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Rejecting Compromise, Getting Gridlock

[Compromise is] not a ‘bad’ word. It’s what we do in a democracy. 1/2 loaf better than no loaf. Legislation is generally incremental.

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Congress has failed to make even incremental progress on a range of pressing problems in recent decades (Binder 2014), and many Americans are frustrated by the gridlock (Newport and Saad 2016). Scholars attribute gridlock to partisan polarization, which has made it harder for legislators to find common policy ground (McCarty et al. 2006; Shor and McCarty 2011; Mann and Ornstein 2012; Binder 2014). But even on issues where agreement is possible, legislators may reject compromise proposals that move policy only partway toward their preferred outcome. Voters recognize that this type of behavior contributes to gridlock. In a 2013 Pew survey, for example, 36% of Americans thought that the main reason for inaction in Congress was that “a few members who refuse to compromise keep things from getting done” (Pew 2013). Indeed, routine rejection of what we call *half-loaf compromises* – proposals that move policy closer (but not all the way) to the legislator’s preferred outcome – could be a significant contributor to legislative gridlock. Why do legislators reject such compromise offers? We find that legislators exacerbate gridlock

¹ This and the other chapter epigraphs are quotations from responses to open-ended survey questions administered to legislators and staff attending the 2017 Legislative Summit of the National Conference of State Legislatures. The attendees took a short survey and 261 attendees also filled out the optional six open-ended questions about compromise. We identify each respondent by a number between 1 and 261. Chapter 4 describes the procedures and questions in full.

by rejecting compromise proposals because they fear being punished in primary elections. In this way, legislators' electoral interests can cause them to act in ways that hurt their policy interests and may lead to representation of the uncompromising positions held by a subset of their voters at the expense of the broader electorates' preferences.

This book studies national, state, and local legislators across multiple issue domains to explore legislators' rejection of compromise proposals. To envision how the rejection of half-loaf compromises can lead to gridlock, suppose that a legislature was considering increasing the tobacco tax from a rate of \$1 per pack to \$1.50 because most legislators preferred the higher tax rate. Suppose, however, that many representatives who preferred a tax of \$2 decided to vote against the proposal because the increase was too small. If enough legislators vote against the proposal even though it moves policy closer to what they would prefer, the legislature would fail to pass the compromise. How often do legislators reject half-loaf compromises? Why do they reject them? Can anything be done to increase legislators' ability to reach more compromises and thus overcome policy gridlock? This book investigates these questions through a problem-oriented approach that seeks to understand legislators' rejection of compromise while also providing broader insights into legislative behavior and the electoral connection.

Original surveys of both state legislators and city officials show that substantial percentages – 13% to 23% – reject half-loaf compromises. This points to an overlooked driver of legislative gridlock. Those legislators who report that their voters are likely to punish compromise are more likely to reject these half-loaf offers, suggesting that legislators' perceptions of their voters are an important element of understanding the rejection of compromise. Evidence from surveys we conducted at the National Conference of State Legislatures (NCSL) annual Legislative Summit shows that this fear of voter punishment is centered on primary voters. Consistent with this perspective, we find that Republican members of Congress with more constituents who support the Tea Party, which opposes compromise and often threatens primary challenges, are more likely to reject compromises.

The focus on legislators' beliefs that their constituents will punish them in primaries raises the question of whether their fears are justified. In survey experiments on a representative sample of the public we find that most voters, even most primary voters, reward legislators for compromising. However, co-partisan primary voters who oppose the particular compromise being offered will punish the legislator with lower approval and by voting against the legislator for supporting a half-loaf offer. In our sample, approximately a third of a legislators' primary

voters fell into this punishing group. Even though legislators are likely to be electorally rewarded in both the general and primary elections for supporting compromise policies, a substantial segment of their primary electorate will punish them for voting for a compromise on a given vote. Legislators, who “run scared” in every election (Mayhew 1974), respond to the threat of punishment by rejecting compromises.

