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Mediators can break political impasse in Washington

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With US Treasury bonds now downgraded, and the economy barely surviving the recent debt-ceiling crisis, America is suffering from PTID – post-traumatic *impasse* disorder.

At water coolers and coffee shops, people are shaking their heads in disbelief that the country came so close to the unthinkable – the invincible US Treasury in default – because Congress was barely able to break its impasse over taxes and spending.

One could dismiss this deadlock as an anomaly, but Americans have seen the same traumatic impasses recently in state legislatures. Minnesota was forced to shut down state government for nearly three weeks this summer because of a stalemate over the budget. In February, Democratic lawmakers from Wisconsin fled to Illinois to prevent a vote on public employees' bargaining rights.

To prevent PTID, one must understand why impasses occur in government and other arenas. Negotiation theory provides answers by identifying three common causes of negotiation failure.

The first arises from one side locking itself into a position. This is known as a "strategic barrier" to settlement. Imagine two drivers speeding toward each other on a narrow one-lane road, with each determined to force the other off the road.

What would you do if you were driving one of the cars and the other driver suddenly pried the steering wheel off his car and hurled it out the window, making sure you saw what he'd done? In the debt-ceiling crisis, some legislators locked themselves into a position that gave them no flexibility on raising revenue. No new taxes, they had pledged.

A second type of bargaining failure comes from rigidly clinging to positions instead of articulating underlying interests. In a classic example – from the book "Getting to Yes" – two siblings fight over an orange. Their mother solves the problem by cutting the orange in two. But one of them wanted only the rind to bake a cake, and the other wanted only the pulp to make juice. Both could have had what they wanted if they had communicated their interests.

The protagonists in governmental impasses seldom exhibit the curiosity or patience to explore options that might satisfy underlying objectives in a creative way. Instead, they focus on ideological positions that they believe will appeal to constituents.

A third obstacle is called "adverse selection" – a problem that arises when both sides are actually willing to settle, but are afraid to disclose their true bargaining positions. Imagine you want to sell your car for $10,000, so you list it for $12,000. Then someone who is willing to pay $10,000 sees your car and offers you $8,000. If you both stand firm, the deal falls through.

Send in a George Mitchell or Ken Feinberg to broker the next big deal.

In the recent debt-ceiling crisis, a deal was made, but just in the nick of time, and the close call contributed to the United States losing – for the first time – its triple-A bond rating.

There is a common cure for all three obstacles – one that is used every day to resolve conflict in business litigation, divorce settlements, and employment disputes. The parties call in a mediator. The ground rules permit the mediator to speak privately with each side. President Carter engaged in this type of "shuttle diplomacy" with Israeli leader Menachem Begin and Egyptian President Anwar Sadat in the successful Camp David peace talks.

Mediators earn trust and keep secrets. They construct settlements by exploring each side's underlying interests, testing to see whether there is a zone of possible agreement, and persuading each side to refrain from taking the steering wheel off the car.

Of course, politicians rarely seek mediation, because they are reluctant to invite someone into their arena who will then have more information than they do. Information is power. But Americans are fed up with governmental gridlock, the threat of financial default, and legislative stalemates.

They should insist that politicians embrace a new pledge: "no new impasses." This means that whenever debate nears the point of intolerable deadlock, both sides will call on an impartial intermediary.

Author and diplomat L. Michael Hager has wisely proposed the creation of a politically neutral service for legislative mediation, akin to the nonpartisan Congressional Budget Office. There is precedent for such an agency in the Federal Mediation and Conciliation Service, whose success in mediating major labor conflicts (such as the Boeing strike in 2008) suggests that its mandate could be expanded to handle legislative impasses.

Also, many nongovernmental organizations have experience in managing intergovernmental disputes, rulemaking, and public-policy conflict. And while America waits for mediation to become a routine, institutionalized part of good government, the ad hoc use of exceptional mediators – such as Eric Green and Jonathan Marks in the Microsoft antitrust litigation, Kenneth Feinberg in the 9/11 Compensation Fund, and George Mitchell in Northern Ireland – should also be considered.

America won't get over its PTID immediately, but with a firm commitment from politicians to steer clear of the brink and deploy mediators when needed, perhaps the healing can begin.

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