## ABSTRACT

Congressional reform is the focus of my study. Congress (but primarily the House of Representatives) attempted to reform its workings from 1968 through 1975, so it might be more effective in developing comprehensive policies on national issues, and more independent of the executive branch. Reform raised expectations that the legislature would reassert its policy-making role, which had diminished during the preceding thirty years. My study examines the influence of these changes on the congressional decision-making process, including their impact on the important role played by external actors, interest groups and especially the President, who reacted to these changes. The study examines the process through an analysis of the development and passage of the most controversial provision, dealing with oil-price controls (Title IV), of Congress' major energy bill of 1975, the Energy Policy and Conservation Act (H.R. 7014).

On 15 December 1975, Congress passed the Energy Policy and Conservation Act (EPCA) which President Gerald R. Ford signed into law on 22 December. The EPCA (Public Law 94-163) extended oil-price controls until 1979. The oil-pricing provision had significant national and international economic and political implications. Merely to trace the tortuous chronicle of oil-pricing policy would be informative. But this study will go further by using this account to analyze congressional decision-making in the period immediately following Congress' attempts at reform.

My study shows that although reforms eroded old norms and power centres, significantly altering some aspects of congressional decision-making (again primarily in the House), they did not create institutional mechanisms or distribute internal powers in such a way that Congress could independently initiate and develop comprehensive national policies. Congress remained more dependent on the President than many of its members understood. The final substance of the oil-pricing policy reflected the characteristic congressional decision-making process, which had become even more dispersed as it was democratized by reform. The committee system, without a strong executive or party control, divides issues in a way that limits decision-makers' options.

# The Influence of the 1968-1975 Congressional Reforms on Legislative Policy-Making: The Development and Enactment of the Oil-Pricing Provision of the Energy Policy and Conservation Act (1975)




A Thesis Submitted to the
Faculty Board of Social Studies, University of Oxford,
in Fulfillment of the Requirements for the
Degree of Doctor of Philosophy.

Susan J. Moran
St. Anne's College, Oxford

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For her unending encouragement
in this, and other endeavours,
I gratefully dedicate
this thesis to my mother,
Ann O. Moran

# ACKNOWLEDGEMENTS

This study examines how decisions are made in Congress. My interest in the subject stems from working for Ralph Nader as a community organizer and as researcher on the Congress Project. This work made me keenly aware of how Congress shapes our lives and, thus, of how important it is that the legislature adjust and adapt to the changing needs of society. Hence my reason for wanting to study Congress at all, but particularly in 1975, when legislators had sought to do just that.

Necessarily, a study examining Congress' decision-making process must rely on the decision-makers themselves. Members of Congress, their staffs, executive branch officials and lobbyists gave generously of their time as they shared their knowledge and perceptions with me. They also provided extensive information by allowing me access to their files, notes and correspondence. I am indebted to them, without whom there would have been no story to tell.

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Any errors, of course, remain solely my own responsibility.

# TABLE OF CONTENTS


| | Page |
|---|---|
| ACKNOWLEDGEMENTS ..... | iii |
| TABLE OF CONTENTS ..... | iv |
| INDEX OF TABLES ..... | viii |
| CALENDAR OF EVENTS ..... | ix |
| INTRODUCTION ..... | 1 |
| CHAPTER ONE: An Historical Perspective: Power Shifts within Congress ..... | 6 |
| Congress Attempts Internal Reform ..... | 7 |
| The House Revolts Against the Speaker - - 1910 ..... | 8 |
| The 1910 Revolt Results in a New Balance of Power ... | 9 |
| Congress Attempts to Adapt to Changing Circumstances: A Rapidly Expanding Government and an Increasingly Powerful Executive - - 1946 ..... | 12 |
| Adaptation Bolsters the Established Balance of Power Within Congress ..... | 13 |
| Congress Revolts Against the Committee Barons: 1968-1975 ..... | 30 |
| The House Adopts Numerous Reforms ..... | 30 |
| House Procedures Change ..... | 33 |
| Representatives Change the Rules Governing Committees ..... | 34 |
| Members Expand Their Staff and Information Resources ..... | 37 |
| The Leadership Gains New Powers..... | 39 |
| The Senate Adopts Fewer Reforms Than the House ... | 29 |
| Senate Procedures Change: Senators Revise the Filibuster Rule ..... | 40 |
| Senators Change Some of the Rules Governing Committees ..... | 41 |
| Senators Increase Their Staff and Information Resources ..... | 42 |

Page

CHAPTER TWO: The Oil-Pricing Issue ..... 45

Influences that Affected Oil Prices in the United States: 1859-1975 ..... 47

Market Forces Create Unstable Oil Prices: 1859-1890 ..... 47

Government Intervention and New Patterns of Business Organization Bring About Stable Oil Prices: 1890-1925 ..... 49

States Enact Conservation Laws ..... 49

The Standard Oil Company of New Jersey Gains Monopoly Control ..... 51

Government Policing Turns to Government Assistance ..... 53

The Oil Companies Replace the Standard Oil Monopoly with an Oligopoly ..... 57

Market Forces Create an Unstable Market: 1925-1935 ..... 59

The Oil Industry's Attempts to Stabilize the International Market Through Cartels Fail ..... 59

States' Attempts to Control Supply Through More Stringent Conservation Measures Also Fail ..... 62

State and Federal Governments Create a Web of Laws That Insures the Stability of the Oil Market and Ushers in a Period of Price Stability: 1935-1970 ..... 64

The Domestic and International Oil Markets Undergo Subtle Changes ..... 68

A New Period of Uncertainty and Rising Prices Follows Stable Supply and Prices: 1970-1974 ..... 77

Influences in the Domestic Market Change ..... 77

Influences in the International Market Change ..... 81

The U.S. Government Responds to the Oil Crisis ..... 89

Congress Debates the Oil-Pricing Issue in 1975 ..... 92

| | | Page |
|---|---|---|
| CHAPTER THREE: | The House of Representatives Adopts an Oil-Pricing Policy ..... | 95 |
| | The House Tries to Develop Its Own Oil-Pricing Policy ..... | 100 |
| | The Committees Fail to Develop a Consensus Oil-Pricing Policy ..... | 103 |
| | The House Democratic Task Force on Energy and The Economy Takes a Stand on Oil-Pricing ..... | 103 |
| | The Ways and Means Committee Considers the Oil-Pricing Issue Through a Related Windfall Profits Tax Provision ..... | 106 |
| | The Interstate and Foreign Commerce Committee Adopts a Bargaining Position on the Oil-Pricing Issue .. | 110 |
| | The Committee's Profile ..... | 110 |
| | The Energy and Power Subcommittee Adopts an Oil-Pricing Policy Backed Primarily by Minority Members ..... | 117 |
| | The Full Committee Reverses the Energy and Power Subcommittee's Oil-Pricing Policy and Adopts Instead a Bargaining Strategy ..... | 134 |
| | The Full House Debates and Decides the Oil-Pricing Issue ..... | 145 |
| | Reforms Result in Change but the House Remains Incapable of Developing a Policy Independent of the President ..... | 155 |
| CHAPTER FOUR: | The Senate Extends The Existing Oil-Pricing Policy Rather Than Develop A New Policy ..... | 159 |
| | Senate Committees Work on Developing an Oil-Pricing Policy ..... | 162 |
| | The Task Force on Energy and the Economy Takes a Stand on Oil-Pricing Controls ..... | 163 |
| | The Interior and Insular Affairs Committee Continues the Old Price Control Authority As Is ..... | 164 |
| | Senate Debate on S.622 Results in Only Minor Changes ..... | 173 |
| | Senate Awaits Action by the House From April Until September ..... | 179 |
| CHAPTER FIVE: | The President Tries to Impose His Oil-Pricing Policy on a Recalcitrant Congress ..... | 182 |
| | President Ford Proposes an Energy Policy ..... | 187 |
| | The Plan ..... | 190 |

Page

Brinksmanship: A Series of Confrontations ..... 192

Late February: The Import Fee Question ..... 194

The May Deadline: Ford Proposes a Modified Decontrol Plan ..... 197

The August Confrontation: Price Controls Officially End ..... 203

CHAPTER SIX: Interest Groups Respond to the Changing Oil-Pricing Issue and to the Altered Political Environment ..... 216

The Labour-Public Interest-Airlines Coalition Emerges ..... 222

The International Brotherhood of Teamsters ..... 225

Congress Watch ..... 226

Air Transportation Association ..... 228

The Coalition Mobilizes ..... 229

The Oil-Business Interest Group Alliance Emerges ..... 237

The American Petroleum Institute ..... 241

The Chamber of Commerce ..... 242

The Business Roundtable ..... 243

The Oil-Business Alliance Mobilizes ..... 243

CHAPTER SEVEN: Congress and the President Finally Agree to an Oil-Pricing Policy: The Conference Committee, House-Senate Approval, Presidential Signature ..... 253

The Conference Committee Sets Out to Resolve the Differences Between the House and Senate Energy Bills ..... 255

The Conference Committee's Profile ..... 255

The Conference Committee Convenes ..... 261

The House and Senate Adopt the Conference Committee's Report ..... 292

The President Signs the Bill ..... 296

CONCLUSION ..... 300

BIBLIOGRAPHY ..... 318

# INDEX OF TABLES


| Table | | Page |
|---|---|---|
| 1-1 | Ideological Divisions in the House of Representatives | 32 |
| 3-1 | Membership of the Interstate and Foreign Commerce Committee | 111 |
| 3-2 | A Comparison of the Conservative Mean Support Ratios of the 91st and 94th Congresses of the Commerce Committee Members | 112 |
| 3-3 | The Subcommittees of the Interstate and Foreign Commerce Committee | 114 |
| 3-4 | Membership of the Energy and Power Subcommittee | 116 |
| 3-5 | Subcommittee Vote on the Eckhardt-Wirth Amendment | 130 |
| 3-6 | Subcommittee Vote on the Krueger Amendment | 133 |
| 3-7 | Committee Vote on the Eckhardt Amendment | 142 |
| 3-8 | House Floor Votes | 154 |
| 4-1 | Membership of the Senate Interior and Insular Affairs Committee | 165 |
| 4-2 | Final Committee Vote on S.622 | 171 |
| 4-3 | Floor Vote on the Johnston Amendment | 175 |
| 4-4 | Floor Vote on the Glenn Amendment | 177 |
| 4-5 | Final Floor Vote on S.622 | 178 |
| 7-1 | Membership of the Conference Committee | 257 |
| 7-2 | A Comparison of Petroleum Pricing Policy and Allocation Act Amendments in the Conference | 265 |
| 7-3 | Major Conference Decisions and Policy Options | 275 |
| 7-4 | House Final Vote on Conference Report | 293 |
| 7-5 | Senate Final Vote on Conference Report | 295 |

# CALENDAR OF EVENTS

## 1975

| | | |
|---|---|---|
| January | 13 | Speaker Carl Albert (D. Okla.) announces Democratic Party energy policy (including oil-price controls). |
| | | President Gerald R. Ford announces his energy policy (including oil-price decontrol). |
| | 15 | President Ford delivers his State of the Union Address to Congress. |
| | 31 | President Ford sends Congress his Energy Independence Act (S. 594-H.R. 2633). |
| February | 27 | House-Senate Task Force on Energy and the Economy releases its final report. |
| | 28 | Senate Interior and Insular Affairs Committee adopts its oil-pricing policy in the Standby Energy Authorities Act (S. 622). |
| March | 4 | President Ford announces he will delay his scheduled end to oil-price controls from 1 April to 1 May. |
| April | 10 | Senate adopts its oil-pricing policy with passage of S. 622. |
| | 30 | President Ford announces his twenty-five month decontrol plan. |
| May | 12 | House Ways and Means Committee rejects windfall profits tax. |
| | 13 | House Energy and Power Subcommittee adopts the Krueger Oil-Pricing Policy as its policy in the Energy Policy and Conservation Act (H.R. 7014). |
| June | 16 | House rejects a windfall profits tax amendment to the Ways and Means Committee's energy bill (Energy Conservation and Conversion Act of 1975 - - H.R. 6880). |
| | 18 | Interstate and Foreign Commerce Committee adopts the Eckhardt Oil-Pricing Policy, reversing its Energy and Power Subcommittee. |
| July | 17 | Congress sends President a short-term extension of oil-price controls (Petroleum Pricing Revenue Act - - H.R. 4035-S. 621). |
| | 22 | President Ford vetoes the short-term extension bill (H.R. 4035-S. 621). |
| | | President Ford sends Congress a thirty-month decontrol plan. |
| | 23 | House rejects President Ford's thirty-month decontrol plan (H. Res. 605). |

| | | |
|---|---|---|
| | 23 | President Ford announces a thirty-nine month decontrol plan. |
| | | House rejects Krueger Oil-Pricing Amendment to H.R. 7014. It adopts the Wilson Amendment striking the pricing provision from H.R. 7014. |
| | 30 | House rejects President Ford's thirty-nine month decontrol plan (H. Res. 641); adopts Staggers-Eckhardt Amendment to H.R. 7014, reinstating the oil-price control provision. |
| August | 3 | Congress adjourns for August recess. |
| | 28 | Congress sends President a short-term extension of oil-price controls (Emergency Petroleum Allocation Extension Act - - S. 1849). |
| | 31 | The oil-price controls authority (Emergency Petroleum Allocation Act - - EPAA) expires. |
| September | 9 | President vetoes the short-term extension (S. 1849). |
| | 10 | Senate fails to override President's veto of S. 1849. |
| | 26 | House adopts H.R. 7014; House and Senate pass a short-term extension of price controls (Oil Price Controls Extension - - H.R. 9524), which President Ford agrees to sign into law. |
| October | 7 | House-Senate Conference Committee convenes on H.R. 7014-S. 622. |
| November | 12 | House-Senate conferees adopt final oil-pricing policy; conference adjourns. |
| | 15 | House and Senate pass a short-term extension (Extension of the Emergency Petroleum Allocation Act - - S. 2667), which President Ford signs into law. |
| December | 9 | The Conference Committee files its final reports on H.R. 7014. |
| | 15 | House adopts the Conference Committee report. |
| | 17 | Senate adopts the Conference Committee report. |
| | 22 | President Ford signs the Energy Policy and Conservation Act into law (P.L. 94-163). |

# INTRODUCTION

Congressional reform is the focus of this study. The question of reform has long generated keen interest among students of the legislative branch. But interest in and analysis of reform have been greater than ever since Congress (primarily the House of Representatives) adopted major reforms from 1968 through 1975. These broad-sweeping institutional changes were the most far-reaching since the 1910 revolution against Speaker Joseph Cannon (R. Ill.). They touched every aspect of the legislature - - its organization, procedures and politics. Although Congress has as its two primary functions both lawmaking and administrative oversight, this study seeks to identify and analyze the impact of these reforms exclusively upon Congress' lawmaking capacity, the process of legislative decision-making. But because the legislative process involves more participants than the elected members of the House and Senate, the present work also examines the impact of these major congressional reforms on internal actors in that process (the enlarged staffs) and on external ones (the President and interest groups).

To accomplish this task, the study takes the long relied-on and familiar approach of the case study. This method allows one to analyze the details and complexities of a specific policy issue as the legislation progresses through the maze of the congressional decision-making process, and then to use that example to draw more general conclusions about the process itself. This advantage of the case study approach is also its disadvantage; it remains a single example, undoubtedly with atypical events or circumstances particular to it. However, as K.C. Wheare has pointed out in discussing research on committees, the researcher

> has to make a choice. Either he can try to hack his way through the jungle on foot or he can try to get a bird's eye view of the terrain from the air. If he chooses the first alternative, the most he can hope for is to clear a portion of his territory; if he chooses the second, the most he can hope for is to produce a rough sketch map of the whole area. 1

This case study of one policy issue seeks to do the former - - "to clear a portion of the territory."

To achieve this, the thesis relies on an historical approach, reconstructing events and political maneuvers from the perspectives of the various participants. Relying largely on both the "inside" and "outside" research methods of the "behavioralists," this study draws heavily upon interviews conducted by the author from January through June of 1976, upon United States Government documents, and upon internal government memoranda. But while "behavioralists" focused on the behaviour of individuals and groups within Congress, they often failed to take into account the effect of institutional structures and procedures on participants' behaviour. The present work, in contrast, looks at the relationship between Congress' institutional reforms and participants' activities.[2]

The oil-pricing provision of the 1975 Energy Policy and Conservation Act (EPCA) provides the vehicle for analyzing the impact of reforms on congressional decision-making. On 15 December 1975, Congress passed the EPCA which President Gerald R. Ford signed into law on 22 December. The EPCA (Public Law 94-163) extended oil-price controls until 1979. Other provisions of the law created a national strategic petroleum reserve, vested the President with standby authority to meet energy supply shortages, and established mandatory fuel economy standards for automobiles. But clearly, the most controversial section of the EPCA was Title IV, the oil-pricing provision. This part of the act

1. K.C. Wheare, Government by Committee: An Essay on the British Constitution (Oxford: Clarendon Press, 1955), p. i.

2. These categorizations of research have been borrowed from the following sources: Robert L. Peabody, "Research on Congress: A Coming of Age," in Ralph K. Huitt and Robert L. Peabody, eds., Congress: Two Decades of Analysis (New York: Harper and Row, 1969), pp. 3-73; David W. Rohde and Kenneth A. Shepsle, "Taking Stock of Congressional Research: The New Institutionalism," Paper delivered at the 1978 annual meeting of the Midwest Political Science Association, 20-22 April 1978, Chicago, Illinois.

had significant national and international implications, both economic and political, in the aftermath of the 1972-1973 world oil crisis.

Moreover, the debate concerning a national energy policy, and specifically an oil-pricing policy, took place immediately after one of the most serious constitutional crises in United States history. First, Vice-President Spiro Agnew and then, more dramatically, President Richard M. Nixon, were forced to resign. Their successors, President Ford and Vice-President Nelson Rockefeller, were the first President and Vice-President selected by Congress under the Twenty-fifth Amendment. (This amendment specifies the terms under which vacancies in the offices of the President and Vice-President will be filled.) Congressional assertiveness was at the zenith; the old norms and power centres had been eroded without it yet being clear what would replace them. Executive leadership was discredited. Moreover, Ford (and Rockefeller) were governing without a popular electoral mandate. Such was the political environment in which the EPCA was developed. The law was enacted after a year-long power struggle between Congress, controlled by the liberal Democrats, and the executive branch, controlled by a conservative Republican President.