Despite the fact that only a small proportion of the electorate punishes compromise, legislators may choose to avoid angering this subset of voters in the primary election even if doing so means the legislators cannot represent the preferences of the broader electorate well. Primary voters are generally more extreme than others, may be more likely to seek out information about the issue, more likely to engage in activism, and more likely to withhold their vote because of the compromise. Thus, legislators may well fear that even a small number of such voters can yield outsized electoral consequences. While only a small number of voters might punish a legislator on a given issue, there may be many such sets of voters and many such votes. Legislators may also fear that a given compromise vote will provide fodder for a primary challenger. As a result, legislators who fear this punishment will be cautious and may often reject the compromise proposals they face. A small fraction of the primary electorate is thus shaping legislators’ behavior, leading them to reject compromise proposals at the expense of representing others who do want compromise.

Given legislator perceptions of voter punishment in primaries, what types of reforms might increase legislators’ willingness to compromise? In-person survey experiments with state legislators show that those assigned to consider negotiation in a private meeting report greater likelihood of compromising than those assigned to a public meeting. This suggests that there may be ways to structure negotiations that would facilitate compromise. The book concludes with a discussion of the importance of compromise for avoiding gridlock, the role of the primary electorate, and the balance between private negotiations and public representation.

THE SAN RAFAEL SWELL NATIONAL CONSERVATION AREA: A CAUTIONARY TALE

Consider the protection of public lands. The federal government owns and manages more than a quarter of the land area of the United States. How to protect these lands, while facilitating their use for recreation and natural resources, is a difficult problem that has divided citizens and policymakers alike. This issue is extremely contentious in Utah, where

63% of the land is under federal ownership. Even with the 2019 passage of an omnibus public lands bill (S. 47 in the 116th Congress) that included more than half a million acres of Utah wilderness, Utah has the least designated wilderness of any western state except Hawaii (Wilderness Connect 2019). People in Utah state politics refer to wilderness as “the W word,” highlighting the contentious nature of the issue (Solomon 2016). Congressional inaction on public land management has led presidents to enter this fray, such as when President Bill Clinton created the largest national monument, Grand Staircase-Escalante, in southern Utah in 1996 and President Barack Obama created Bears Ears National Monument in the southeastern part of the state in 2017.²

In recent decades, the issue of public land management in Utah has become more contentious and more urgent as the growing population in Utah has brought new recreational uses like backpacking and rock climbing into conflict with older resource uses like mining and ranching. Debate over the San Rafael Swell in eastern Utah exemplifies the struggle to resolve public land management issues in a way that balances competing demands. The San Rafael Swell has deep canyons and historic petroglyphs, which highlight its natural beauty and historical connections. Bisected by Interstate 70, the Swell rises out of the desert like the geological salt dome that it once was. The increasing number of visitors to the area has damaged the petroglyphs and off-highway vehicles have produced significant damage. Use of the land for grazing and mineral extraction has sparked conflict. Backpackers objected to a stray cow in a box canyon and environmental groups opposed the opening of gypsum mines (Durrant 2007). Government employees have struggled to handle these conflicts over public land because they lacked resources. A single Bureau of Land Management (BLM) ranger patrolled the San Rafael Swell, an area the size of Connecticut.

After years of worsening problems, county commissioners, in consultation with local residents, proposed a solution – the San Rafael Swell National Conservation Area. In 2000, Congressman Chris Cannon (R-UT) introduced legislation vetted by the Secretary of the Interior to create the National Conservation Area. The conservation area designation would close the area to oil and gas exploration and leasing, shut down some off-highway vehicle trails, and offer more resources for protection.

² President Donald Trump subsequently halved the size of the Grand Staircase National Monument and cut Bears Ears down to 17% of its original size.

The bill seemed like a sure bet to pass, as it had support from both Democrats and Republicans, and from both federal officials and local residents. Congressman Cannon – a conservative Republican – had introduced the bill, and Bruce Babbitt, the Democratic President’s Secretary of Interior, had vetted and agreed to the plan. While land use issues often pit local interests against federal interests, local support complemented federal support. The commissioners of Emery County, which contains the Swell, supported the plan, which had been developed in an extensive process of consultation with local and statewide groups. Moreover, legislators in the relevant House committee broadly agreed that action was needed; the bill passed out of the Subcommittee on National Parks and Public Lands and the Committee on Resources on voice votes (House of Representatives Resources Committee 2000).

