The Art of Bargaining, So Lost Upon Washington

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ALMOST everyone agrees about one thing these days: Congress is malfunctioning. To help our representatives escape from their current morass, I suggest that they read “An Essay on Bargaining,” the classic 1956 article by Thomas Schelling, the Nobel laureate economist. It is profound, and it doesn’t contain a single equation.

The article’s primary theme is that the key to success in many bargaining situations is the ability to commit to a future course of action. In this analysis, the Senate “won” the payroll tax cut showdown late last year by passing a bill and then going home for the holidays. This was a highly credible “take it or leave it” offer.

This ability to commit can help solve games in which the two players must choose between strategies: either they cooperate or they “defect,” as a decision not to cooperate is called in the literature. They are much better off if they both cooperate, but there is always a temptation to defect when the other player cooperates, scoring a big win at the other player’s expense.

When this game is played repeatedly, a natural — and often successful — strategy is called tit for tat. You begin by cooperating, hoping for the best. If the other side cooperates, too, all is good. But if it defects, you retaliate. And once the retaliating starts, it is hard to stop.

When I asked a former Republican senate staff member to explain why so many qualified Obama administration nominees were being denied confirmation hearings, he told me, “We are tatting.”

Last year has to be one of the worst episodes of senatorial tatting in history. Extraordinary nominees like Peter A. Diamond, the Nobel laureate economist who was nominated twice to the Federal Reserve Board of Governors, and Dr. Donald M. Berwick, a leading authority on evidence-based medicine, nominated to head Medicare and Medicaid, never got an up-or-down vote. (Dr. Berwick served for a while after receiving a recess appointment.)

Turning down such experts’ offers to help is like declining an offer from Phil Jackson to help coach your high school’s basketball team.

Even more worrisome was the failure to confirm Richard Cordray, a former Ohio attorney general, to the Consumer Finance Protection Bureau. In this case, many Senate Republicans did not deny that he was qualified; they said they just didn’t like the agency and refused to confirm anyone to run it. The president has responded by making an unusual type of recess appointment
of Mr. Cordray. Republicans are furious because they thought they had blocked such a move by holding “pro forma” sessions, in which the sole business conducted was to adjourn for a few days. Expect each side to argue that the other is behaving unreasonably.

Perhaps the refusal to confirm Mr. Cordray was simply follow-through on the publicly stated goal of Senator Mitch McConnell, the Republican minority leader, to assure that President Obama is a one-term president.

But I have a question for Senator McConnell: If you achieve your goal and a Republican is elected president, what will happen then? Won’t Senate Democrats take it up a notch? If they don’t like the new president’s foreign policy, for example, they could refuse to confirm a secretary of defense, citing the Cordray case as a precedent, and leading to either more recess appointments or 24/7 sessions for the Senate.

Clearly, we must find a way to avoid this escalation of retaliation. Professor Schelling’s teachings suggest that to gain a new cooperative equilibrium in the Senate, both sides must be able to make credible commitments to cooperate in the future. And right now is a propitious time to strike a deal, as neither party can be sure who’ll be in charge in 2013. So I urge Senator Harry Reid, the Democratic majority leader, to seek a Senate rule change so all presidential appointees get an up-or-down vote within 90 days of nomination or gain automatic confirmation.

Yes, the Republicans could block this bill with a filibuster, but if they really think they can win the presidency, shouldn’t they be willing to trade a year of allowing Mr. Obama’s appointees a chance to serve for an assurance that they’d get the same treatment when in power?

After the bill was passed, neither side could change it without overcoming another filibuster, so it would most likely stick; it would be a commitment. Individual senators who can now block any appointment at their whim would lose power, of course, but the country would be a big winner. (The nonpartisan group NoLabels.org supports this idea.)

President Obama has some negotiating decisions ahead, too. Regardless of whether the payroll tax cut is extended, the Bush tax cuts are scheduled to expire at the end of 2012, and $1.2 trillion in automatic spending cuts would begin to kick in, hitting military spending especially hard. From a bargaining-theory perspective, it’s important that these are the default options: it will take the agreement of Congress and the president to avoid these changes. And remember that no matter what happens in November, President Obama and the current Congress will still be in power on New Year’s Eve.

This puts the president in a very strong bargaining position. Though he and both parties in Congress would prefer to avoid the consequences of inaction, it’s safe to say that Republicans would especially hate the expiration of the Bush tax cuts because the rich would take the hardest hit. Keep in mind that once the tax cuts expired, it would take a new bill in 2013 to reinstate them, and even if the Republicans won the presidency and both houses of Congress, they would still need 60 votes in the Senate to overcome a Democratic filibuster.
How should President Obama play this powerful hand? This could be his last chance, at least for this term, to strike the grand bargain he so wants. Again, while the two parties have their differences, there are some zones of agreement. We all know it’s possible to lower tax rates and keep revenue constant by reducing deductions and loopholes. Certainly, no one — aside from some tax accountants — thinks our tax system is close to perfect. An agreement can be reached only as part of a substantial tax reform.

My suggestion would be for the president to first propose his own plan, borrowing some concepts from the Bowles-Simpson commission, and then to challenge members of Congress to come up with something they like better. But he must list conditions that have to be satisfied if he is to sign the bill.

Professor Schelling teaches that the best “lines in the sand” are for principles, not for arbitrary numbers. One such principle might be the so-called “Buffett rule,” that the rich should not pay a lower proportion of income in taxes than their secretaries. But whatever principles the president chooses, he must make everyone believe that he will keep his word and veto any bill that does not include these features.

I think that he can make such a pledge credible. If he loses the election, why not go out in a blaze of principled glory? And if he wins, he will want to begin his second term on a strong and constructive note.

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