These factors - - the changing nature of the energy issue, its controversial nature and great significance, and the political environment with its partisan and ideological divisions - - made oil-pricing an especially illuminating choice to study. It displays an unusually rich and interesting legislative history. Merely to trace the tortuous chronicle of the oil-pricing policy would be informative. But this study goes further. It takes advantage of an excellent opportunity to analyze the internal congressional process that produced this major legislation; oil-pricing was one of the first major issues upon which legislators acted immediately following Congress' - - and particularly the House of Representatives' - - attempt to reform its workings, ostensibly so it might be more effective in developing comprehensive policies on national issues.

This study shows that although reforms shifted power, significantly altering some aspects of congressional decision-making (again primarily in the House), they did not create institutional mechanisms or distribute internal powers in such a way that Congress could independently initiate and develop comprehensive national policies. Congress was thus still more dependent upon the President than many of its members understood. Moreover, this study also shows that the final substance of the oil-pricing policy reflected the characteristic congressional decision-making process, which, under the committee system, narrowed members' outlook by dividing the issue between two committees unable to bridge the jurisdictional gap. Ironically, all these problems were especially acute in 1975 - - since the reforms which democratized power had, simultaneously, dispersed it.

## Thesis Organization

The material of this study is organized in the following manner. The first two chapters provide a framework so that the reader may readily understand the political climate and power relationships obtaining during the oil-pricing debate, as well as the intricacies of the issue itself. Chapter One presents a brief history of Congress as an institution, its internal reforms and the influences that brought them about, and its shifting power relative to the executive branch (and, in the process, provides a survey of relevant scholarly literature). In Chapter Two, a brief history of the influences that have determined oil prices in the United States is presented.

Then, successive chapters present analyses of the role and activities of the House of Representatives, of the Senate, and of the executive branch in the 1975 oil-pricing decision (Chapters Three, Four, and Five, respectively). Chapter Six focuses on the impact of interest groups in the deliberations. The part played by the conference committee in integrating and resolving the two chambers'

policy conflicts on oil-pricing, while also shaping a policy acceptable to President Ford, is analyzed in Chapter Seven.

Finally, the Conclusion summarises the author's findings regarding the influence of congressional reforms on the legislative decision-making process, as evidenced by the Energy Policy and Conservation Act's oil-pricing provision.

# CHAPTER ONE

## An Historical Perspective: Power Shifts Within Congress

The distribution of power within Congress has never been static. The relative power positions among members, committees, party leaders and the effective heads of both houses within Congress have shifted over the decades. As George Galloway explained:

> From its earliest days, Congress, especially the House, has many times altered its organization and procedures. Some of these reorganizations were relatively minor, consisting merely in the addition or dropping of a single committee. On the other hand, there have been other reorganizations which have profoundly altered the previously established equilibrium of power, bringing far-reaching changes. 1

These changes have occurred because the U.S. Constitution is silent or ambiguous about the internal organization of the legislature; it does not specifically direct how power should be shared within Congress. In consequence, members of Congress have made changes in response to both internal and external influences.

Internal factors that have prodded members to seek change include party tensions and the balance of power within Congress. When changing electoral patterns resulted in ideological shifts that fostered tensions, either within or between congressional parties, members sought to ease them through reforms. When an imbalance of power arose within Congress that either impeded lawmaking or became intolerable politically, legislators reallocated power.

External pressures have been equally important influences in prompting legislators to institute changes. One of the most important of these, by far, is Congress' relationship with the President. The authors of the Constitution, in separating powers as they did between the three branches of government, created, in Richard E. Neustadt's classic phrase, "a government of separated

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1. George Galloway, Congress At The Crossroads (New York: Thomas Y. Crowell, 1946), p. 124.

institutions sharing power."[2]

The Constitution assigns broad legislative responsibilities to Congress while it endows the executive - - the President and his agents - - with authority to implement the laws Congress has passed. But each branch also shares powers and duties with the other. For example, because the legislature appropriates funds for implementation of laws, it can also impose controls over how the executive branch carries them out. And because the executive branch has legislative prerogatives, it can also guide Congress' policy choices. Although the framers' intent in providing these overlapping powers was to "prod and check," in practice, the ambiguities have created what Edward S. Corwin has called "an invitation to struggle."[3] The division and sharing of power have encouraged and facilitated shifts as the two branches continually seek an elusive goal: "to assemble those dispersed powers in a working combination sufficiently harmonious to permit decisions to be made."[4] The configuration of these powers has altered over time. In so doing, it has been a continuous influence - - external to the Congress itself - - urging legislators to make internal changes. The standing challenge has been to make changes which facilitate, rather than hamper, decision-making.

## Congress Attempts Internal Reform

Three separate examples of reform, all of which occurred within the present century, show how internal and external influences prodded legislators to act. The first of these, in 1910, reflected a rebellion against the extraordinary power which the Speaker of the House had arrogated to himself and which he was using in an arbitrary manner against the Progressive rebels in his own party, who in consequence joined forces with Democrats to clip the Speaker's wings. The

2. Richard E. Neustadt, Presidential Power: The Politics of Leadership From FDR to Carter, 2d ed. (New York: John Wiley and Sons, Inc., 1980), p. 26.

3. Edward S. Corwin, The President: Office and Powers, 1787-1957, 4th rev. ed. (New York: New York University Press, 1957), p. 171.

4. James L. Sundquist, "Congress and the President: Enemies or Partners?" in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., Congress Reconsidered (New York: Praeger Publishers, 1977), p. 222.

second of these reforms, in 1946, stemmed from a dissatisfaction in both the House and Senate with the committee system's response to the rapid expansion of the federal government. This system had spawned too many committees without established or consistent jurisdictions, generated rivalry among committees and created contradictory and duplicate policies, which in turn weakened the Congress vis-a-vis the executive branch, and conservatives in Congress vis-a-vis liberal Presidents. Finally, from 1968 through 1975, Congress, but primarily the House, instituted yet another set of reforms. These attacked the enormous power of committee chairmen. The "committee barons", as they were referred to, used their powers to block consideration of legislative proposals the majority party supported, to deny their colleagues - - particularly younger and liberal members - - access to objective information and staff, and to exclude them from participating in important decisions. They also seemed too ready to collude with conservative Presidents.

The House Revolts Against the Speaker - - 1910

The Republican Speaker of the House, Joseph Cannon, enjoyed a colourful and dictatorial reign from 1903 until 1910. He followed the precedents of his predecessors who, for more than a generation (since Thomas B. Reed), had imposed control over members of the House through the strong leadership of well-disciplined political parties, and the use of the broad discretionary powers inherent in the Speaker's position. Members' vesting of power in the Speaker had been a reaction to the decentralization of power within Congress from 1860 to 1889 that had so impeded policy-making. Among other things, the Speaker controlled committee assignments, including the powerful Rules Committee which he chaired, and directed floor debates over which he presided. Speaker Cannon exploited these powers with zeal. Through committee assignments, he appointed supportive members to a committee in an attempt to determine the final policy. He rewarded his friends who supported his position and punished his

enemies who defied him by arbitrarily transferring offending members to less important or less desirable committees. In one of many examples, Cannon transferred seven of the Agricultural Committee's nine members to other committees after they voted in support of legislation which sanctioned government beef inspection, a measure that he opposed.[5] As chairman of the Rules Committee, Cannon prevented those bills which he was against but had not been able to thwart at the committee stage, from coming to the floor for debate. He often disregarded the existing rules and created his own to fit particular circumstances. On one occasion when he knew that he could not obtain the necessary two-thirds majority vote required during floor consideration of a piece of legislation he favoured, he merely decreed that this particular vote needed only a simple majority.[6] He also had enormous power over individual members. He could bind their votes, even if the position were contrary to the interests of the members' constituents, and thus could jeopardise their chances for re-election.[7] This balance of power within Congress became politically intolerable to legislators.

Cannon's autocratic control was attacked inside and out of the Congress because he frustrated not only legislators' efforts but the President's as well. Although President Theodore Roosevelt had revived the old custom (not used since Abraham Lincoln, and before him Thomas Jefferson) of sending Congress legislative proposals, Cannon often blocked them. In consequence, "Cannonism" became a national issue; opposition grew, and "Barnyard Joe" Cannon was finally stripped of his power in 1910, when the House adopted rules limiting the Speaker's powers.

## The 1910 Revolt Results in a New Balance of Power

Limits on the Speaker's authority created a power vacuum which the Democratic Party Caucus briefly filled, before existing and additional

5. Richard Bolling, House Out of Order (New York: E. P. Dutton & Co. 1966), pp. 60-61.
6. Roger H. Davidson and Walter J. Oleszek, Congress Against Itself (Bloomington: Indiana University Press, 1979), p. 26.
7. Ibid.

committees and their chairmen emerged to take its place. For a decade after the Cannon revolt, the Democratic Party Caucus assumed the role the Speaker had played as power broker. "King Caucus" replaced "Czar" Cannon. An instrument of the majority party, Democrats used the Caucus as a forum in which to work out their differing views on legislation, and as an authority to bind members' votes when bills came to the House floor. Centralized power created an effective policy-making process in which the President and Congress worked together. William Howard Taft, Roosevelt's successor, carried on his predecessor's custom of sending legislative measures to Congress. As chief executive before and during the First World War, Woodrow Wilson himself furthered this trend not only by sending up his legislative proposals but by using the Caucus to garner enough votes to secure their passage. This resulted, as Davidson and Oleszek explained, in "one of the rare times when party government characterized the political system".[8] But centralization of power was short-lived.

By the early 1920's, decentralized government had replaced the centralized government of the party Caucus. Although from the earliest years committees - - created to divide labour among members - - had been important decision-making units in Congress, after 1910 they became even more so. For once limits were imposed on the Speaker, committees became more autonomous. The evolution of autonomous committees in Congress began much earlier than Speaker Cannon's reign, but the reforms of 1910 accelerated this trend. Initially, drawing upon the example of the British House of Commons, a select committee was established to consider a single policy issue or piece of legislation. When the committee completed its task it was dissolved by the whole chamber, which then made the final policy decisions. But when particular policy issues persisted, requiring additional legislative action, select committees were given permanent status as standing committees. This gradually changed the decision-making

8. Ibid., p. 34; Randall B. Ripley, Majority Party Leadership in Congress (Boston: Little Brown & Co., 1969), pp. 55-57.

process because the standing committees then began to operate independently, taking direction from within rather than from the chamber as a whole. Increasingly, they, rather than the full chamber, made the final policy decisions. Mary Parker Follett, a student of Congress, wrote of the consequences of this change as early as 1896:

> Congress no longer exercises its lawful function of lawmaking; that has gone to the committees as completely as in England it has passed to the Cabinet. 9

However, when Follett wrote this assessment, committees still took their direction from the dominant political party leaders. Reforms which restricted the Speaker's powers also had weakened party leaders' positions. True party leaders were able to hold on to some of their power for almost a decade after the Cannon Revolt by relying on the Caucus. But as divisions within the parties widened, it was only a matter of time before the balance of power tipped in favour of committees.

After 1910, committees proliferated as more members sought to establish their own policy domains. Committee chairmen, selected more and more on the basis of their length of continuous service in the chamber and on the committee, were insulated from the control of even the already weakened party leaders. Seniority, which had been one among many criteria used to select committee chairmen before 1910, increasingly became the sole criterion. It was a welcome alternative to the arbitrary appointments made by the Speaker; it limited presidential interference in the organization of the legislature and its deliberations; it allowed for experience and thus the development of expertise; and it seemed like the only alternative to divisive selection by heterogeneous and internally divided parties.[10] But it impeded legislative coordination and insulated the committees from control by the parent chamber. It also made them dependent on the executive branch and thus subject to presidential manipulation.

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9. Mary Parker Follett, The Speaker of the House of Representatives (New York: Longmans, Green, 1896), p. 246.

10. See Barbara Hinckley, The Seniority System in Congress (Bloomington: Indiana University Press, 1971).

By 1946, legislators could no longer ignore these facts, and they were prodded into reforming themselves once more.

## Congress Attempts to Adapt to Changing Circumstances: A Rapidly Expanding Government and an Increasingly Powerful Executive - - 1946

Congressional government by numerous autonomous committees became a decentralized decision-making process; lawmaking under such a system created an ineffective and incoherent policy-making process. Overlapping jurisdiction among committees pitted one committee against another (a process which no one, not even party leaders, had the power to check), which often resulted in fragmented and inconsistent policies. Under such a system, the President gained the upper hand. Franklin D. Roosevelt (1933-1945) and his staff not only compiled the policy agenda for Congress, but, in addition, drafted specific legislation that members of the executive branch then guided through the legislative maze. Roosevelt's forceful personality, the political events and issues of the day - - in particular the Great Depression and World War II - - had prompted Congress to delegate its powers. But in doing so, Congress became increasingly dependent on the executive, not only for the specific legislative proposals but also for information to review them. By the end of World War II this dependence resulted in legislators thinking that they had lost control of the legislative process. The executive was simply more capable than the legislature of dealing with policy issues. As Galloway concluded in 1946:

> Congress today is neither organized nor equipped to perform its main function of determining policy, reviewing executive performance, controlling expenditure, and representing the people. 11

The 1946 reforms attempted to change this assessment.[12]

Congress passed the Legislative Reorganization Act of 1946 to create a more effective policy-making process, one that enabled legislators better to

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11. Galloway, p. 334.

12. See also George Goodwin, Jr., The Little Legislatures (Amherst: University of Massachusetts Press, 1970), pp. 18-25; George B. Galloway, History of the House of Representatives (New York: Thomas Y. Crowell, 1969).

control not only the legislative but the administrative process as well. To accomplish this, reformers reorganized the committee system. The Act reduced the number of committees from forty-eight to nineteen in the House, and from thirty-three to fifteen in the Senate, with jurisdiction more or less matching the executive agencies.[13] It categorized all policy issues and assigned them to specific standing committees, allocated funds for professional committee staffs (although few chairmen initially took advantage of this staff provision) and limited special and select committees. It also, for the first time, required interest groups engaged in lobbying to register and disclose expenditures they made trying to influence legislation. Like the 1910 reforms, these changes also had unanticipated effects on the decision-making process, which in turn led to further reform.

## Adaptation Bolsters the Established Balance of Power Within Congress

Committee chairmen, or "barons," gained enormous power between 1946 and 1968. As Lawrence C. Dodd explained, "... the reorganization [1946] refurbished the old order and removed some of the most glaring shortcomings, but in the end left committee government intact and strengthened."[14] Chairmen now had the power to facilitate or obstruct a bill, and many chairmen misused that power in the interests of the declining conservative coalition. The chairmen's tight control was possible because in the end they could count on a cross-party majority of floor votes which increased the committees' importance and autonomy. This trend, which began at the end of Speaker Cannon's reign, grew stronger after the 1940's for a number of reasons. First, the 1946 reforms consolidated numerous committees, and in so doing enhanced their independence.

13. Richard E. Neustadt, "Politicians and Bureaucrats," in David B. Truman, ed., The Congress and America's Future (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1965), pp. 102-120.

14. Lawrence C. Dodd, "Congress and the Quest for Power," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., Congress Reconsidered (New York: Praeger Publishers, 1977), p. 287; for a comparative study of how these committees worked, see Richard F. Fenno, Jr., Congressmen in Committees (Boston: Little Brown & Co., 1973).

Second, electoral trends shifted, increasing members' average years of congressional service. Increased incumbency made congressional service a self-contained career, which in turn, affected members' attitudes.[15] Members acted protectively towards their committees. Toward non-member colleagues a member behaved as someone belonging to an exclusive club. Members also gained expertise in the particular subjects with which their committees dealt because of the length of time served.[16] As a consequence, a norm developed whereby members were encouraged to rely on one another in their recognized fields of expertise for voting directions, because all members could not be familiar with all issues.[17] Third, once members secured a position on a committee, the seniority system protected their positions and assured them automatic advancement. And for no one on the committee was this blanket protection greater than for the chairman. He was insulated from challenge, within his own committee, in the chamber as a whole, and in his district.

Thus chairmen sat at the pinnacle of the committee system and wielded enormous power because of their positions. They usually determined their committee's policy agenda, established subcommittees' jurisdiction and then assigned members to them, directed and supervised committee staff, if any, and disbursed funds for committee expenses.

All chairmen took advantage of this situation, and some used their power arbitrarily. Because committee proceedings and votes were conducted in camera and not revealed to the public, chairmen could more easily pressure committee members to vote in accordance with their wishes. In return, the chairmen could also use this power to protect more vulnerable committee members - - or other

15. Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," American Political Science Review, vol. 62 (September 1968), pp. 144-168; Douglas H. Price, "Congress and the Evolution of Legislative Professionalism," in Norman J. Ornstein, ed., Congress in Change: Evolution and Reform (New York: Praeger Publishers, 1975), pp. 2-23.

16. Donald R. Matthews, U.S. Senators and Their World (Chapel Hill: University of North Carolina Press, 1960), pp. 94-97; Richard F. Fenno, Jr., "The Internal Distribution of Influence: The House," in Truman, ed., The Congress and America's Future, pp. 71-73.