Despite broad support for the bill, which was viewed as a compromise solution to increase protection for the Swell, it had detractors who felt it did not go far enough. The bill included environmental protections that environmental groups wanted, just not all of them. The Southern Utah Wilderness Alliance opposed the bill because it did not create full wilderness protection. Instead of imposing full wilderness designation, which would have added restrictions to how the land was used, the bill maintained the designation of much of the area as Wilderness Study Areas, which a BLM inventory process had created in the late 1970s. Some of these groups adopted “a strategy of a statewide BLM Wilderness legislation bill or nothing” (Durrant 2007, 50). Criticizing the strategy of environmental groups who would not support the bill, Molly McUsick, a legal advisor to Secretary Babbitt, declared to the *New York Times*, “Wilderness protection for a significant portion of the land is inevitable, but that’s a long way down the road. Meanwhile, we think the perfect shouldn’t be the enemy of the good” (Janofsky 2000).

Ultimately, the San Rafael Swell legislation failed because legislators rejected compromises that sought common ground. The initial bill was a half-loaf offer that provided more conservation than the status quo. However, legislators who wanted even more conservation pushed amendments to make it more than half a loaf. They proposed to expand the area covered, to designate the area wilderness (with the corresponding environmental protections), and to prohibit off-highway vehicles in all Wilderness Study Areas. These amendments, an effort to get more of what environmentalists wanted, alienated the original sponsors.

Representative Sherwood Boehlert (R-NY) countered these proposals with compromise substitute amendments in an effort to keep the

original sponsors on board with the legislation. For example, when Representative Mark Udall (D-CO) introduced an amendment to make the Wilderness Study Areas into formal Wilderness Areas, Boehlert proposed an amendment requiring the BLM to manage the Wilderness Study Areas in at least as protective a manner as they had been previously. The substitute amendment passed 212 to 211, with the vote held open past the normal time and the Speaker of the House (who normally does not vote) casting the deciding vote.

Yet Congress rejected other compromise substitute amendments. Representative Rush Holt (D-NJ) offered an amendment to prohibit off-highway vehicles in Wilderness Study Areas, and Boehlert countered with a substitute amendment that would allow the BLM to decide this issue, saying he was trying “to seek the sensible middle ground” without “foreclos[ing] options for the future” and without “jeopardiz[ing] a very fragile, carefully crafted agreement, which has been endorsed by the Secretary of the Interior” (“Congressional Record, June 7” 2000, 3955).

When the amendment to prohibit off-highway vehicles passed without the compromise substitute amendment, Representative Cannon, the sponsor of the bill, pulled it from consideration. The legislation was dead and everyone was worse off given their preferred policy outcomes.

The failure of the San Rafael Swell National Conservation Area illustrates that legislators sometimes reject half-loaf compromises in pursuit of getting everything they want. In proposing his compromise measures Boehlert said, “Does this bill successfully dispose of every issue the way I would most prefer? No, of course not. But this is a case where an old congressional saying is quite appropriate: ‘Let’s not make the perfect the enemy of the good’” (“Congressional Record, June 7” 2000, 3939). It’s no accident this phrase recurred in the debate; as this book will show it comes up frequently when, as in this case, compromise proposals give the negotiating parties only part of what they want. The result of failure to compromise on a National Conservation Area for the San Rafael Swell was further damage to a beautiful natural area. The Governor of Utah asked President George W. Bush to declare it a National Monument, but he declined. Subsequent BLM rules closed some of the off-highway vehicle routes proposed for closure and wilderness protection was finally included in an omnibus public lands law in 2019, but for almost twenty years the area had far fewer protections than the initial bill introduced in 2000 would have provided.

