeon General was designated as the chairman of the eight-member council to be appointed by the Federal Security Administrator (now the Secretary of Health, Education, and Welfare). The statute specified that four of the members should be persons outstanding in hospital and health activities, of whom three should be authorities on hospitals. The other four members should represent consumers of hospital services and should be familiar with the hospital needs in urban and rural areas.

18. S. Rep. No. 674, 79th Cong. 1st Sess., 18 (1945).

19. Pub. L. No. 81-507, 64 Stat. 149 (1950) 42 U.S.C. Secs. 1861-1879 (1970).

20. S. 1850, 79th Cong. 2nd Sess. (1946).

21. S. Rep. No. 78, 80th Cong. 1st Sess. 2, (1947).

22. "National Science Foundation Act" of May 10, 1950, ch. 171, 64 Stat. 149, 42 U.S.C. 1861-1875 (1970).

23. S. Rep. No. 78, 80th Cong. 1st Sess. (1947).

24. Act of September 8, 1959, 73 Stat. 467, 42 U.S.C. 1864(b), amending 42 U.S.C. 1964.

25. Pub. L. No. 86-232, 73 Stat. 467 (1959) 42 U.S.C. Sec. 1864(a) (1970).

26. Act of Feb. 23, 1927, ch. 169, 44 Stat. 1162.

27. Staff Report of House Comm. on Interstate and Foreign Commerce, 85th Con. 2nd Sess., Regulations of Broadcasting (Comm. Print 1958).

28. Pub. L. No. 85-909, 72 Stat. 1749 (1958) 7 U.S.C. Sec. 227 (1970).

29. Pub. L. No. 67-51, 42 Stat. 1590 (1921) as amended, 7 U.S.C. Secs. 181-251 (1970).

30. Pub. L. No. 85-909, 72 Stat. 1750 (1958) 7 U.S.C. Sec. 228(b) (1970).

31. H. R. Rep. 1507, 85th Cong. 2nd Sess. (1958).

32. Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics, H. Rep. No. 2356, 82nd Cong. 2nd Sess. (1952).

33. Pub. L. No. 83-518, 68 Stat. 511 (1954) 21 U.S.C. Sec. 346(a), (g) (1970).

34. See H. Rep. No. 1385, 83rd Cong., 2nd Sess. (1954).

35. Pub. L. No. 85-929, 72 Stat. 1784 (1958), 21 U.S.C. Sec. 348 (1970).

36. Id. Sec. 348(f) (2) and (g) (2).

37. See H. Rep. No. 1593, 85th Cong. 2nd Sess. (1958).

38. Act of July 22, 1958, Pub. L. No. 85-544, 72 Stat. 400 (1958) amending 42 U.S.C. Sec. 246(c) ( ) (19)--provides that in allocating the available funds among eligible schools "the Surgeon General shall give primary consideration to the number of Federally sponsored students attending each such school".

39. "Health Insurance for the Aged Act" of July 30, 965, Pub. L. No. 89-97, 79 Stat. 286, amending 42 U.S.C. Secs. 401-425 (1970).

40. For a readable (though not necessarily unbiased) account of the American Medical Association's struggle against the enactment of this legislation, see Richard Harris, A Sacred Trust (The New American Library, New York, 1966).

The legislative conflict over National Health Insurance has not yet been resolved, of course. The Medicare-Medicaid legislation is only a milestone in that continuing conflict. The Nixon Administration proposed National Health Insurance legislation of its own, and Senator Edward M. Kennedy (D., Mass.) and Chairman Mills revised downward the benefits and the price tag proposed in an earlier bill sponsored by them. These moves were compromise moves aimed at improving the chances of such legislation. The politically sensitive aspect that remained to be compromised concerned primarily the method by which health insurance benefits were to be paid and administered. The Nixon bill would have used commercial health insurance carriers while the Kennedy-Mills bill would have relied on a federal agency. President Ford has indicated that he would not favor National Health Insurance legislation at this time in order to keep Federal expenditures down.

41. H. R. Rep. No. 976, 80th Cong. 1st Sess. (1947), which accompanied H. R. 4044.

42. S. Rep. No. 1742, 80th Cong. 2nd Sess. (1948).

43. Pub. L. No. 80-896, 62 Stat. 1240 (1948), 50 app. U.S.C. Sec. 9 (1970).

44. For two different interpretations of why the compromise effort failed, see Daniel P. Moynihan, The Politics of a Guaranteed Income--The Nixon Administration and the Family Assistance Plan (Random House, New York, 1973), and Abraham Ribicoff, "He Left at Half Time", The New Republic, Vol. 168, No. 7, (February 17, 1973), p. 22.

45. Pub. L. No. 85-767, 72 Stat. 885 (1958), as amended, 23 U.S.C. Sec. 120n (1970); Pub. L. No. 91-258, 84 Stat. 250 (1957) as amended, 49 U.S.C. Sec. 280 (1970).

46. For a discussion of "Barter versus the Use of Money" see Paul A. Samuelson, Economics, 51 (6th Ed., 1964), (McGraw-Hill Book Company, New York, N.Y.).

47. As the medium is the message, so organization and procedure are policy. This fails to be recognized quite frequently, and not only in connection with legislation.

48. See particularly, James David Barber, The Presidential Character--Predicting Performance in the White House, Prentice-Hall, Inc., Englewood Cliffs, N.J., 1972.