17. Ibid. Matthews, pp. 99-101; Fenno, pp. 73-76.

congressmen - - from rapacious local interest groups because a member could say he voted one way even though he had not (if the chairman did not refute him), or he could introduce a bill simply to appease some vociferous local interests, which a chairman might then obligingly pigeon hole. This in turn left members obligated to him. Chairmen could also refuse to refer a bill to a subcommittee, the necessary first step for its consideration, or could assure the outcome by appointing to the subcommittee a majority of members on whom they counted to vote correctly. In consequence, a chairman could assure a bill's passage or its failure, creating a system, characterized by Galloway as one of "diffusion, disunity, and disintegration - - a baronial system of political power."[18]

In the House, nowhere was this kind of power of a chairman more evident than with Judge Howard Smith (D. Va.), chairman of the important Rules Committee. The Rules Committee fixes the agenda and time-table of the House; it schedules legislation. It determines whether the full House will consider a bill, and if so, under what conditions - - the amount of time for debate, the members who will control such time, and the number and nature of the amendments that will be allowed. Smith scheduled no regular committee meetings; instead, he called his committee to order when he saw fit. Throughout the 1950's, Smith used his position to block major pieces of legislation with which he disagreed, even when the legislation had the support of both the leadership and a majority of his party.[19] No overriding power - - neither the leadership, a party majority nor a President - - seemed able to offset the unchecked power of Smith or other committee chairmen like him so long as there were enough votes on the floor to back them in a challenge.

Party leaders were largely unable to offset the independence of the committees and the enormous power of chairmen, even though, theoretically,

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18. George Galloway, Legislative Process in Congress (New York: Thomas Y. Crowell, 1953), p. 352.

19. See James A. Robinson, House Rules Committee (Indianapolis: Bobbs-Merrill Co., 1963), pp. 81-88; Neil MacNeil, Forge of Democracy: The House of Representatives (New York: David McKay & Co., 1963), pp. 103-104.

leaders of both parties in both houses could still exert significant influence in congressional operations. Leaders could influence the appointment of party members to committees, including the important joint and conference committees composed of members from both houses. The leadership of the majority party, which in the period from 1945 to 1975 was Democratic (excluding the four years between 1947 and 1949, and 1953 to 1955), also could influence legislation during this period through authority both to schedule legislation for floor debate, and to rule on points of order during such debates. Some party leaders actively campaigned for party members and helped them raise funds for re-election, making members indebted to them. However, in spite of these powers and levels of influence, the Democratic and Republican leaders did not assert strong control over committee chairmen. In large part, this was because the parties themselves were so divided and party structure in Congress had declined. The serious divisions evident by Roosevelt's second term in the 1930's, divisions which gave birth to the conservative coalition of southern Democrats and Republicans, grew even worse with the emergence of the controversial civil rights issue after 1948.[20] This prevented the leaders from using what might have been their most powerful tool--the Caucus for the Democrats and the Conference for the Republicans. Although, in theory, through these partisan political organizations party policy could have been tied to specific legislation, in practice such caucuses had long ceased to function effectively, and thus generally met only once a session to organize the chambers.[21] According to Roger H. Davidson and Walter J. Oleszek:

> party leaders functioned less as generals commanding loyal troops, and more as brokers or mediators building coalitions from bits and pieces. 22

20. See James T. Patterson, Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939 (Lexington: University of Kentucky Press, 1967); James L. Sundquist, Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States, rev. ed. (Washington, D.C.: Brookings Institute, 1983), pp. 273-277.

21. MacNeil, Forge of Democracy, p. 109.

22. Davidson and Oleszek, p. 35.

Whether party leaders used even these powers effectively thus depended a great deal on their internal position in the party, their personal popularity and their political skills. Two Texans were masters in this regard: Sam Rayburn in the House of Representatives (1941-1947; 1949-1953; 1955-1961), and Lyndon B. Johnson in the Senate (1955-1961). But even these masters, on many important occasions, could not bring errant committee chairmen into line. Moreover their successes masked the underlying problems inherent in the decentralized committee system which remained. Thus, the powerless in Congress became increasingly frustrated because they had no place to turn.

Moreover, the ranks of the frustrated grew in the late 1950's and throughout the 1960's, as voters elected more moderate and liberal Democratic members to Congress while the number of conservative southern Democrats declined. Within Congress the division of power that favoured committee chairmen had promoted older, conservative members over the more recently elected members. The solid base of support for the Democratic Party in the southern United States had meant that Democrats from that region were re-elected to Congress for succeeding terms. As a result of the seniority system, they therefore moved into and remained in powerful committee positions.[23] From the New Deal, and particularly from the 1950's, a substantial number of newer Democratic members were elected from urban industrial regions and their suburban districts outside the south. Representing these more heterogeneous constituencies they were much less conservative. They also tended to transfer from one committee to another, and unlike their southern colleagues, they tended not to regard a congressional career as an end in itself and so served fewer years. Thus they reduced their chances to build up seniority and to move into leadership positions.[24] Although from the 1960's on it was clear that

23. Hinckley, p. 41.

24. James MacGregor Burns, The Deadlock of Democracy (Englewood Cliffs, N.J.: Prentice Hall, 1963). For a contrary view, see Raymond E. Wolfinger and Joan Heifetz Hollinger, "Safe Seats, Seniority and Power in Congress," American Political Science Review, vol. 59 (June 1965), pp. 337-349.

committees were very slowly but surely falling to northern and liberal Democrats with seniority, their power did not increase commensurate with their numbers; southern chairmen remained in positions where they could thwart the policy efforts of the more liberal faction of their party.

In consequence, this division of power among chairmen in the decentralized committee system did not create the effective policy-making process which at least some reformers in 1946 had envisioned. Legislators were no more capable of framing policy. Nor were they more capable of dealing with other aspects of expanding government - - interest groups and the President. Members of Congress were neither less dependent on the President, nor less captive to private interest groups.

Prior to the 1946 reforms, lobbyists' numbers and expenditures had dramatically increased in response to the government's expanding role. The situation only seemed to get worse after 1946. Bombarded with demands, legislators lacked the institutional resources to weigh lobbyists' claims, which increasingly reflected only a narrow sector of groups. This was so because Congress' organization and power structure seemed to favour some groups over others. Reformers grew concerned that policy decisions appeared unwarrantedly and unfairly slanted.

This concern arose because almost all of the groups consistently heard from were of one type - - a "private interest." While there is little agreement among students of interest groups over how sub-categories of interest groups should be defined, in this present study interest groups, following David B. Truman's general definition, have been divided into two categories.[25] The first of these, public interest groups, are defined by Jeffrey Berry:

> A public interest group is one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activities of the organization. 26

25. David B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1951), p. 33; Graham Wilson, Interest Groups in the United States (Oxford: Clarendon Press, 1981), pp. 4, 83, 84; Robert H. Salisbury, "An Exchange Theory of Interest Groups," Midwest Journal of Political Science (February 1969), pp. 1-32.

26. Jeffrey M. Berry, Lobbying for the People (Princeton: Princeton University Press, 1977), p. 7.

Conversely, it would follow then that a private interest group is one that seeks a collective good which if attained will selectively and materially benefit the membership or activities of the organization. The advantages of private interests over public ones were already well-established. In the 1930's, E.E. Schattschneider explained private interest groups' success came from their members' powerful economic self-interests. These led them to organize and commit the money to their causes. In turn, the money and formal organization provided access to the political process.[27] In contrast public interests lacked the same incentives, funds, and thus power. While the 1946 reforms sought to shift this bias, instead, they created conditions in Congress even more favourable to private interests. With the decentralized committee system and the accompanying norms of specialization and reciprocity, interest groups did not have to convince an entire Congress of their positions. Instead, they could concentrate on a few committees which dealt with the issues that concerned them, and they worked with the leadership to insure that members appointed to those committees were receptive to their positions.[28] Once appointed, a long and mutually advantageous courtship began between a committee member and the interest groups. The financial resources of private interest groups enabled them to reward their friends with campaign contributions, special favours and social entertaining.[29] Because of the seniority system, no one was lavished with more attention or plied with more favours than a committee chairman who, operating behind closed doors, could deliver the votes needed to support a particular group's best interest or block any measure it opposed. The most powerful interest groups, like oil, had good and loyal friends in all the appropriate places in Congress. In this political environment, the relative power

27. E.E. Schattshneider, Politics, Pressures and the Tariff (New York: Prentice-Hall, 1935); Truman, pp. 321-351.

28. See Bruce Ian Oppenheimer, Oil and the Congressional Process: The Limits of Symbolic Politics (Lexington Mass.: Lexington Books, 1974), pp. 70-88.

29. James Deakin, The Lobbyists (Washington, D.C.: Public Affairs Press, 1966), pp. 224-254; Grant McConnell, Private Power and American Democracy (New York: Vintage Press, 1970).

of interest groups rested not so much on the substance of the issues being debated, or on a group's size, but on whom they knew and on the financial resources they employed to aid their friends or fight their foes.[30]

While public or "diffused" interest groups also existed, they were no match for the private interest groups. They lacked the resources to gain power within the political and institutional structure. The barriers were numerous. They were without the economic incentives which would have prompted them to organize and mobilize; regardless of whether a person joined a group, that group's successes would be shared by all. They also lacked other incentives for development. They did not have the cohesive affiliation which comes from profession, workplace or industry. Their membership, though often large, was widely dispersed. When they tried to compete with private interest groups their resources, and thus access, were so limited that, generally, they were left out of the decision-making process altogether. The 1946 reforms had only accentuated the problem.

Moreover, the 1946 reforms had done little to reign in the President; the growth of the executive branch, and the accompanying dependence of the legislative branch, continued unabated. Congress itself institutionalized a further legislative role for the executive in passing The Employment Act of 1946. Congress required the President to plan and propose further specific legislation on economic policies to meet the Act's objectives of "maximum employment, production and purchasing power."[31] Congress also directed the President to monitor the economic conditions of the country, to present to it periodic economic reports and to offer corrective legislative measures when economic conditions warranted. Moreover, in the same Act, Congress appropriated funds for presidential staff and advisors needed to carry out the Employment Act's objectives. As other policy issues emerged, they were handled in the same way.

30. Robert Engler, The Politics of Oil (Chicago: University of Chicago Press, 1961), chapters 13 and 14.

31. James L. Sundquist, The Decline and Resurgence of Congress (Washington, D.C.: Brookings Institute, 1981), p. 64.

Congress was becoming, in fact, more dependent upon the information, expertise and specific recommendations of the executive branch. So much so that members of Congress came to expect the President to initiate legislative proposals. As Stephen J. Wayne explained:

> The assumption that it was a presidential responsibility to propose legislation and try to influence its adoption was not questioned after the mid 1950's. 32

And Presidents who even on one occasion did not play this role were criticized for their failings.[33] Most observers saw this development as a positive trend. A strong presidency was seen as the only means to overcome the inertia of committee-centered government dominated by conservative chairmen.[34] And while this role facilitated decision-making for a brief time, with shifting electoral trends this division of power eventually became unworkable. When voters increasingly elected a President of one party and a majority in Congress of another - - a new trend evident in the two decades preceding the oil-pricing debate in 1975 - - partisan politics intensified the already competitive inter-institutional pressures. But even when voters elected a President and congressional majority of the same party, and this majority was comprised of an increasing number of moderate and liberal Democrats, with a President who was part of the same faction - - as in 1960 with John F. Kennedy's election - - ideological pressures still divided the party.[35] When the Democratic President proposed his legislative measures, the Democratic chairmen often blocked them by entering into voting coalitions with minority Republicans when necessary. This alliance drove an ever-widening wedge between the major factions within the Democratic party.

32. Stephen J. Wayne, The Legislative Presidency (New York: Harper & Row, 1978), p. 19.

33. Richard E. Neustadt, "Presidency and Legislation: Planning the President's Program," American Political Science Review, vol. XLIX, No. 4 (December 1955), p. 1015.

34. See James MacGregor Burns, The Deadlock of Democracy: Four-Party Politics in America (Englewood Cliffs, N.J.: Prentice Hall, 1963).

35. See Arthur M. Schlesinger, Jr., A Thousand Days (Boston: Houghton Mifflin, 1965), pp. 707-713.

While conservative chairmen often frustrated the President's legislative efforts and the policy objectives of a growing numerical majority, they often did so without offering alternative policies. Legislative stalemate was the outcome. In the 1950's, many critics saw the problem as one tied to the decline of the political parties and thus in response advocated a rebirth of party responsibility.[36] However, as the problem became more pronounced during this period, and as a new school of political scientists, the behavioralists, became more sophisticated in their studies of Congress, the problem was seen in a different light. For example, some, like James MacGregor Burns, saw the stalemate as an inherent feature of the system:

> We are at the critical stage of a somber and inexorable cycle that seems to have gripped the public affairs of the nation. We are mired in governmental deadlock, as Congress blocks or kills not only most of Mr. Kennedy's bold proposals of 1960, but many planks of the Republican platform as well. Soon we will be caught in the politics of drift, as the nation's politicians put off major decisions until after the presidential campaign of 1964. Then we can expect a period of decision, as the voters choose a President, followed by a brief phase of the "politics of the deed," as the President capitalizes on the psychological thrust of his election mandate to put through some bits and pieces of his program. But after a short honeymoon between Congress and President the old cycle of deadlock and drift will reassert itself. 37

Burns was not alone in his assessment; concern over the government's apparent inability to act was widespread.[38]

Thus when events in 1964 suddenly changed to challenge these gloomy predictions, legislators, observers and analysts were caught off guard. From 1964 to 1966, President Lyndon B. Johnson demonstrated that a liberal President, backed by an effective majority, could overcome the obstacles which had previously impeded the passage of liberal social legislation. James L. Sundquist

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36. See Committee on Political Parties of the APSA, "Toward A More Responsible Two Party System," American Political Science Review, September, 1950 Supplement; Austin Ranney, The Doctrine of Responsible Party Government (Urbana: University of Illinois Press, 1954).

37. Burns, p. 2.

38. James L. Sundquist, Politics and Policy (Washington, D.C.: Brookings Institution, 1968), p. 4; Joseph S. Clark, Congress: The Sapless Branch (New York: Harper & Row, 1964); Roger H. Davidson, David M. Kovenock, and Michael K. O'Leary, Congress in Crisis: Politics and Congressional Reform (Belmont, Calif.: Wadsworth, 1966).

described the bills enacted during that period as "one of the most remarkable outpourings of major legislation in the history of the country."[39] A few predicted the government system had been so altered that the cyclical problem of drift and deadlock was now part of legislative history.[40] However, it was soon evident that the impressive record did not signify that the system had fundamentally changed. Credit for the record was given instead to accidents of history - - the Kennedy assasination and the 1964 Democratic landslide election.[41]

The old problems and persistent questions and criticisms of Congress soon reemerged, along with new ones about the power of the executive. Johnson's Vietnam policy - - more than any other issue - - made absolutely clear just how far the President had usurped a congressional role in foreign policy, a development which Arthur M. Schlesinger characterised as the emergence of the "Imperial Presidency."[42] Recognition of this development prodded some liberal legislators to criticize the President, and to question both their dependence on the executive branch and their long-held belief of the importance of a strong President. And legislative dependence was not limited to foreign policy issues; they lacked independent information and other basic requirements needed to formulate, develop or challenge policies.

Moreover, the frustration of these members was further exacerbated in 1968 when the previous division of power between the President and southern Democrats took on a new meaning with the election of Republican President Richard M. Nixon. The Republicans gained control of the executive branch, but the Democrats retained control of Congress - - if a party so divided can actually be said to control. The Democrats were crucially divided over the issue of the

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39. Ibid., Sundquist, p. 3.

40. Stephen K. Bailey, The New Congress (New York: St. Martin's Press, 1966), pp. vii-ix.

41. Rowland Evans and Robert Novak, Lyndon B. Johnson: The Exercise of Power (New York: New American Library, 1966), p. 364.

42. Arthur M. Schlesinger, Jr., The Imperial Presidency (New York: Popular Library, 1973).

Vietnam War. And the division within the Democratic party was not limited to the war issue, but also included fiscal and social issues as well. The committee system and party divisions inhibited Congress from developing its own policies, and the committee chairmen, largely southern conservatives no longer ideologically representative of their party, made the development of a consensus impossible. Democrats from the south continued to join with Republican members now supporting many of President Nixon's legislative programmes. The conservative Democrats in Congress no longer thwarted presidential initiatives, but now used their positions of power as committee chairmen to facilitate passage of them.[43]

Criticism both within Congress and outside grew even louder as a result of the situation. Samuel P. Huntington, one of Congress' harshest critics, identified the problem as follows:

> The congressional role in legislation has largely been reduced to delay and amendment .... Eighty percent of the bills enacted into law .... originated in the executive branch. Indeed, in most instances Congressmen do not admit a responsibility to take legislative action except in response to executive requests ... The President now determines the legislative agenda of Congress almost as thoroughly as the British Cabinet sets the legislative agenda of Parliament ... The loss of congressional control over the substance of policy is most marked, of course, in the area of national defense and foreign policy ... In domestic legislation Congress' influence is undoubtedly greater, but even here its primary impact is on the timing and details of legislation, not on the subjects and contents. 44

In general, most of the critics supported Huntington's view. Although they said the same thing in different ways, the conclusion reached commonly became known as "the President proposes, the Congress disposes."[45]

However, as blatant as Congress' problems appeared to many, not all congressional analysts were in agreement. Ralph K. Huitt characterized this

43. Davidson and Oleszek, pp. 40-41.

44. Samuel P. Huntington, "Congressional Responses to the Twentieth Century," in Truman, ed., Congress and America's Future, p. 23.

45. See also Robert A. Dahl, Pluralist Democracy in the United States: Conflict and Consent (Chicago: Rand McNally, 1967).

popular view as only "superficially true"[46], while Nelson W. Polsby called it a "cliche."[47] Huitt and Polsby's views were shaped by their careful review of what functions Congress did perform. And they were not the only ones who made more optimistic assessments. John F. Manley's important study of the House Ways and Means Committee (under Wilbur Mills) concluded that it was a policy-making body capable of matching the executive branch.[48] But these views, both among members of Congress and outside observers, were clearly in the minority.