The San Rafael Swell case is not unique. In a similar scenario, conservative Republicans in both the House and the Senate expressed

opposition to what was termed an “Obamacare Lite” bill in the spring of 2017, even though the proposed changes moved policy in a conservative direction (Pear and Kaplan 2017). The Patient Protection and Affordable Care Act, passed in 2010 and often called the Affordable Care Act or Obamacare, mandated that each individual have health insurance, subsidized premiums, guaranteed coverage of existing conditions, and encouraged states to expand Medicaid expansion to cover low income individuals. Repeal of Obamacare became a major rallying cry for conservatives who thought that the individual mandate went too far and that the bill interfered too much in insurance markets. The bills to repeal and replace Obamacare became known to critics as “Obamacare Lite” because they made major conservative changes to health care policy but did not fully repeal the Affordable Care Act (Cannon 2017; Demko 2017). Some conservative Republicans refused to support the compromise represented by “Obamacare Lite.” As a result, the compromise did not pass even when Republicans controlled all three branches of government. But neither did the full repeal of the Affordable Care Act that these legislators sought. In 2018, Republicans repealed the individual mandate to purchase insurance through a separate piece of tax reform legislation (Paletta and Stein 2017), but many provisions opposed by Republicans, including Medicaid expansion, coverage of pre-existing conditions, and the basic structure of Obamacare remained in place. By rejecting the compromise (“Obamacare Lite”) that moved health care policy closer to what they wanted (no Obamacare), conservative Republicans largely helped maintain the status quo (Obamacare).

Other examples suggest that refusing policy improvements because they do not go far enough may be common and consequential, and that it occurs at the state and local levels as well. During the reauthorization of California’s cap and trade climate legislation in 2017, State Assembly member Monique Limón, who has a strong record of supporting pro-environment positions, voted against the compromise bill that provided greater environmental protections because she viewed the bill as not strong enough (Welsh 2017). And in a local example, the one city alderman who voted against a local Des Plaines, Illinois ordinance to treat vaping like smoking for those under 18 did so because he thought the proposal should apply to anyone under the age of 21 (Jordan and Burton 2018). In both of these instances, the state or local politician voted against a half-loaf compromise because it did not go far enough.

CONTRIBUTIONS TO UNDERSTANDING COMPROMISE

This book takes a problem-oriented approach by examining why legislators reject half-loaf compromises. We study what causes legislators to reject these compromises so that we can identify ways to increase legislators' willingness to compromise, helping minimize the gridlock that often paralyzes policymaking. Our results highlight how legislators' rejections of half-loaf offers exacerbate gridlock, why they reject these compromises, and how to encourage support for legislative compromise.

Definition: Throughout the book, the terms **half-loaf offer** and **half-loaf compromise** refer to any proposals that move policy closer to, but not all the way to, the legislator's preferred outcome.

While scholars have examined how electoral environments shape voting behaviors (e.g., Canes-Wrone et al. 2002; Brady et al. 2007) and how electoral and institutional rules shape bargaining in legislatures (e.g., Baron and Ferejohn 1989; Ansolabehere et al. 2003; Volden and Wiseman 2007), much less scholarship has systematically examined legislators' support for compromise legislation. Much of the extant scholarship on legislative compromise is case-studies of notable, successful compromises (e.g., Elving 1995; Clinton and Meirowitz 2004) or treatises on the value of compromise for governing (Gutmann and Thompson 2012). We also work from the premise that compromise is often essential to governing in a democratic system but turn our focus to why individual legislators support or reject compromises that entail partial solutions. Because theories about legislative outcomes are rooted in the behavior of individuals, all of the analyses here focus on how individual legislators react to compromise proposals.³

Studying legislators at all levels of government – federal, state, and local – provides insights into politicians' behavior more generally. This book takes advantage of evidence from the national, state, and local levels to understand the rejection of compromise. Though there is variation across state legislatures and the federal government in factors like professionalism (Squire 2007) and the degree of majority control over the legislative

³ The party is also an important unit. Indeed, party structure can give individuals incentives to take more extreme positions (Kanthak 2002; Kirkland and Harden 2016). However, other scholars have covered these dynamics effectively. We focus instead on how individual legislators have responded to half-loaf proposals.

agenda (Anzia and Jackman 2013), policymaking at all levels of government is typically viewed through the lens of rational actors making decisions based on whether they support the proposed policy over the status quo (Bertelli and Grose 2006; Crisp et al. 2011). Moreover, legislators at all levels of government face similar ranges of electoral environments, processes, and constraints (Rosenthal 2009; Trounstein 2009; Squire and Moncrief 2015). Studying compromise at these different levels of government provides general insights about politics and policymaking.