Thus, throughout the 1950's and the 1960's, some members (junior moderates and liberals) understandably proposed changes to redress the imbalance of power between themselves and their conservative senior colleagues. The proposed changes during this period differed in the House and Senate. These differences reflected the House and Senate's dissimilarities. The Senate's six year terms compared to two years for the House members, the size of their constituencies and immunity from gerrymander, their own customs and rules, all set a different legislative rhythm and policy orientation.[49] In general, the Senate is less concerned with formal rules than the House; with fewer members, it operates on a more personal and individual level. Because of these distinguishable characteristics in the House and Senate, the 1946 changes influenced the two chambers differently, each responding according to the internal ramifications of these reforms. But in both houses reforms, generally, succeeded or failed in response to the increase and decrease of moderate and liberal members elected to Congress. Reforms were adopted in one Congress

46. Ralph K. Huitt, "Congress, The Durable Partner," in Robert L. Peabody and Ralph K. Huitt, eds., Congress: Two Decades of Analysis (New York: Harper & Row, 1968), p. 217.

47. Nelson W. Polsby, "Strengthening Congress in National Policymaking," Yale Review (Summer 1970), p. 485.

48. John F. Manley, The Politics of Finance: The House Committee on Ways and Means (Boston: Little Brown & Co., 1970); Ronald C. Moe and Steven C. Teel, "Congress as Policy-Maker: A Necessary Reappraisal," Political Science Quarterly, vol. 85 (September 1970), pp. 443-470; John S. Saloma III, Congress and the New Politics (Boston: Little Brown & Co., 1969).

49. Lewis A. Froman, Jr., The Congressional Process: Strategies, Rules and Procedure (Boston: Little Brown & Co., 1967), pp. 5-15.

after an election brought in an influx of Democrats, only to be retracted in the next when their numbers fell. However, this pattern produced one result in the Senate, and quite another in the House.

In the Senate, liberals scored their first victory against the establishment when in 1953 Minority Leader Lyndon B. Johnson acceded to their request for a fairer distribution of committee assignments among junior and senior members. Johnson, in an effort to placate the liberals and to avoid more sweeping changes, proposed that each senator, regardless of how junior, receive one assignment to a major committee before any member received a second. This change had little immediate effect in giving liberals a more equal role in the decision-making process. In part, this was because they were too few in number and too low within the committee hierarchies. This situation changed, however, as their numbers increased and their tenure within committees lengthened.

The increased number of liberals in the Senate, particularly after the 1958 election swelled their ranks, brought significant reforms. Because the Senate, to a much greater extent than the House, relies on informal norms and individual personalities to set the chamber's character, as its membership changed so too did its character. Liberals, considered outsiders in the Senate, rejected its conservative ways which Donald R. Matthews, and others, saw as a fundamental part of the institution.[50] As Michael Foley explained:

> Given such inherently conservative traditions and the powerful socializing force of the senior conservative leaders, the Senate's conservative posture appeared to be an immutable characteristic. To White and Matthews, the dynamic interrelationship between internal culture and power had frozen the Senate's legislative style and policy orientation into a permanently conservative direction. 51

But by rejecting the norms, such as apprenticeship and specialization, liberals eventually thawed the Senate's legislative style. [52]

In response, when Majority Whip Michael Mansfield (D. Mont.) became Majority Leader on Johnson's departure, he adopted a very different leadership

50. Matthews; William S. White, Citadel: The Story of the U.S. Senate (New York: Harper & Row, 1956), perhaps the classic analysis of the conservative club.

51. Michael Foley, The New Senate (New Haven: Yale University Press, 1980), p. 9.

52. See also Nelson W. Polsby, "Goodbye to the Inner Club," The Washington Monthly (August 1969), pp. 30-34.

style. His behaviour, guided by his philosophy that the Senate was comprised of "one hundred equals", helped liberals to bring about further change. As John G. Stewart concluded:

> Mansfield . . . refrained from using even the fragments of institutionalized power at his disposal . . . . One could even say Mansfield deliberately abandoned recognized powers of majority leadership. 53

Mansfield abandoned his powers by sharing them more equally and, in doing so, redistributed power within the Senate to younger and generally more liberal members.

Thus, in the Senate, the gradual changes which had been instituted throughout the 1960's redistributed power, redressing the fundamental imbalances within the chamber. These changes placated liberals, altering their view of the role of Senate reform. As Foley noted:

> Far from assuming the position of anticommittee radicals who wished to wrest power from the committees and to centralize and coordinate internal influence within some integrated and accountable locus, most liberals came to see that their political potential was more likely to be fulfilled at an individual level within the existing structure. 54

As a result, by 1968 Senate liberals' cries for reform had quieted down. And from 1968 through 1975, as the number of liberal senators continued to increase, further reforms, in general, were only minor ones, bolstering the changes that had already been made.

In contrast, the experience with reforms in the House was very different. The Rules Committee was a major early target of reform and one of the best examples of how reformers' success waxed or waned with the election results. During the 81st Congress (1949-1950), the increased number of Democrats made it possible for the House to pass the "21-day" rule which allowed the full chamber to vote a bill out of committee after three weeks if the committee failed to grant a rule. But the reform was short-lived since the "21-day" rule was repealed in the

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53. John G. Stewart, "Two Strategies of Leadership: Johnson and Mansfield," in Nelson W. Polsby, ed., Congressional Behavior (New York: Random House, 1971), p. 70.

54. Foley, p. 240.

next Congress (1951-1952) when Democrats' numbers declined. The deck was stacked against Democratic party-supported legislation because the committee's Democratic chairman and another southern party colleague, William Colmer (D. Miss.), often voted with the four minority members in a six-to-six tie to kill bills. The election of a large number of liberals in 1958 raised hopes that legislators would again adopt a 21-day rule. The newly-elected liberals brought about several important changes, among them, the formation of the Democratic Study Group (DSG) to work for structural reform.[55] But a 21-day rule was not among their successes. Initially, their hopes for circumventing the conservative power structure of committee chairmen were pinned to the election of a like-minded President in 1960 - - John F. Kennedy. However, when the liberal President was unable to provide the impetus needed, he and the reformers tried a new tactic during the 87th Congress (1961-1962). They proposed that the House increase the Rules Committee's membership from twelve to fifteen. To break the six-to-six voting pattern, congressmen, with presidential prodding, adopted this proposal in hopes of passing Kennedy's liberal social legislative programme.[56] Enlargement helped, but did not solve the problem: the Rules Committee continued to impede party-supported legislation because there were not enough moderate and liberal members consistently to vote bills out of committee, or because Chairman Smith would retire to his Virginia farm to avoid summoning the committee when the conservatives might lose.[57]

But after the 1964 election this changed with the influx of another large Democratic majority aided by President Lyndon B. Johnson. Members adopted yet another "21-day" rule. Over the committee chairman's objections, the House

55. Mark G. Ferber, "The Formation of the Democratic Study Group," in Polsby, ed., Congressional Behavior, pp. 249-67.

56. See Milton C. Cummings, Jr. and Robert L. Peabody, "The Decision to Enlarge the Committee on Rules: An Analysis of the 1961 Vote", in Robert L. Peabody and Nelson W. Polsby, eds., New Perspectives on the House of Representatives, 2d ed. (Chicago: Rand McNally, 1969), pp. 253-280; Walter Kavitz, "The Influence of the House Rules Committee on Legislation in the 87th Congress," in Joseph S. Clark, ed., Congressional Reform: Problems and Prospects (New York: Thomas Y. Crowell, 1965), pp. 127-137.

57. MacNeil, Forge of Democracy, pp. 103-104.

relied on this new rule to vote eight bills out of the Rules Committee. In addition, during this Congress reformers made an important inroad. As a result of the Democratic Study Group's lobbying, the Joint Committee on the Organization of Congress (headed by Sen. A. S. Mike Monroney and Rep. Ray Madden) was established in 1965, in the 89th Congress (1965-1966). This Committee held hearings throughout the summer of 1965, and then (in the summer of 1966) issued a final report that proposed a legislative package of structural and procedural changes.[58]

However, in spite of these advances, the pattern remained the same. When Democrats lost seats in the 1966 mid-term election, the House again suspended the "21-day" rule in the 90th Congress (1967-1968). The Rules Committee first stalled consideration of most of the Joint Committee's measures in 1967, and then, in 1968, blocked the Joint Committee's bill from floor debate altogether (although a few of the Joint Committee's less controversial proposals, such as the establishment of a new committee on Standards of Official Conduct, were adopted in other House bills). And, most importantly, the reforms up to this time were adopted on a piecemeal basis, which failed to address the question of the power of committee chairmen. But all this changed after 1968. Congressional liberals and others (primarily in the House) instituted yet another series of reforms, which stripped committee chairmen of the vast power they had acquired.

58. U.S. Congress, Joint Committee on the Organization of Congress, "Report of the Joint Committee," 89th Cong., 2d sess., 1966.

## Congress Revolts Against the Committee Barons: 1968-1975

### The House Adopts Numerous Reforms

The consensus in the House for the reforms adopted from 1968 through 1975 had been developing during the previous twenty years. However, the House was finally able to institute its third series of structural and operational changes because of reformers' decision to shift the forum in which reforms were adopted (from the committee rooms and the floor to the Democratic Party Caucus) and because of electoral shifts that transformed the chamber's membership.

In consequence, the reformers' first objective necessarily was to change the Party Caucus itself. Prior to 1968, the Democratic Party Caucus met only in the opening days of each Congress; their purpose was to decide organizational questions (committee assignments for example). But even then, they primarily affirmed the decisions already made by the party's leaders and the Democratic members of Ways and Means, the party's Committee on Committees. Thus, reformers had to build the Caucus into a viable political entity within the chamber. The DSG was the driving force behind this effort. First, they petitioned their party leaders, and won monthly Caucus meetings and members' right to nominate items for the agenda. Then, from 1969 through 1971, they used the Caucus to nurture a growing interest in reforms and a strengthening of members' commitment to change. In 1970, the Caucus formed the Committee on Organization, Study, and Review - - referred to as the "Hansen Committee" after its Chairwoman, Julia Butler Hansen (D. Wash.). The establishment of this committee turned reform into a legitimate topic for study, and one that the Democratic Party now clearly supported.

Equally important to the shift of forums were the electoral changes underway; an increasing number of members who supported reform - - both Democrats and Republicans - - were being elected. In the 1970 and 1972 congressional elections Norman J. Ornstein surveyed the newly-elected

Democrats and found growing and wide-spread support for reform.[59] These new members made it possible for the reformers to begin to realize some of their goals. However, even at the end of the 93rd Congress (1973-1974), the reform movement, as Mary Russell noted, was still "generally half-finished, leaving the House like a caterpillar in its chrysalis, no longer crawling, but unable to fly."[60] This description was apt because there were still a number of important changes which had yet to be embraced, and others, which although officially adopted by the House, had yet to be put into practice. For example, throughout the 93rd Congress, Harley Staggers (D. W.Va.), chairman of the Interstate and Foreign Commerce Committee, ignored the reforms intended to make committees operate more democratically, and instead continued to run his committee in the same undemocratic, even capricious, manner as he had always assumed. But this changed after 1974 with the Democrats' dramatic congressional landslide electoral victory.

After the post-Watergate election in November 1974, the reform movement showed an unexpected new strength. As one student of Congress, Burton Sheppard, concluded, the reform movement became:

> more than a lame vague hope of disquieted junior liberals and habitual malcontents. It had been plotted, battled over, and implemented and used - - and in doing so had shifted the dynamics of power. 61

The election had this impact because, along with the addition of so many new Democrats, seemingly unconstrained by the usual party or other loyalties, came a correspondingly dramatic shift in the chamber's ideological make-up, as table 1-1 shows.

59. Norman J. Ornstein, "Causes and Consequences of Congressional Change: Subcommittee Reform in the House of Representatives 1970-1973," in Ornstein, ed., Congress in Change, pp. 88-114; this impression is further supported by the author's own experience after conducting interviews throughout the summer and fall of 1972 as a researcher on Ralph Nader's Congress Project, and in January 1973 for Robert L. Peabody on events within the Democrat's Caucus as Tip O'Neill (D. Mass.) succeeded Hale Boggs (D. La.) as Majority Leader.

60. Mary Russell, "Hill Changes: Slow Motion," The Washington Post, 15 September 1974.

61. Burton Sheppard, "Internal Reform and Power Relations in the United States House of Representatives 1968-1975," (D. Phil. diss., Oxford University, 1976), p. 279.

Table 1-1

Ideological Divisions in the House of Representatives

86th CONGRESS, 1ST SESSION (1959)

| | Northern Democrats | Southern Democrats | All Democrats | Republicans | All Members |
|---|---|---|---|---|---|
| Liberal | 82% (140) | 2% (2) | 51% (142) | 4% (6) | 34% (148) |
| Moderate | 13% (23) | 13% (14) | 13% (37) | 15% (23) | 14% (60) |
| Conservative | 5% (8) | 85% (94) | 36% (102) | 81% (124) | 52% (226) |
| | (N = 171) | (N = 110) | (N = 281) | (N = 153) | (N = 434) |

94TH CONGRESS, 1ST SESSION (1975)

| | Northern Democrats | Southern Democrats | All Democrats | Republicans | All Members |
|---|---|---|---|---|---|
| Liberal | 74% (148) | 11% (10) | 55% (158) | 1% (2) | 37% (160) |
| Moderate | 24% (47) | 30% (27) | 26% (74) | 19% (28) | 23% (102) |
| Conservative | 2% (4) | 59% (53) | 20% (57) | 79% (115) | 40% (172) |
| | (N = 199) | (N = 90) | (N = 289) | (N = 145) | (N = 434) |

Source: Lawrence C. Dodd and Bruce I. Oppenheimer, "The House in Transition," in Dod and Oppenheimer, eds., Congress Reconsidered (New York: Praeger Publishers, 1977), p. 24. The authors based their ideological ranking on the conservative coalition scores published by Congressional Quarterly.

This shift gave reformers the number of like-minded colleagues they needed to ensure that prior changes would now be followed and further reforms would be adopted. In consequence, by far the most dramatic changes occurred at the outset of the 94th Congress when the impact of these reforms began to be felt.

Moreover, the Caucus' interest in reform and the increased number of members who supported change generated renewed interest throughout the chamber. In 1972 the full House adopted a resolution which established a bipartisan Select Committee on Committees, known as the "Bolling Committee" after its chairman Richard Bolling (D. Mo.), to study the committee system. And that same year, the Rules Committee began reconsidering proposals which it had

originally reviewed but blocked in the mid-1960's. From 1968 through 1975, in consequence, House members adopted reforms in numerous resolutions passed by the Democratic Party Caucus at the beginning of the 92nd (1971), the 93rd (1972), and the 94th (1975) Congresses, and in two legislative measures enacted in 1970 and 1974. As the proposals adopted will show, reformers had different objectives. Proposals from the Hansen Committee largely concerned party reforms, while those from Bolling's group dealt with committee change. The differences did not end there. The Hansen proposals were incremental in approach; Bolling's were comprehensive. Moreover, proposals emanating from the former tended to disperse power, while those from the latter tended to consolidate it. [62]

House Procedures Change

The House adopted numerous procedural changes - - many of them simply technical innovations, intended to make the chamber's operations more efficient. For example, an electronic voting system was installed in 1973 to save members' time when they voted.

Of greater interest to this study, however, are the procedural changes adopted to improve the substance of decisions, and by so doing, to assert Congress' power vis-a-vis the executive. For example, in 1974 the Speaker was given the power to refer a bill to several committees simultaneously, sequentially, or to divide sections of legislation among several committees, and to establish ad-hoc committees. The Bolling Committee argued that this authority would "facilitate inter-committee cooperation and infuse flexibility into the committee system."[63] Cooperation and flexibility were needed because before this change the Speaker could refer a bill only to one committee at a

62. For a more thorough analysis of the Hansen and Bolling Committees (from which information in this section is largely drawn), see Davidson and Oleszek, Congress Against Itself; Ornstein, Congress in Change.

63. U.S. Congress, House, Select Committee on Committees, "Committee Reform Amendments of 1974, 93rd Congress, 2d sess., 1974, Serial 93-916, p. 59.

time. This tended to give one committee a monopoly over certain sorts of legislation and to result in policies being looked at from only one viewpoint. It allowed committee chairmen to block measures coming to the floor and it encouraged Presidents to lobby for bills to go to favourable committees. In either case, the House might be ill-served. Moreover, other committees, whose expertise was also needed on certain sections of a bill, either would not be given the opportunity to consider the legislation, or at least not until the first committee had completed its review (and it was not unusual for such a review to take an entire legislative session). With this change, the Speaker could now see that all committees with expertise on a particular subject participated in the decision-making process.

Congress also relied on another procedural device, the legislative veto, to assure members' participation in decisions delegated to the executive branch. Congress had used this procedure since the 1930's, but almost exclusively to review presidents' executive branch reorganization plans. However, after 1968, Congress relied extensively on the legislative veto to check decisions concerning a wide variety of issues, from foreign policy and impoundment to the spate of energy questions addressed during the oil crisis of 1973-1974. In fact, it was under this procedure that the House would review President Ford's decontrol proposal. As the oil-pricing issue shows, the veto provided Congress with a means to delegate complicated, detailed decisions to the executive, while at the same time, retaining control over them with their opportunity for review.[64]

Representatives Change the Rules Governing Committees

The reforms influencing committees emerged primarily from Democratic Party Caucus resolutions (not from passage of legislative measures), and instigated major changes in the way committees conducted their business. The resolutions redistributed power from committees to subcommittees, and from chairmen to rank-and-file members.

64. See John R. Bolton, The Legislative Veto (Washington, D.C.: American Enterprise Institute For Public Policy Research, 1977).

Committee chairmen, who had been the vanguard of the old power system, were the reformers' first target. In an attempt to make chairmen more accountable, the Hansen Committee in 1971 (at the opening of the 92nd Congress) proposed that chairmen be elected by the Caucus instead of appointed automatically through seniority. Traditionally, committee chairmen had been selected on a seniority basis by the Committee on Committees; this committee then presented one list of names for all chairmen to the Caucus members for their approval, which always occurred in a pro forma single vote. The Hansen proposal altered this process by having all chairmen individually elected by the Caucus, if at least ten members so requested. At first this had no effect on the election process. Caucus members continued to approve the Committee on Committee's recommendations without exception because most members feared that if they publicly requested a vote on their committee chairman and their challenge failed, their own chairman would retaliate. Thus, in an attempt to remedy this situation, in 1973 (at the opening of the 93rd Congress) the Caucus adopted a DSG proposal which strengthened the election process by allowing secret rather than public ballots. This proposal eased members' fears of reprisal. And although it was adopted after chairmen were already approved for the 93rd Congress, and thus, too late to have an immediate impact, at the next Congress (the 94th, 1975) it made a significant difference. For the first time, Caucus members successfully challenged three of the Committee on Committee's recommendations. Moreover, members did not automatically replace those three deposed with the next most senior person in line. (For example, the Caucus elected as chairman of the Banking and Currency Committee its fourth ranking member, Henry Reuss (D. Wisc.)).

Subcommittee chairmen were reformers' second target. The Hansen Committee also proposed changes in the selection of subcommittee chairmen because a small number of the most senior members held all of the subcommittee chairs on each of the committees on which they served, and thus controlled the

subcommittees, as well as the parent bodies. To loosen their grip and to provide opportunities for more members to hold these positions, in 1971 the Caucus limited to one the number of subcommittee chairmanships any single member could hold. No longer could any one member hold two or three subcommittee chairs in the same committee or even more than one on different committees.

Additional steps followed to distribute power even further. In 1973, the Caucus adopted a fairer selection process for subcommittees' membership. Before this change, the most senior members on committees usually held most, if not all, of the seats on the most important subcommittees. Typically, junior members were relegated to membership on the subcommittees that dealt with the least important issues. This resulted from a selection process that allowed members, in line of their seniority, to request several subcommittee seats at once. By the time junior members had their chance to request an assignment, senior members had already filled the seats on the most attractive subcommittees. But under the new system each member on a committee, in line of seniority, could now select only one subcommittee assignment until all members had done the same, and then in the same order request a second, and in some cases a third. In 1974, the full House adopted a Bolling Committee proposal that required all committees of more than fifteen members (later changed to twenty) to establish at least four subcommittees. In part, reformers aimed this change at the powerful Ways and Means Committee. It had no subcommittees. Wilbur D. Mills (D. Ark.), chairman of the committee from 1958 through 1974, had abolished all of them so that he could directly control decisions by considering all bills in full committee.[65] And in part reformers proposed it as a preventive action so that other chairmen could not follow Mills' example.

Consistent with these actions, in 1973 the Caucus adopted the "Subcommittee Bill of Rights." This gave members on each committee the right

65. See Manley; Catherine Rudder, "The Policy Impact of Reform of the Committee on Ways and Means," in Leroy N. Rieselbach, ed., Legislative Reform (Lexington, Ma.: Lexington Books, 1978), pp. 73-90; David W. Rohde, "Committee Reform in the House of Representatives and the Subcommittee Bill of Rights," Annals of the American Academy of Political and Social Sciences, vol. 411 (January 1974), pp. 39-47.

to organize their own party caucus which would formulate committee rules; establish the jurisdiction of subcommittees; set the party ratio of members on the subcommittees to match the ratio of party members in the parent committee; elect subcommittee chairmen; and refer bills to subcommittees if a chairman refused to assign a piece of legislation.

In addition, in 1973 the Caucus opened committee proceedings to the public. Most committee business - - including some hearings - - had been conducted behind closed doors. After this change, a committee could close a session only if a majority of its members voted in public to do so, and then only if it was to discuss either internal administrative matters, such as staff selection, or national security issues.

## Members Expand Their Staff and Information Resources

By the mid-1960's, the congressional workload had become prodigious; policy issues were even more complex, yet the most senior members controlled almost all of the staff appointments. Committee minority party members and junior majority party members lacked sufficient staff and access to objective information to play an active role in the substantive development of policy. Although the DSG and its Republican counterpart had tried to compensate for this imbalance of resources by providing small research staffs, these attempts were inadequate. Moreover, Congress as a whole - - even the most senior members - - lacked adequate staff and information to challenge the executive branch policy proposals. Thus, Congress needed to expand its resources, and the minority and junior majority party members needed to share them more equally.

Consequently, the 1970 Legislative Reorganization Act increased the number of allowable individual staff (both secretarial and professional) for all members - - junior and senior, majority and minority.[66] Continuing this expansion of staff, in 1974 the Hansen Committee reversed a long-standing

66. In January 1971 the House rescinded the provision in the 1970 Act which provided additional staff for minority members, and then later reinstated it. See John Bibby and Roger Davidson, "Inertia and Change: The 1970 Legislative Reorganization Act," in John F. Bibby and Roger H. Davidson, On Capitol Hill: Studies in the Legislative Process (Hinsdale, Illinois: Dryden Press, Inc. 1972), pp. 251-280.

custom of Committee chairmen controlling staff. It adopted a proposal guaranteeing each subcommittee chairman at least one professional staff person who would devote himself to subcommittee business. As a result of these changes, the number of staff increased dramatically. Harrison W. Fox and Susan Webb Hammond reported that in 1967 committee staff numbered only 589 compared to 4,055 personal staff. By 1976, committee staff had grown to 1,548, and staff of individual members had increased to 6,939.[67] Reformers intended that expanded staffs would enable members to be better lawmakers. Members assumed there would also be several other important benefits. They would be able to become experts on a broader number of issues, and to respond to the growing burden of constituency demands. In addition, they would be able to exert greater control over the expanding federal bureaucracy by broadening the scope of congressional oversight activities. But even more important, although the practice was not strictly legal, they would be able to intermingle their larger congressional staff with campaign aides during election races.

To complement the expansion of personal and committee staffs, Congress also expanded its main institutional support of the Congressional Research Service (CRS) of the Library of Congress, and the General Accounting Office (GAO). The Legislative Reorganization Act broadened the mandate of the CRS to include both short and long term policy analysis, and also increased its staff from 323 in 1970 to 778 in 1975. The 1970 Act also expanded the GAO's oversight function, and increased its staff from 4,471 in 1970 to 4,954 in 1974.[68] Additionally, in 1972, Congress established the Office of Technology and Assessment (OTA) to evaluate increasingly technical policy issues, and then, in 1974, set up the Congressional Budget Office (CBO) to provide independent data and analysis of fiscal and budgetary matters.

67. Harrison W. Fox and Susan Webb Hammond, Congressional Staffs: The Invisible Force in American Lawmaking (New York: The Free Press, 1977), p. 171.

68. Ibid., Fox and Hammond, p. 133.

## The Leadership Gains New Powers

The 1970's reforms enhanced the leadership's powers, breaking with the long-practiced rule the House had followed since the 1910 revolt against Cannon. Democrats had feared transferring power to the leadership because of the north-south divisions within their party. By the early 1970's these divisions had been substantially diminished, and members' long-standing fears of granting too much power to the Democratic leadership were eased by the more strongly perceived need for party unity. House Democrats needed a recognized leader to bring this about, and without a Democrat in the White House, they had nowhere else to turn but to their congressional leaders.

To accomplish this, reformers enhanced the Speaker's powers of appointment. In 1973, the Democratic Caucus appointed the Speaker, the Majority Party Leader and the Chairman of the Caucus to the powerful Committee on Committees, which assigns all members to committees. Previously, the leadership had only ex-officio status on this important committee comprised of the fifteen Democratic members from the Ways and Means Committee. Moreover, the Caucus also reactivated the long inactive Steering and Policy Committee--to develop official party policy positions and to coordinate legislative strategies for their passage. It appointed the Speaker as chairman, and included in its membership the Majority Leader, along with nine other members the Speaker would select. The Caucus then further strengthened the leadership's position by transferring the Committee on Committees from under the Ways and Means Committee's jurisdiction to the Policy Committee. The Caucus also vested the Speaker with the power to appoint all Democratic members to the Rules Committee, subject to the Caucus' approval.

## The Senate Adopts Fewer Reforms Than the House

By 1968, when House liberals launched their new campaign for reform, some students of Congress had concluded that the Senate was already a changed institution. As Nelson W. Polsby explained, the Senate was transformed:

> . . . from an intensely private and conservative body to a very public and progressive one; from one focused on the virtues of age and experience to one devoted to the young, and vigorous, and the ambitious. 69

Polsby was not alone in his assessment.[70] The Senate's membership, its formal rules, and informal norms had all changed, resulting in a more liberal, democratic, and decentralized chamber. Thus, from 1968 through 1975 the pressure for further reform in the Senate was not as great as it was in the House.

In consequence, the changes that were instituted in the Senate during this period were generally very different from those adopted in the House. First, there were simply not as many of them. Second, it was not necessary that they be as far-reaching. As James L. Sundquist explained:

> . . . the changes in the Senate tended to be less tangible than in the House, often a matter of practice rather than rule, as befits a smaller and more intimate body where the power structure is often defined more by the interplay of personalities than by the formal institutional arrangements. 71

Thus, the list of specific changes - - enacted in the Legislative Reorganization Act of 1970 and several resolutions adopted either by the Democratic Party Caucus, or by the full Senate - - is brief compared to the list in the House. But these reforms continued or strengthened what had already been begun; the Senate became a little more public and progressive.

Senate Procedures Change: Senators Revise the Filibuster Rule

In 1975 the Senate modified Rule XXII - - the rule governing cloture on filibusters - - to make ending debate under this procedure easier. Filibusters, or "extended debate," have been part of the Senate's history since its earliest years.[72] Initially intended to protect minority opinion within the chamber,

69. Polsby, "Goodbye to the Inner Club", p. 30.

70. See Gary Orfield, Congressional Power: Congress and Social Change (New York: Harcourt Brace Jovanovich, 1975), Chapter 1; Biddy and Davidson, On Capitol Hill, pp. 144-147; Norman J. Ornstein, Robert L. Peabody, and David W. Rohde, "The Changing Senate: From the 1950's to the 1970's," in Dodd and Oppenheimer, Congress Reconsidered, pp. 3-20; Eric Redman, The Dance of Legislation (New York: Simon & Schuster, 1973).

71. James L. Sundquist, The Decline and Resurgence of Congress (Washington: Brookings Institute, 1981), p. 390.

72. See Raymond E. Wolfinger, "Filibusters: Majority Rule, Presidential Leadership, and Senate Norms," in Raymond E. Wolfinger, ed., Readings on Congress (Englewood Cliffs, N.J.: Prentice-Hall, 1971), pp. 286-305.

filibusters became the target of reform when southern conservative Democrats relied on them to block passage of civil rights legislation supported by majority opinion. Southern Democrats succeeded in blocking legislation by this procedure because once a filibuster began, cloture - - which required two-thirds of those senators present and voting (which was usually sixty-three to sixty-seven) - - rarely occurred. Bills were said to have been "talked to death." Southern conservatives blocked any of the reformers' attempts to change the rule with yet further filibusters.

However, after 1970 liberals themselves began relying on the filibuster to block conservative-backed proposals, such as Richard M. Nixon's nomination in 1970 of Harold Carswell to the Supreme Court. This new trend arose as conservatives relied on the procedure less. The major civil rights laws had already been passed and the 1965 Voting Rights Act encouraged many southern Democrats to adopt a less conservative outlook. It also discouraged them from filibustering other bills desired by the newly enlarged black electorate in their home states. As a result, by 1975, conservatives also supported change. Senators brought about this change by lowering the number of votes needed to halt debate to three-fifths, or sixty of the chamber's members.

## Senators Change Some of the Rules Governing Committees

From 1968 through 1975, further committee reforms continued the Senate's earlier efforts to make committee operations more democratic and their members' roles more equal. For example, although the Senate's workload has always been shared more equally among its members than the workload in the House - - primarily because there are fewer senators than representatives - - steps were taken to assure an even more equitable division of the most interesting and politically attractive work. The 1970 Legislative Reorganization Act prohibited senators from serving on more than one of the chamber's four major committees (Appropriations, Armed Services, Finance, and Foreign Relations). This same act also limited the number of chairmanships a

senator could hold on these committees to one full committee and one subcommittee chair.

In a further effort to break down the lines of hierarchy between junior and senior members, Republicans and Democrats (in 1973 and 1975, respectively) disallowed seniority as the sole criterion upon which members selected committee chairmen. Election procedures could sometimes replace automatic advancement based on a members' tenure. Republicans adopted procedures to be followed within each committee, Democrats within their party caucus. But these procedures did not go as far as those adopted two years earlier in the House. Election of Senate committee chairmen was not automatic; for the Democrats, a vote by secret ballot could be taken on a particular chairman only if one-fifth of the members publicly requested it. Moreover, the Democrats adopted these changes after the majority party selection of chairman had already been made for the 94th Congress. Thus, Senate chairmen would not be selected by election until the 95th Congress (1977-1978).

Since 1970 some Senate committees had voluntarily allowed the public to view their committee proceedings; but it was not until November 1975 that members opened all committee proceedings. After passage of this measure, senators could close committee proceedings only if they voted in public to do so, or if they were considering issues in a narrow category of subjects - - such as national security. This action also came two years after the House had voted to open its committee proceedings.

## Senators Increase Their Staff and Information Resources

Due to the increase of Congress' workload and the growing complexity of issues, senators felt the same pressures as did their House colleagues - - only more so because there were fewer of them to share the burden, and because their burden is greater since they represent much larger and more diverse constituencies. Thus, from 1968 through 1975, the House and Senate reforms in this one area were almost parallel. The Legislative Reorganization Act of 1970

increased the number of committee staff in both chambers.[73] Moreover, the bill which increased the staffs and expanded the mandates of the Congressional Research Services (CRS), the Congressional Budget Office (CBO), and the Office of Technology and Assessment (OTA), benefited both senators and representatives equally.

But the Senate went a step further than the House to assure that its most junior members had adequate staff assistance to aid them in their committee work. In June 1975 the Senate permitted junior members to hire up to three additional professional staff persons. In order to insure staff resources were matched to need, individual differences in members' committee assignments were evaluated, to determine a senator's need before such an allocation was approved.

Thus, although these reforms furthered earlier efforts to make the Senate a more democratic and decentralized body, they did not generate confidence that major changes had been brought about in the chamber's decision-making process - - particularly when compared to the sweeping and dramatic reforms in the House.

However, these changes in both the House and Senate, taken together, led one observer to conclude that by the outset of the 94th Congress, "even a casual observer must have suspected that unusual things were happening on Capitol Hill."[74] Unusual things had happened, at least in the House, but the ramifications of these changes were not yet clear. Nonetheless, many members and observers held unrealistically high expectations about the ability of the 94th Congress to develop policy. They overlooked not only the mixed motives of these reforms, but the limits and the unintended results of previous reform attempts when they enthusiastically embraced the changes. The Washington Post observed:

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73. Fox and Hammond, p. 171.

74. John G. Stewart, "Central Policy Organs in Congress," in Harvey C. Mansfield, Sr., ed., Congress Against the President (New York: Praeger Publishers, 1975), p. 23.

> The scenario writers after the 1974 election had the Congress - - especially the newly invigorated House - - seizing the day, throwing up brilliant innovative programs for energy, the economy, and other gluey dilemmas. 75

Many of these members and observers believed that once again, as a result of their reforms and the weakened position of the presidency after the Nixon debacle, Congress would be able to assume full responsibility for developing comprehensive national policies.

The development of the oil-pricing policy tests this expectation. However, the reader will find any analysis of the oil-pricing issue difficult to understand without an awareness of the relevant background on the issue itself. The next chapter thus presents a brief history of the influences that determined oil prices prior to 1975.

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75. Rod McLeish, "Return of the 94th Congress", Washington Post, 7 June 1975.

# CHAPTER TWO

## The Oil-Pricing Issue

Members of the 94th Congress faced one of the most perplexing and important policy issues to emerge in this century: should the U.S. government continue to control the price of domestically produced oil? President Richard M. Nixon first imposed oil price controls in August, 1971, when he froze wages and prices throughout the economy to stem the alarming increase in the rate of inflation. After this freeze expired, the Nixon Administration continued controls on oil throughout 1972 and most of 1973, as part of its broader wage and price control policy. Moreover, in October 1973, although the Nixon Administration began lifting controls from the rest of the economy, it proposed to Congress that controls on oil be continued. Members of Congress agreed and in 1973 enacted the Emergency Petroleum Allocation Act, (P.L. 93-159 hereafter EPAA), which continued petroleum price controls. Congress took this action in large measure because of sweeping changes that had occurred in the oil market - - both at home and abroad - - and of the uncertainties that such changes had created.

Within a period of only a few years, the United States had become dependent upon foreign producers to provide an increasingly significant percentage of its oil supply. This dependence contrasted dramatically with the nation's prior experience. Throughout most of this century, the country's vast petroleum reserves had enabled American-based oil companies to be the major suppliers to, and to set the oil prices for, not only the U.S. but the rest of the world as well. The discovery and development of oil fields in other parts of the world, and particularly in the Middle East, gradually reversed the traditional economic relationships which had resulted from American firms' dominance in the oil market. By 1975, foreign governments, rather than American-based oil companies, determined international and uncontrolled domestic prices of this essential commodity. Moreover, some of these foreign-producer governments tried to use their oil to influence U.S. foreign policy.

Oil prices in the international market soared as a result of these changes. But in the domestic market oil-price controls blunted the full impact of these price increases. Congress in effect insulated the domestic market from these economic and political influences by continuing controls in 1973. However, by 1975 the nation faced a serious and growing energy problem that controls could not mask. This problem demanded a more comprehensive national policy than Congress had originally intended or than was possible to develop from its price-controls policy. However, at the heart of the energy problem was the question of how to price the country's primary souce of fuel - - oil. Thus these changing circumstances, plus the fact that the 1973 EPAA was due to expire in August 1975, put pressure on Congress to address the oil-pricing issue during the first session of the 94th Congress (1975).

The 1975 congressional oil-pricing controversy ensued. A majority of Democrats supported continued controls while a majority of Republicans opposed them. The question of whether oil prices should be controlled or decontrolled was not a simple one. It required an understanding of the complex economic and political factors that had determined oil prices in the past, including market forces, patterns of business organization (monopoly, oligopoly and cartels) within the oil industry, and state and federal government regulations to control supply. It also required an understanding of those forces that influenced oil prices in more recent years, and that had undergone such dramatic changes in the period just prior to the debate. Acquiring this understanding was made all the more difficult because the politicians had little real knowledge of these issues, and the experts to whom they turned vehemently disagreed among themselves. Thus, before examining the 1975 debate, this chapter surveys the important factors that have determined oil prices in the past and how they changed in the early 1970's. The complexity of the oil-pricing issue, its prominence in 1975, and the difficulty of its resolution are inextricably linked to these influences and related policies.