Through its range of questions, approaches, and arguments, the book makes several advances for the study of legislatures, elections, and representation. First, the book shows that rejection of half-loaf compromises is an overlooked contributor to policy gridlock. Rather than focusing on polarization – which is certainly a major driver of gridlock in contemporary politics – we show that many legislators are rejecting half-loaf compromises. This is a troubling pattern; some legislators are rejecting proposals that are in their own policy interest and contributing to gridlock in the process. While not every compromise is normatively good, finding solutions to pressing issues is an important and desirable attribute of our governance institutions.

In the aggregate, legislators' rejection of half-loaf compromises means that finding compromise solutions that benefit a majority of legislators is not always enough to achieve passage of those proposals. In the United States, most legislatures require majority support to pass a bill. Typically, this means picking policies that a majority of the legislators prefer to the status quo. However, if some legislators reject compromises that benefit them, the support of even more legislators is needed to pass a policy. This can have a big impact even if only a small number of legislators reject half-loaf offers. To illustrate, consider a proposal that would benefit 60% of a 100 person legislature. This proposal has a lot of support and should pass. However, if even 20% of legislators (i.e., 12 who would benefit from this hypothetical proposal) reject half-loaf compromises, the bill would fail despite being beneficial to a supermajority. This example highlights that even if many members support compromise proposals, the rejection of half-loaf compromises by a subset of legislators makes it even harder to pass policies in an already polarized era.

The second advance this book makes is to show that voters – and particularly primary voters – can affect legislators' willingness to compromise. We have long known that legislators are responsive to electoral concerns. Yet, scholars have often overlooked how responsiveness to particular subgroups of the electorate leads legislators to oppose policies

that make them and many of their voters – both in the general and primary electorate – better off (for exceptions, see Arnold 1990; Bishin 2000; Griffin and Newman 2005; Leighley and Oser 2017).⁴ The extant literature on retrospective voting emphasizes that voters hold legislators accountable for their actions while in office (Key 1966; Fiorina 1983) and electorally punish legislators who are too ideologically extreme or too partisan (Canes-Wrone et al. 2002; Carson et al. 2010).

We uncover the common and puzzling case where legislators reject policy proposals that move policy toward their preferred outcome, even when they are pressed to account for how voter preferences shape their own policy preferences in the first place. While legislators may have clear policy interests, which their rejection of half-loaf compromises will harm, they also have broader electoral interests that may be at odds with their policy goals. This tension between policy and electoral interests contributes to the rejection of compromise. We show that legislators' fear of punishment in primaries drives their rejection of half-loaf compromises. Our research thus complements scholarship on rising partisan conflict in Congress that also emphasizes how electoral interests can work in tandem with or be in tension with policy interests. For instance, strategic choices by party leaders to ignore bipartisan legislation or engage in messaging politics often reflects collective electoral interests but can be at odds with individual legislators' policy interests, contributing to partisan conflict and gridlock in the process (Harbridge 2015; Lee 2016; Koger and Lebo 2017).

We contribute to a growing literature examining the role of primaries and primary voters by showing that even relatively small subsets of primary voters who might punish legislators electorally can shape voting behavior and policy outcomes. Past research has looked at the effect of closed versus open primaries and found no difference (McGhee et al. 2014; McGhee and Shor 2017),⁵ using this observation to conclude that primaries have no effect. More recently, researchers have shown that this focus on open versus closed primaries misses the point because the primary electorates in open and closed primaries do not differ appreciably.

⁴ Much of the literature that has examined responsiveness to particular subgroups has focused on features like aggregate congressional responsiveness to the wealthy (e.g., Gilens 2005; Gilens and Page 2014) or political parties' responsiveness to extreme policy demanders in selecting stances and candidates (e.g., Bawn et al. 2012).

⁵ Other work has examined how primary elections affect the selection of legislators (Gerber and Morton 1998; Burden 2001; Kanthak and Morton 2001; Brady et al. 2007; Hall 2015).