## Influences that Affected Oil Prices in the United States: 1859-1975

### Market Forces Create Unstable Oil Prices: 1859-1890

As with many natural resources and primary products, a cycle of scarcity and glut caused oil prices to fluctuate wildly for most of the three decades after drillers first discovered domestic oil resources in Titusville, Pennsylvania, in 1859. For example, oil that sold for $19.25 per barrel in 1860 dropped to $.10 per barrel just two years later in 1862.[1] In large part, this cycle resulted from the economic forces of supply and demand. The growing scarcity of whale oil created a demand for petroleum as a substitute that surpassed the supply. As a result, demand pushed the price of oil at times as high as $25 per barrel. Oil supply was erratic because of 1) the primitive state of the technology of prospecting and geological engineering, and 2) the great number of producers attracted to the industry's financial rewards when oil prices were high - - a situation that in turn led to an oversupply of oil. In effect, once oil was discovered at a particular site, investors rushed to drill there, creating a huge increase in production. Increased supply inevitably caused a major decline in prices and a great deal of physical waste. The waste resulted when producers, faced with plummeting prices due to oversupply and lacking expensive storage facilities, often resorted to dumping their unsold oil in fields and rivers. It also resulted from seepage of oil when drillers simply abandoned wells without even capping them and petroleum bubbled to the surface. Waste and depressed prices resulted in drastic cuts in drilling activity which eventually dissipated the excess supply. In response, oil prices once again began to rise.

In addition to these economic influences, American property law and the geophysical nature of oil further exacerbated these cyclical supply and price fluctuations. United States law vests the landowner with the rights to minerals under the surface of his land. (In contrast, the laws of most countries separate these interests and vest the valuable rights to the subsurface minerals in the

1. Resources for the Future, Inc. Energy in the American Economy 1850-1975: Its History and Prospects (Baltimore: John Hopkins University Press, 1960), p. 85.

state.) This vesting under U.S. law created intense competition among drillers because petroleum deposits can be drawn from an underground pool without regard to surface property lines. Moreover, oil is mobile so that extraction from any point over the pool diminishes the whole. Because of this mobility, U.S. law places oil in the same category as wild animals, subject to the "law of capture" - - that is, whoever brings oil to the surface owns it. Therefore, if one landowner drilled, others over the common pool quickly followed to extract the oil before their neighbors did.

Competitive drilling among adjoining landowners was detrimental to all parties involved. It created gluts which brought prices down. But, more seriously, it resulted in great physical waste of oil because the high levels of drilling depleted natural pressures (inherent in the geological formations) necessary to bring the oil to the surface. Any temporary advantage one landowner gained from drilling faster than his neighbor was soon lost when all landowners were forced to abandon their wells because it became either technically impossible to lift the oil or financially unrewarding to do so. As one economist concluded: "From the point of view of economic efficiency, conservation or technical efficiency, the law of capture is disastrous."[2] Thus, the impact of these influences - - the legal parameters and the geophysical nature of oil, which accentuated the economics of supply and demand - - created a turbulent oil market in the early years of the industry. The turbulence generated serious concern among investors, consumers and lawmakers that the future of the oil industry and the economic stability of the producing states were jeopardized by the boom and bust cycle, and that the country was rapidly depleting its petroleum resources. In response to these concerns, government and industry both responded but with different solutions.

2. Thomas G. Moore, "The Petroleum Industry", in Walter Adams, ed., The Structure of American Industry (New York: Macmillan Publishing Co., Inc., 1971), p. 128.

## Government Intervention and New Patterns of Business Organization Bring About Stable Oil Prices: 1890-1925

### States Enact Conservation Laws

Governments in the oil-producing states responded to the growing concerns about petroleum among investors, consumers, and politicians by enacting conservation laws in the 1890's. No single or specific definition of conservation emerged, as one study explained:

> No doubt the most commonly quoted statement about conservation was made by President Taft, who said that it is something a great many people are in favor of, no matter what it means. 3

However, in general, the intent of these conservation statutes was twofold: to curtail physical waste of oil that had been so flagrant, and to protect conflicting property rights of multiple owners. To accomplish these ends, the laws regulated producers' drilling practices. For example, some statutes mandated a minimum distance at which producers could space wells, while others dictated the most efficient drilling methods or required abandoned wells to be capped.

By enacting conservation laws, state governments responded to only one of the public's prevalent concerns about oil - - its depletion. This aspect of the public's fear generated a strong consensus for governments to act where other concerns - - over the economic stability of the oil industry or of the producing states - - only gave rise to great controversy. A strong consensus for action to stem petroleum depletion existed, in large measure, because the issue arose in the context of the public's more general concern about the sound use of all of the country's resources, a concern so strong it gave birth to the conservation movement in the 1890's.[4] But in addition, the consensus was further bolstered because of oil's growing importance as a substitute for the much needed but rapidly depleting whale oil. Even with this strong consensus, the passage of conservation laws was not without controversy. Some charged that these

3. Wallace F. Lovejoy and Paul T. Homan, Economic Aspects of Oil Conservation Regulation (Baltimore: John Hopkins University Press, 1967), p. 8.

4. See Samuel P. Hays, Conservation and the Gospel of Efficiency (Cambridge: Harvard University Press, 1959).

statutes were really intended to stabilize oil prices - - that they were price controls in disguise. Members of the industry feared a future of too restrictive prices in a regulated market, while consumers feared prices would be too high. Lawmakers dismissed these charges and tried to ease such fears by including language in the statutes that specifically stated their intent was not to raise or even stabilize oil prices but only to eliminate physical waste. In spite of these disclaimers, any attempt to control oil supplies also affected prices. The conservation regulations at times eliminated some excess supply, and in so doing, evened out price fluctuations. Thus conservation laws emerged as one of the earliest steadying influences on oil prices.

However, conservation laws fell short of eliminating altogether the physical waste that resulted from excess drilling, and thus the accompanying gross price fluctuations. The conservation laws failed because regulation of drilling practices was insufficient to control production and because some producers simply disregarded these regulations. When this happened, states lacked the enforcement authority necessary to police renegade drillers. Oklahoma was the only state that tried to rectify this situation when, in 1909, it empowered an inspector to enforce its drilling regulations. In 1915, Oklahoma went one step further and expanded its regulations to include authority to restrict or prorate actual production levels when the oil supply either reached a level that matched market demand, or when prices fell below the cost of production. Thus lawmakers enlarged the definition of "waste" to include the prohibition not only of physical but economic waste as well. Economic waste meant any "pecuniary losses caused by unduly depressed prices."[5] With this provision, the Oklahoma statute became the first conservation law in the country clearly intended to influence prices. But even Oklahoma's more comprehensive law did not fully solve the problem of sudden increases in supply and the

5. Erick W. Zimmerman, Conservation in the Production of Petroleum (New Haven, Conn.: Yale University Press, 1957), pp. 138-139; and Lovejoy and Homan, pp. 131-135.

accompanying decreases in prices. Although Oklahoma was better equipped to regulate its own state's oil supply, it could not prevent a neighboring state's oil from flooding its market. Between 1890 and 1925, therefore, conservation laws proved to be a contributing factor towards achieving a less turbulent oil market. But they were not the sole steadying influence.

## The Standard Oil Company of New Jersey Gains Monopoly Control

The Standard Oil Company of New Jersey gained monopoly control over the oil market and, as a result, exerted an even more powerful stabilizing influence on prices than the patchwork of state conservation laws. A monopoly may be defined as "anyone who buys and sells a good in large enough quantities to be able to affect the price of that good."[6] Standard Oil, under the ingenious leadership of John D. Rockefeller, acquired this control in less than two decades. The Company's emergence illustrates how one firm became so powerful that it set prices for an entire industry.

The industry had traditionally been composed of many individuals (called "independents") and of small companies, which usually concentrated only in one, or at most two, branches of the industry. Moreover, each had had many competitors, all of whom set their own prices. Frequent price changes were one ramification of this pattern. But Rockefeller changed all that.

Founded in 1870, his Company by 1890 had become involved in all aspects of the industry - - production, refining, transportation and marketing. In business organizational terms, the Company had become vertically integrated. Even more important than its involvement in all sectors of the industry was Standard's domination of all but the production stage. Rockefeller pursued a twofold strategy to achieve this dominance. First, as Anthony Sampson explains, he set out to gain control over the industry's jugular vein - - the transportation sector:

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6. Paul A. Samuelson, Economics, 8th ed. (New York: McGraw-Hill Book Company, 1970), p. 43.

> He [Rockefeller] realised that the only way to dominate the industry was not by producing oil, but by refining and distributing it, and undercutting his rivals by cheaper transport. 7

Once Rockefeller gained control over the transport of oil - - first the railroads and later the pipelines - - he set out to accomplish the second part of his strategy, which was the virtual elimination of his competition.

Rockefeller launched an aggressive merger campaign through which Standard acquired many of its competitors, and when a company failed to accept a merger offer, Rockefeller resorted to unfair marketing techniques to drive it out of business. For example, with one of these techniques, predatory pricing, Standard set its prices in a particular market so low that a competitor was forced to cut prices to match Rockefeller's. Since Standard set such prices often below actual cost, the competitor sustained substantial financial losses. With its extensive and growing network, Standard offset its losses in one market by raising prices in another market from which it had already eliminated competition. Competitors could not sustain themselves for long; no other company was large enough to challenge Standard Oil, which radically departed from the industry's previous organizational pattern. By 1890, Standard - - now renamed the Standard Oil Trust - - had been so successful in eliminating competition in the refining sector that it refined ninety per cent of all petroleum consumed in the country.[8]

By controlling the refining, transportation and marketing sectors, Standard was in a position to set oil prices for the entire industry. Walter Adams explained how this was possible:

> The monopolist can generally charge all the traffic will bear, simply because the consumer has no alternative source of supply. The consumer is forced to pay the monopolist's price, turn to a less desirable substitute, or go without. 9

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7. Anthony Sampson, The Seven Sisters (London: Hodder and Stroughton, 1975), p. 23.

8. Gerald D. Nash, United States Oil Policy 1890-1964 (Pittsburgh: University of Pittsburgh Press, 1968), p. 8.

9. Walter Adams, "Public Policy In A Free Enterprise Economy," in Adams, ed., The Structure, p. 460.

Since few alternatives existed, either with other oil suppliers or other energy sources, Rockefeller's company could extract the monopolist's price. Price changes became infrequent.

Oil companies and state governments tried but failed to challege Standard's stranglehold on the industry, at least initially. However, their efforts eventually gave birth to a national antitrust movement in the late 1880's. Even though Standard's monopoly over the oil market reflected a broader trend of economic concentration in other industries, its size and degree of control made it an extreme example of these developments which generated a much more intense outcry from the public against it than against other companies. The intensity of these reactions was reflected in political cartoons that depicted Rockefeller as the evil monopolist. Thus, the Standard Oil Trust became one of the antitrust movement's prime targets.[10]

## Government Policing Turns to Government Assistance

The federal government proved to be the only entity large, powerful and independent enough to challenge industrial giants like the Standard Oil Trust. In 1890 Congress passed the Sherman Antitrust Act which specifically gave the federal government the authority to regulate economic concentration. The intent of the government's antitrust laws was "to perpetuate and preserve an organization of industry in small units which can effectively compete with each other."[11] Under this law the government attacked Rockefeller's economic empire. In 1906, the Bureau of Competition, which had been established to enforce the Act, sued Standard Oil for restraint of trade through its large holdings and its unfair and illegal business practices, such as predatory pricing.[12] These charges culminated five years later in the U.S. Supreme Court's landmark

10. See Ida M. Tarbell, The History of Standard Oil Company (New York: McClure, Phillips and Co., 1904).

11. U.S. v. Aluminum Company of America, 148 F.2d 416 (C.C.A. 2d., 1945).

12. For a more detailed discussion of the Standard Oil Company's tactics, see John S. Magee, "Predatory Price Cutting: The Standard Oil Case", in Journal of Law and Economics, 1:137 (October 1958).

antitrust decision in Standard Oil Company of New Jersey vs. United States.[13] The high Court ordered Standard Oil to divest itself of its stock in, and day-to-day control over, thirty-eight affiliates which made up the Rockefeller empire.

Most economists agree, however, that the Court's decision had little initial effect on Standard's monopoly position in the oil market.[14] It took six years after the decision was handed down (until 1917) to complete the divestiture, and even then the pattern of operations among the formerly affiliated companies remained essentially intact. Standard of New Jersey (later known as Esso and then Exxon) remained the largest of the now separated companies. But more important, during this period of divestiture, stable oil prices continued - - one of the surest signs of Standard's continued control. After divestiture was finally completed and some economists thought the impact of the break-up would begin to show, the United States entered World War I, and a whole new set of influences came to determine the price of oil.

The exigencies of World War I brought a change in government policy toward the oil industry. Almost overnight, their relationship was transformed from that of adversaries to that of close associates involved in a cooperative effort to increase production and control prices. World War I was the first conflict in which combatants were dependent on oil-powered equipment. As British Foreign Secretary Lord Curzon commented, "The Allies floated to victory on a wave of oil."[15] As the largest producer of petroleum among the Allies, the United States supplied eighty per cent of the oil necessary for the Allied war effort.[16] When this great surge in demand began to drive prices up, the government imposed direct controls that lasted throughout America's involvement in the war; but it also provided added tax incentives for oil companies to encourage the increased level of production and to reward them

13. 221 U.S. 1 (1911).
14. Moore, p. 119.
15. Sampson, p. 60.
16. Ibid.

financially for doing so. Government agents and representatives of the oil industry worked closely to achieve maximum production levels. As a result, the general public's view of oil men began to change, from evil monopolists to trustees of one of society's most important resources.

Although the government dismantled price controls after the war, the relationship between the government and the industry did not revert to the antagonism which had existed before the war. Instead a peacetime policy of cooperation - - sometimes verging on collusion - - began between government and the oil industry. As Gerald D. Nash explained:

> From emphasis on competition and dissolution of monopoly, public policy now stressed cooperation and regulation of business practices. 17

This cooperation emerged because the war had made petroleum's importance - - to the nation's economy, as well as to its national defense - - perfectly clear. Moreover, this recognition emerged at the same time that scientists warned of an impending petroleum shortage, which renewed fears concerning depletion. In 1919, G.O. Smith, director of the United States Geological Survey, predicted that the country had only ten years of oil reserves left.[18] Smith's prediction was based on a persuasive argument: demand for oil had continued to increase at a rapid rate while supply failed to keep pace. Production in the United States actually declined because the high drilling levels during the war damaged some oil fields by depleting natural geological pressures in fields, thereby lowering the amount of oil ultimately recoverable, and because new oil deposits were being discovered at a much lower rate. Given these facts, any administration would most likely have concluded that oil was too important a commodity to be left solely in the hands of private enterprise. But it was Wilson's successor, pro-business Republican President Warren G. Harding, who determined that this relationship would be close and cooperative.

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17. Nash, p. 36.

18. Ibid., p. 43.

The Harding Administration's policy of assistance was evident in numerous ways. For example, the government enacted very favourable tax measures to encourage the industry to explore for, and develop, oil fields. However, the lengths to which the Harding government was willing to go in order to aid the oil industry was most evident in two instances. In the first, the State Department gained entry for American-based companies into the oil-rich Middle East region in which the British and the French held exclusive concessions. Declaring that there ought to be an "open door" to oil development for all the Allied victors of the war, the State Department in August 1922 secured interests for seven American companies in the Turkish Petroleum Company (TPC), the parent company through which the British (the Anglo-Persian Oil Company, later renamed the Anglo-Iranian, then British Petroleum - - BP) and French (Compagnie Francaise de Petroles - - CFP) were developing the region and which in 1928 they renamed the Iraq Petroleum Company.[19] By this action, the State Department assured the development of these important fields would be controlled by a limited number of companies with American-based firms in the majority. In the second instance, the Interior Department delegated the government's public business - - the important task of producing petroleum for the Navy - - to private oil producers. Although political corruption and the Teapot Dome scandal eventually put an end to such delegation, it illustrated the close cooperation between government and industry. [20] However, as significant and important as this shift in government policy was, it still did not assure a stable oil market. For that, private enterprise once again proved to be the more important influence.

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19. These seven American companies were: Standard Oil of New Jersey (Esso, then Exxon); Standard Oil of New York (Socony-Vacuum, later Mobil); Gulf; Atlantic Refining (later ARCO); Pan American Petroleum (Standard Oil of Indiana); Sinclair Oil; and Texas Oil Company (Texaco). In addition to the British, French, and American interests, smaller stakes in the TPC were owned by Royal-Dutch Shell, entrepreneur Calouste Gulbenkian, and the German Deutsche Bank.

20. For a detailed account of the Teapot Dome Scandal, see Carl Solberg, Oil Power: The Rise and Imminent Fall of an American Empire (New York: Mason/Charter, 1976), pp. 80-102; and, Nash, pp. 73-81.

## The Oil Companies Replace the Standard Oil Monopoly with an Oligopoly

Three companies - - Standard Oil of New Jersey, Royal-Dutch Shell and Anglo-Persian - - dominated the international oil market after World War I, as Standard alone had done before the war. Thus, in economic terms, an oligopoly replaced a monopoly.[21] An oligopoly, like a monopoly, is a deviation from the textbook model of perfect competition. But instead of just one company controlling the market, several now shared this power to set prices for the entire industry. As a result, in the years immediately following the war, after one steep increase when controls actually ended, prices changed infrequently and when they did change it was only in small increments.

The oligopoly evolved from the legacy of the Standard Oil Company's organizational structure, a structure embodying vertical integration or involvement in all segments of the oil business. The Supreme Court had not condemned Standard's structure per se, but only the size of this structure and the unfair business practices the Company employed. After Standard was divided up as ordered, the remaining Standard Oil Company of New Jersey continued to be the largest integrated company and thus a formidable entity within the oil business. As a result, it became the model for others to imitate if they were going to compete with this company. As the founder of Gulf Oil, W.C. Mellon, explained, his company had no choice but to become vertically integrated "or else to become in effect part of Standard Oil's production department."[22] Companies that had not been part of Rockefeller's original network, as well as those which had been spun out of his empire, began merging to form vertically

21. The oil industry at this time was not, perhaps, strictly speaking an oligopoly, since there were many producers of oil. The oligopolistic concentration actually took place at the next stage, the refining of oil, which was concentrated in the hands of a few companies. A more accurate term for the industry during this period is "oligopsony", a market in which there are few buyers. See: Samuelson, pp. 465-466; and Neil H. Jacoby, Multinational Oil: A Study in Industrial Dynamics (New York: MacMillian Publishing Co., Inc., 1974), pp. 3 and 30.

22. J.E. Hartshorn, Oil Companies and Governments (London: Faber and Faber, 1967), p. 120.

integrated companies. As a result, while the industry continued to encompass many independents (most still involved only in the production sector), mid-size companies (almost all involved in more than one stage of the industry) emerged as much more prominent. And the three largest companies - - Standard Oil of New Jersey, Royal Dutch Shell and Anglo-Persian - - had such extensive networks that they set prices for the entire oil market.

These major companies did not set oil prices through direct agreements or collusion, but a tacit understanding that stable oil prices were in their common interests. As Edith Penrose explained:

> Each company may endeavor to maintain or improve its own position vis-a-vis the others, but each accepts the restraint that arises from the recognition that such action, perhaps profitable in the short run, would in the long run be defeated by the retaliation of the others. The particular restraint most often exercised is in respect of prices. 23

This indirect control was possible largely because companies that in theory were competitors had considerable information about each other's actions and prices. This too was a result of the Standard Oil case. When the Supreme Court ordered the division of the Standard Oil Trust, it did not seek to realign the underlying ownership of all the newly formed entities. The basic pattern of ownership stayed the same. Thus, large stockholders and boards of directors interlocked. Moreover, as the thirty-eight former affiliates began to merge among themselves, ownership and control were further consolidated, and with it information and interests. Until the mid-1920's, this oligopoly of three majors and several mid-size companies proved to be the most powerful stabilizing influence on the oil market. However, it was not strong enough to counter the changing market forces of the mid-1920's, which resulted in a dramatic oversupply of oil and ushered in another period of price instability.

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23. Edith Penrose, "Monopoly and Competition in the International Petroleum Industry", in Edith Penrose, The Growth of Firms, Middle East Oil and Other Essays (London: Frank Cass & Co., Ltd., 1971), p. 180.

## Market Forces Create an Unstable Market: 1925-1935

A dramatic increase in oil supplies combined with a significant decline in demand resulted in a decade of oil price instability from 1925 to 1935. This glut of petroleum stemmed from several factors: (1) advances in drilling technology that improved overall levels of recoverable oil from a well, (2) increased levels of imported oil, and especially, (3) government and industry policies initiated after the war to encourage exploration and development of fields. By 1929 the situation was bleak. As Walter Teagle, the President of Standard Oil of New Jersey put it: "The oil industry is faced with financial chaos unless the government can help extricate it from over-production."[24] Not all industry officials wanted help, and the government resisted calls for intervention from those who did, even though its earlier policies had contributed to the industry's overall problems. The gap between supply and demand widened as the Great Depression further decreased demand for oil at the same time that the discovery of large new domestic oil fields dramatically increased supply. Oil prices plummeted in response. In 1931, as oil production in Texas alone doubled, the price of its crude oil dropped to $.10 per barrel.[25] Finally, attitudes began to change as those industry and government officials who, after the war, had been so concerned about the possible depletion of oil reserves no longer could ignore the glut. As a result, both sectors - - industry and government - - now turned their attention to restricting production.

## The Oil Industry's Attempts to Stabilize the International Market Through Cartels Fail

The oil companies took their own steps to cope with the surge in supply while they waited for government to act. In the international market, the companies entered into cartel agreements which were intended to limit competition by setting production, pricing and marketing terms. For example, in one instance of the "Pool Association" or "As Is" Agreement (1928), participating

24. Nash, p. 94.

25. Ibid, p. 115.

companies agreed to accept their then current shares of the market and to follow a more orderly schedule for developing overseas oil fields.[26] Although this agreement was legal, because of its nature, companies kept its details secret - - with all of the facts not known until the early 1950's.

This agreement also established a pricing system. Companies consented to relying on the already existing basing-point price system known as the "Gulf-Plus System." Under this system oil prices throughout the world were based on those charged at the U.S. Gulf of Mexico plus standard freight charges from the point of sale to the destination market - - a practice that prevailed long after other terms of this agreement had been abandoned. This pricing system resulted from a practice followed since the earliest days of the industry when prices for different grades and quantities of oil were "posted" in the major domestic oil fields by the buyers (the refiners) who agreed to purchase oil at these prices. Although oil was actually sold at prices above and below these posted prices, at levels which reflected changing market conditions (sales referred to as "actual transaction prices"), posted prices provided a standard to which the market kept returning. When the United States was the only, or at least the major, supplier in the international market such a system had some merit to it. But when the companies formally agreed to follow this system in 1928, they had only one reason. Anthony Sampson observed:

> as American oil was becoming more expensive and threatened by much cheaper oil from Iran and Venezuela, it was a blatant device to keep up prices. 27

U.S. prices, although volatile and now depressed, were still much higher than the prices for oil produced overseas because of the influence of conservation policies.

In addition to the production and pricing measures, this agreement formalized long-practiced marketing techniques designed to enhance the

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26. This Agreement was also referred to as the "Achnacarry Agreement", named after the Achnacarry Castle in Scotland where representatives from the Big Three Companies held their conference to work out the secret agreement.

27. Sampson, p. 74.

companies' profit margins. Companies relied on an elaborate exchange system to swap supply near the destination market but to charge the buyer as if this supply had been bought and shipped from the Gulf of Mexico. This resulted in an overcharge, or what was referred to as "phantom freight." Thus, the company made a higher profit from the difference between the price that oil sold for in Texas and the overseas field, plus the savings from not having to transport it as far. Companies then split the profits made from these swapping arrangements.

These cooperative efforts by the oil companies had limited success. They certainly kept the situation from being as bad as it could have been. They succeeded in curtailing some of the excess supply, in easing the wild fluctuations of oil prices, and in maintaining company profits. But their efforts were not totally successful because any stabilizing influence cartels had was ultimately limited by the fact that they could not be extended to the U.S. domestic market where sources of supply were dramatically increasing. United States antitrust laws prohibited producers from entering into domestic cartels. Moreover, control through cartels was dependent on the big three oil companies maintaining their dominance in the market. This was not possible as new sources of supply provided attractive opportunities and promised handsome profits to new entrants. The make-up of the oil market kept shifting. By the early 1930's, seven integrated companies emerged as majors where only three had existed in the late 1920's. The seven majors, often known as the Seven Sisters, were: Standard Oil of New Jersey; Royal Dutch Shell; Anglo-Persian (BP); Standard Oil of California (Socal); Socony-Vacuum (Mobil); Gulf; and Texaco. These facts left the government as the only entity that could provide a stabilizing force in the domestic market.

## States' Attempts to Control Supply Through More Stringent Conservation Measures Also Fail

Governments at the state and federal level initially did not act to stabilize the oil market because public opinion among lawmakers, industry, and consumers was strongly divided over whether or not they should take any action at all, and if so, what action was desirable. A consensus for the federal government to act was initially absent because the problem of an unstable oil market affected various industries and regions of the country differently. Some of the oil-rich states and many of the petroleum industry spokesmen continued to fear the federal intervention they had fought so long to block. Without a consensus, the federal government could not act. As a result, demands from those states and industry spokesmen who thought differently and wanted a national comprehensive conservation policy went unheeded. But a consensus for further government action could form at the state level where there were often fewer competing interests and sometimes a dominant one. Gradually, as the market became even more chaotic with each new discovery, public opinion began to shift in the oil states where the problem of oversupply was the greatest. For example, when the governor of Texas declared a state of emergency in August, 1931, and sent troops into the East Texas fields to enforce a suspension of all production, a consensus for more stringent conservation laws finally formed. The producing states' lawmakers and industry spokesmen who had feared the restrictions of a more regulated market (and particularly one controlled at the national level) now began to see the possible advantages. Because of this growing consensus, state governments took the first steps to curtail excess supply and to stabilize prices within their own borders.

From the late 1920's to the mid-1930's, most major producing states replaced their earlier conservation laws with more stringent and comprehensive statutes. These laws, patterned after Oklahoma's pioneering example, established market-demand prorating systems. Under this system, the states established overall production ceilings and then divided the permitted production

among individual oil producers according to complex regulatory formulas. Initially, state regulators relied on this statutory authority to raise oil prices immediately by setting production ceilings so low that existing supply was drastically curtailed and the oil glut was eliminated. Once prices were raised, regulators (for the next thirty-five years) used these statutes not to raise prices but merely to support them. Critics continued to accuse regulators of using conservation policies to disguise price fixing even after this shift occurred in regulators' intent. As Edith Penrose explains: "If supply can be reasonably adjusted to an assumed level of demand, there is no need at all to worry about direct control of prices."[28] In a major study on conservation policies, Wallace F. Lovejoy and Paul T. Homan explained how the regulations indirectly influenced prices:

> By its very nature, conservation regulation entails some control over the market structure through which oil prices are determined. It is an error to suppose that regulatory agencies, individually or collectively, "fix" prices. What they essentially do is to specify some of the conditions under which buyers and sellers meet in the market, and by doing this they have a marked effect upon price terms. 29

The crucial condition that regulators tried to maintain in the oil market was a close balance between supply and demand. They achieved this balance by carefully setting production levels to match demand, which at times in Texas meant producers were allowed to produce only several days a month. For example, in 1962, Texas regulators allowed only ninety-seven days for the year, or eight days per month.[30]

But state regulators could not act alone to maintain such balance in both the domestic and international markets. The producing states soon learned that, even though they could better control production within their own borders by enacting more stringent statutes, an influx of oil from neighboring states still could easily disturb an otherwise stable market. Thus, if conservation laws were

28. Penrose, "Monopoly and Competition", p. 186.

29. Lovejoy and Homan, p. 238.

30. John M. Blair, The Control of Oil (New York: Pantheon Books, 1976), p. 165.

to succeed, help from the federal government and cooperation among the producer states was essential.

## State and Federal Governments Create a Web of Laws That Insures the Stability of the Oil Market and Ushers in a Period of Price Stability: 1935-1970

When state laws proved insufficient to maintain stability, a political consensus gradually emerged for the federal government to enact policies in support of them. An extensive complementary state and federal regulatory system resulted which, in cooperation with the oil industry, controlled domestic production and in the late 1950's was expanded to control the influx of imported oil as well. The structure that emerged for oil was unparalleled for any other commodity. By regulating the supply of oil, these policies indirectly controlled prices and made possible a thirty-five year period of stability in the price of oil.

The federal government now took steps to support the producing states' efforts to regulate the nation's oil supply, either when the states lacked the authority to do so or their efforts failed. To foster cooperation among the oil-producing states the federal government sanctioned an agreement, the Interstate Oil Compact, which Congress approved in 1935.[31] The Compact's statutory intent was to conserve oil and natural gas, and to prevent their physical waste, for conservation had been a recognized federal responsibility since the turn of the century. Although the Compact lacked formal authority to impose a national production limit over the member states, it provided an important forum through which the states agreed to discuss common problems, to provide information on their expected levels of demand and intended production limits, and to monitor each others' behaviour to assure compliance. This cooperation among the

31. Article IV of the United States Constitution allows states to enter into interstate agreements, subject to Congress' approval. Another agreement, similar to the Oil Compact, is the Port of New York Authority which enables New York and New Jersey to cooperatively run the three airports they share in close proximity - - Newark in New Jersey and LaGuardia and John F. Kennedy in New York. Such agreements have become common in the twentieth century with the growth of complex policy issues, such as air and water pollution, which require cooperation among ajoining states. See also Zimmerman, pp. 207-210.

producer states engendered trust and brought oil supply under much tighter control, but it did not bring it under as much control as many of the producing states now wanted. The states needed additional help from the federal government.

In 1935, Congress responded by passing the Connally "Hot Oil" Act to stop the interstate shipment of petroleum produced in excess of producers' legally set limits. The Act, named after its sponsor, Texas Democratic Senator Tom Connally, prohibited pipelines from transporting this illegal oil. As a result, the nation's oil supply was brought under even tighter national control. This Act confirmed the federal government's commitment to helping the states stabilize domestic oil prices. Although the federal government was willing to impose direct price controls on oil several years later, during World War II, "conservation" laws provided a peacetime solution to achieve basically the same end.

After the war when imported oil emerged as a threat to the control conservation laws had achieved, the federal government once again took action. Continuing discovery and development of overseas oil fields resulted in an abundant and much cheaper supply of oil which the large oil companies (the majors) imported into the United States. At first, state regulators responded to this increase in supply by adjusting production levels downward in order to prevent a glut. But soon these efforts proved inadequate because this flood of oil had an industry-wide impact on the domestic petroleum market. It upset the balance between supply and demand that state regulators had worked so hard to achieve. It also seriously undermined the economic viability of some of the country's producing regions, as well as of its independent producers. When state regulators adjusted levels of production downward, producers and royalty owners had less revenue, the producing states less tax monies, and producing areas diminished prosperity. More serious still, the rising levels of imported foreign oil eroded the competitiveness of the important domestic independent and small

companies vis-a-vis the larger vertically integrated international companies. The independents, who were largely responsible for discovering and developing the country's major fields, did not have access to the much cheaper international supplies the State Department had helped the larger companies to secure following World War I. Although a few independent and several smaller companies finally gained a foothold in the Middle East during the 1950's, generally only those large companies with foreign affiliates had access to this supply, because very little oil was ever actually sold on the open market. The companies operating in the Middle East were producing arms of the Anglo-American majors and, as affiliates, the production companies "sold" all of their oil to the parent company to refine, transport and market. This "sale" was essentially an accounting transaction. When the parent company of a major imported this oil it undercut the prices the independents charged for their more costly domestically produced oil. Moreover, as state regulators lowered allowable levels of production, independents and the smaller companies that did not have access to this supply faced drastically curtailed revenues which forced many out of business while the majors prospered on fat profits from their over-priced imported products. As a result, the independent segment of the oil industry joined with producing-state governments in seeking relief from the federal government against the large internationally-based oil companies and the consumer-state governments which benefited from this flow of cheaper oil.

The consequence of increasing amounts of imported oil grew more serious and the political debate more intense after 1955 when oil became the country's primary source of fuel. Finally, in response to the commodity's growing importance and to pressure from the independent producers and oil-rich states who proved to be such powerful constituencies, President Dwight D. Eisenhower in 1959 imposed mandatory quotas on oil imports under the authority of the Reciprocal Trade Agreements Act. This Act gave the President power to prohibit foreign oil from being imported, if imports increased at such levels that

they threatened the national security. Politicans quieted opposition as they justified intervention on national security grounds. They argued that because imported oil was transported over water it was susceptible to military action or sabotage. In the early 1960's, this authority was extended to include oil shipped overland from Canada and Mexico as well. Under this programme, imports were set at nine per cent of expected domestic demand (this figure was raised to twelve per cent in the 1960's) and all refiners, whether they imported oil or not, were issued transferable "tickets" permitting them to purchase a certain percentage of this foreign oil. Since not all refiners bought imported oil (particularly those located inland) a complex system developed, whereby refiners who did not import sold tickets to those who did. Refiners fixed the tickets' value at approximately $1.35 per barrel - - the price difference between foreign and domestic oil. The exchange system eliminated any advantage to the purchaser or importer of oil by equalizing the price of foreign and domestic oil, and re-established state and federal regulators' control over the domestic oil supply. As a result, the country returned to a strong and stable domestic oil market.

However, in spite of these advantages, quotas remained controversial. They aided the producing regions of the country at the expense of the consuming areas, and they benefited independent producers, with their domestic operations, more than the vertically integrated companies with their extensive overseas operations.[32] Moreover, regardless of who benefited or who bore a burden as a result of import quotas, all paid in higher energy costs. A cheap supply of oil simply was no longer available to the domestic market. In 1964, M.A. Adleman estimated that Americans paid $4 billion annually in additional petroleum costs because of the import quota programme.[33]

32. See for example U.S., Congress, House, Subcommittee on Oil Imports to the Select Committee on Small Business, "Report on Effects of Foreign Oil Imports on Independent Producers", 81st Cong., 2nd sess., 1950.

33. M.A. Adleman, "Efficiency in Resource Use in Crude Petroleum", Southern Economic Journal, October 1964, pp. 101-122; J. Burrows and T. Domencich, An Analysis of the United States Oil Import Quota (Lexington, Mass.: Lexington Books, 1970).

Americans were not the only ones who paid higher energy costs because of government policies. Although the United States' market was insulated from the world market, the reverse was not true. The nation's leading role as producer and consumer, combined with the still effective "Gulf-Plus" basing price system, inflated the price of oil and petroleum products to consumers throughout the world.[34] As J.E. Hartshorn explained, each time Americans raised the price of their oil, the shocks were felt around the world.[35] Thus, although the impact of import quotas was mixed, it was never seriously challenged since it was a crucial element in the state and federal regulatory system.

The web of state and federal government laws assured the stability and dominance of the domestic oil market. This system, which so tightly controlled the domestic oil supply, was possible because of America's vast oil reserves. The country even had excess production capacity available should demand for petroleum suddenly increase. In 1956 when strikes and sabotage in the Middle East oil fields erupted in response to the invasion of Egypt by the French, British and Israelis to undo the Egyptian nationalization of the Suez Canal (through which approximately two-thirds of Europe's supply of oil was transported), United States regulators simply raised domestic production levels to ensure market stability. The reserves provided the United States with the supply both to dominate the world market and, at the same time, to remain insulated and independent of it. But during these very years of stability (1935-1970), seemingly insignificant changes were taking place--changes which would eventually undermine American dominance.

### The Domestic and International Oil Markets Undergoes Subtle Changes

Changes in both the domestic and international markets occurred so gradually that most went unnoticed. In the domestic market, the most serious

34. See Edward J. Mitchell, U.S. Energy Policy: A Primer (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1974), pp. 29-39.

35. See J.E. Hartshorn, Politics and World Oil Economics: An Account of the International Oil Industry in its Political Environment (New York: Praeger Publishers, 1962), Chaps. IX and X.

trend did not even occur until the 1960's when the country's vast reserves no longer kept up with consumption. The growth rate of proven reserves began to decrease after 1961, slightly at first, but then more rapidly, until in 1967, reserves declined at approximately one billion barrels of oil per year, the same rate at which they had been growing from 1945 through 1960. (Proven reserves are the most conservative estimate of how much oil can be easily recovered from known deposits with the industry's current level of knowledge and technology.)

In spite of this evidence, most geologists still believed that the country had plenty of oil, estimating that reserves ranged from 250 to 590 billion barrels.[36] However, at the same time that U.S. reserves began to decline, domestic consumption began to increase. Social and technological changes resulted in much higher levels of consumption. For example, a shift in the population from city to suburbs meant a greater reliance on the automobile. Moreover, manufactured goods and appliances, particularly the automobile, became more widespread and more powerful. These changes and others were reflected in the statistics of oil consumption, the rate of which increased from an average annual growth of 3.5 per cent from 1950 to 1965, to 4.5 per cent from 1965 to 1970.[37] Those who questioned U.S. consumption patterns, particularly in the 1950's and early 1960's, were largely ignored.[38]

The seriousness of these trends -- the increase in consumption and the decrease in domestic reserves -- was reflected in a decline in experts' estimates of the nation's total petroleum supply. Analysts calculate those estimates by dividing the country's proven reserves by its annual rate of production. The

36. M. King Hubbert, "Energy Resources", Resources and Man (National Academy of Sciences, National Research Council, 1969), p. 48.

37. See Joel Darmstadter and Hans H. Landsberg, "The Economic Background", in Raymond Vernon, ed., The Oil Crisis (New York: W.W. Norton & Company, 1976), pp. 15-38.

38. See President's Materials Policy Commission, Resources for Freedom, Vol. I: Foundation for Growth and Security (Washington: U.S. Government Printing Office, 1952), p. 16; Henry Jarrett, "How Much Should a Country Consume?" in Henry Jarrett, ed., Perspectives on Conservation (Baltimore: Johns Hopkins Press for Resources for the Future, Inc. 1958).

resulting figure provides the projected number of years of oil supply. By 1967, this estimate dropped from an average of twelve years, which had remained consistent between 1945 and 1961 to ten years.[39] In light of these changing circumstances, the country had two options, as John M. Blair explained:

> If the amount of oil produced exceeds the amount discovered, an increase in demand can be supported only by a rise in imports or a drawing down of reserves. 40

Since the federal government resisted any pressure to remove import quotas, the state conservation commission responded by increasing allowable production levels, and thus lowered the nation's reserves. Critics referred to this policy, which emerged with little or no debate, as "drain America first". The consequence (although not immediately apparent) was that the United States was moving towards a serious, unforeseen shortage of domestic oil, and the shortfall would have to be bought on the international market - - at the very time when this market was also undergoing enormous changes.

In the international market, the most significant changes occurred with the emergence of the Middle East as a leading production centre. In 1938, the Middle East and North Africa had supplied only 5.8 per cent of the world's oil. By 1970, this figure had risen to 39.2 per cent.[41] In part, this was because of the region's proximity to the European market where demands increased dramatically after World War II. But the shift was largely due to a change in the location of the world's proven reserves from North America to the Middle East and North Africa. Each year from 1955 until 1970, eighty per cent of the additions made to the world's proven reserves in non-communist regions were made in the Middle East and North Africa, assuring that in the future, this region would increasingly supply the world's oil. [42]

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39. Blair, p. 5.
40. Ibid., p. 7.
41. Darmstadter and Landsberg, p. 33.
42. Ibid., p. 32.

As a result, the producer governments of the region gained new power, which they used to reassert control over their petroleum reserves. Once they had been forced to give up their control to the major oil companies because they lacked the political independence, technical knowledge, marketing networks, and financial resources to develop the fields themselves. The oil companies decided which fields they would develop, at what rate, as well as the level of prices, and royalties to be paid to producer governments. Such governments had had no choice but to accept this arrangement if they wanted their oil resources developed. But they accepted it grudgingly, for they distrusted the oil companies whom they suspected of compensating them unfairly. Gradually, information came to light which supported their suspicions. After World War II, when Great Britain enquired why oil it purchased under the Marshall Plan from the Middle East cost the same as if it had been bought from the Gulf of Mexico, the whole secret "Gulf-Plus" system finally became public knowledge. Disclosure of this system made it clear to the Middle Eastern producer countries just how profitable their oil was - - for the oil companies. Not only was their oil cheaper to produce than American oil (even though it sold at the same price) but it had to be shipped a much shorter distance. Yet the oil companies' compensation to the producer governments did not reflect these higher levels of profitability. Compensation was strictly tied to royalties based on production levels. Moreover, the royalties generally amounted to less than the corporate taxes oil companies paid to their own national governments. For example, in 1949, the Saudi government received only $38 million in royalties from the Arabian-American Oil Company, (Aramco) while the United States government received $43 million in taxes.[43] But that was 1949. Now, as the region's role as leading producer expanded, the governments acquired the power they needed to negotiate for changes.

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43. Leonard Mosley, Power Play, Oil in the Middle East (Baltimore: Penguin Books, Inc., 1973), p. 194. Aramco, like the Turkish Petroleum Company, was a parent company for a group of oil companies involved in joint ventures in Saudi Arabia. It received its first concession in 1933.

One of the first steps the producer governments took was to reclaim some of the lands they had originally assigned to the oil companies. The producer governments demanded that oil companies relinquish vast tracts of land which they had not yet developed. The governments then turned around and offered concessions to other companies, if they promised to develop them. Many firms, previously denied entry into this region, now vied for these concessions. The terms of these contracts reflected the highly competitive environment in which they were negotiated. In one of the first of the new agreements, J. Paul Getty secured a concession from the Saudi government over lands Aramco had been forced to relinquish. Getty offered a $9.5 million down payment, annual royalties of approximately $1 million (or $.55 per barrel), a guaranteed unlimited supply of fuel free to the Saudi government, a contribution to the government's education system, and appointment of one of the King's aides to the company's board of directors. In sharp contrast, Aramco's concession for the same land had provided no compensation beyond royalties (set at approximately $.21 per barrel) on the oil they actually produced.[44] Other companies new to the area followed Getty's example. Some were so eager to secure a foothold in this oil-rich area that they offered even more favourable terms than Getty's.

Naturally, the new concessions forced the companies already established in the region either to improve the terms of their older agreements, with more favourable provisions, or to risk further relinquishments of their leased lands. For example, the Getty Agreement prodded Aramco to begin negotiations with the Saudis to revise its contracts. As the first major company to do so, these negotiations led to a new principle of compensation for those companies already operating in the region. Referred to as the "50-50 principle," Aramco agreed to pay the Saudis fifty per cent of the company's earnings from the sale of Saudi oil. The other major companies quickly followed Aramco's lead, and offered their host governments the same terms. The result was an immediate increase in revenues to the producer governments. For example, Saudi oil revenues almost

44. Ibid., p. 184.

doubled (from $56 to $110 million) in the first year alone after they signed the agreement with Aramco.[45]

The agreements that resulted from these negotiations influenced other oil industry business practices. Standard Oil of New Jersey established the first official posting of Middle Eastern oil prices. Establishment of a second basing point did not result in lower oil prices, even though Middle Eastern oil was much cheaper to produce than American oil, because Standard pegged the prices of the former to the latter. Only the "phantom freight" charges were eliminated. Companies were assumed to have received the publicly posted price for their oil, giving governments a direct interest in the price at which oil was sold. They also resulted in a significant decline in the major oil companies' control over the region. By 1970, the producer governments had forced the first oil companies operating in the region to relinquish much of their original territory. Aramco, for example, by 1963 retained only twenty-five per cent of the land it had leased in its original 1933 contract with Saudi Arabia.[46] And this resulted in competition which, in turn, contributed to an erosion of the major companies' power and control over production throughout the non-communist world. Their control slipped from ninety-one per cent in 1957 to eighty-four per cent in 1961.[47] Although seemingly only a small decline, this shift in the major companies' control was significant in an oil market in which even small amounts of oil could disrupt production and pricing patterns. Moreover, throughout the 1960's, the major companies' control continued to decline. From the producer governments' perspective, these were positive changes which brought financial benefits and increased the producers' involvement in the development of their own resources. But not all of the ramifications of these changes were as beneficial.

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45. Ibid., p. 195.

46. Edith Penrose, "Oil and State in Arabia", in The Growth of Firms, p. 287; see also: Mosley, p. 74.

47. Penrose, "Monopoly and Competition", p. 193.

The increased number of concessions the producer governments granted resulted in competition which also eventually eroded the financial benefits they had achieved, and showed just how limited their involvement and control over their own resource really was. The introduction of so many new companies in the early 1950's resulted, by the middle of the decade, in a significant increase in oil supplies. As a result, oil prices dropped. Although posted prices had been increased as recently as 1957,

> It was soon apparent to the oil industry that the higher prices were being so widely discounted or so poorly translated into product prices that the higher postings meant simply more money paid out .... To the industry the 1957 increase soon appeared as a serious mistake. 48

And in 1959, after the prices at which oil was in fact sold (referred to as actual transaction prices) had been declining for some time, the oil companies sought to reverse their mistake by cutting the posted price of Middle Eastern oil by $.18 a barrel. Then, one year later, in 1960, the companies again decreased the posted price by another $.10, to approximately $1.80 per barrel. This was the actual transaction price at which oil had been selling for several years. Thus, the oil companies simply adjusted posted prices to reflect the market conditions.

The producer governments, understandably, objected to these decreases. A decline in oil prices, first by ten per cent, followed by an additional six per cent, eroded the hard-won gains they had made. For many producer countries in which oil revenues financed their development plans, these cuts created budgetary crises. The price cuts also fueled these governments' growing resentment toward the oil companies. Even though concession agreements made in the 1950's had certainly enhanced the producer governments' compensation and enlarged their participatory role, price fluctuations provided evidence that the companies continued to hold all the power. The companies did not even bother to inform the governments before the new prices were announced to the public.

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48. M.A. Adelman, The World Petroleum Market (Baltimore: John Hopkins University Press, 1972), p. 161.

Five of the producer governments - - Iran, Iraq, Saudi Arabia, Kuwait and Venezuela - - were so offended by companies' decision to cut prices, and by the manner in which they did it, that in response they formed the Organization of Petroleum Exporting Countries, (OPEC) in 1960. The Organization's immediate objective was to restore posted prices to their previous levels before the cuts. Producers vowed to work together against the oil companies, and to develop a just and stable pricing formula. The Organization failed to restore posted prices, but still won an important victory. The five founding members threatened reprisals if the companies instituted further price reductions. Although the oil companies protested loudly, they took this threat seriously and quietly complied; as actual market prices continued to decline, posted prices (upon which companies determined producer governments' compensation) remained stable. OPEC succeeded in breaking the link between posted and actual market prices at the oil companies' expense.

Throughout the 1960's, as OPEC's membership expanded to include Indonesia, Libya, Qatar, Abu Dhabi, Nigeria, Algeria, and Ecuador, its aspirations also grew more ambitious. Their objectives now included the power to reclaim ownership over their oil resources, to limit oil company profits, to set their own posted prices, and to establish a link between the prices producer governments received for their oil and the prices developed western countries charged for their goods (which the developing countries needed to build their economies). By 1970 - - OPEC's tenth anniversary - - its accomplishments fell short of these goals. While OPEC members individually made significant gains in reclaiming control over lands they had once relinquished to the oil companies, and collectively, in renegotiating a higher and uniform royalty rate with the oil companies (which limited company profits), they failed to gain sufficient power either to set prices or to link their oil prices to the cost of western-produced goods.

In part, OPEC's achievements were limited by internal dissension, distrust, and conflict among OPEC members themselves (all firmly rooted in long-standing

internal as well as external rivalries). Even the seven Arab members of OPEC - - Saudi Arabia, Iraq, the United Arab Emirates, Kuwait, Qatar, Libya, and Algeria - - were not united until the 1967 Arab-Israeli War when finally they were able temporarily to put aside their own political and economic differences. The Arab nations' experience in the 1967 war is a telling example of the divisions within OPEC. During the war, Arab members of OPEC (with the exception of Iraq) imposed an oil embargo on western nations supporting Israel. But their action was undermined by non-Arab OPEC nations, who increased their production to take advantage of this opportunity to capture a larger share of the market. Thus, they blunted the effect of the embargo. In the end, the Arab countries sustained more damage from the embargo than did the western nations who were their targets. Saudi Arabia alone lost more than $30 million during one month of the embargo.[49]

In consequence, most of the producer governments' gains in the 1960's were not achieved through joint OPEC action (with the uniform royalty-rate negotiations a notable exception) but on a country-by-country basis. For example, in 1963 Indonesia independently increased its share of profits from the 50-50 split established in the 1950 Aramco Agreement, to a 60-40 per cent ratio. However, each victory, even if it involved only one country, reinforced the power of other producer nations. By the late 1960's, there were signs that some of the internal dissension which had bedeviled them back in the early 1960's was easing. In 1967 this was evident when three Arab OPEC members - - Saudi Arabia, Kuwait, and pre-revoluntionary Libya - - formed their own organization, the Organization of Arab Petroleum Exporting Companies (OAPEC), specifically to unify and foster goals common to the Arab members.

As a result of all of these changes, a confrontation was brewing. Penrose noted at the time:

49. Mosley, p. 344.

> Either the governments or the companies will give way, and if OPEC succeeds in maintaining the position of the governments they may well find themselves with a greater responsibility for their own industry than either they expect or want. 50

Although, in retrospect, Penrose appears to have underestimated the producer nations' will to assert responsibility over their oil resources, she rightly predicted the conflict that would arise in the early 1970's. This conflict would change the influences that had determined oil prices.

In spite of these significant domestic and international developments, the federal and state regulatory system (built on the United States' and American-based companies' dominance of the world market) maintained stable oil prices throughout this long period surveyed above. But after 1970 this would all change.

## A New Period of Uncertainty and Rising Prices Follows Stable Supply and Prices: 1970-1974

After 1970 the U.S. and the world oil market entered a new era that was characterized by uncertainty and rising prices. The changes that had long been underway prior to 1970 - - both at home and abroad - - intensified after this date. They created the oil crisis of 1973-74. United States oil prices had been determined solely by domestic constraints, particularly the state and federal regulatory system which controlled supply from 1935 to 1970. From 1971 they were set by direct federal price controls, and economic and political factors in the international market. World oil prices that had been determined by the U.S. and American-based oil companies now were controlled by foreign producer governments. This transformation of influences was completed just prior to the congressional debate on oil prices in 1975.

### Influences in the Domestic Market Change

In the early 1970's, price controls were the most pervasive influence on U.S. oil prices. President Nixon's August 1971 initial ninety day freeze, followed by a more complex regulatory system, kept the price of all domestically

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50. Edith Penrose, "OPEC and the Changing Structure of the International Petroleum Industry", in The Growth of Firms, p. 235.

produced oil steady from August 1971 to August 1973, when controls were then continued on only sixty per cent of domestically produced oil.[51] The system of controls had the opposite impact on prices from that intended. Instead of keeping prices stable, controls created shortages which, in turn, generated pressure for regulators to increase prices and eventually led to forty per cent of domestically produced oil being decontrolled in August 1973. Shortages of certain petroleum products resulted because controls provided financial disincentives for their production.[52] For example, since controls were imposed during the summer months when prices are traditionally high for gasoline and low for heating oil, the prices were set at those seasonal levels. In response, refiners continued to process more gasoline than they did heating oil even after the demand for gasoline declined and that for heating oil increased due to changing seasonal consumption patterns. Moreover, oil shortages could not be made up with imports because, even though quotas had been raised slightly, controls discouraged imports. By keeping domestic prices set at a time when international prices were rising, regulators precluded importers from passing on to customers the higher costs of oil from abroad. The Nixon Administration, which regarded oil-price controls simply as part of its larger anti-inflation economic package, did not foresee the special problems they created. But once the shortages occurred, they generated pressure on government regulators to raise price levels. However, controls were not the shortages' only cause.

The primary cause of shortages in the early 1970's was the continued decline of domestic proven reserves. Proven reserves decreased at the rate of one billion barrels a year from 1970 to 1974,[53] while consumption rose steadily at

51. For a more detailed account of oil-price controls, see: William A. Johnson, "The Impact of Price Controls on the Oil Industry: How to Worsen an Energy Crisis", in Gary D. Eppen, ed., Energy: The Policy Issues, (Chicago: The University of Chicago Press, 1975), pp. 99-121; Ezra Solomon, The Anxious Economy (San Francisco: San Francisco Book Co., Inc., 1976), pp. 51-67.

52. Johnson, pp. 102-104.

53. Blair, p. 6.

a 4.5 per cent annual rate.[54] Even the addition in 1970 of the estimated 9.6 billion barrels of reserves in the rich Alaskan oil fields did not stem the slide in the nation's remaining oil supply. By 1974, the reserve-production ratio had dropped from its 10 year level to 7.7 years.[55] The country was simply depleting its oil reserves.

During the winter of 1972-1973, oil shortages, which had been predicted since at least the summer before, grew so serious that some Americans were without oil to heat their homes and some industries were without sufficient fuel to run their factories. In consequence, demand grew for government to respond to the first serious peacetime oil supply shortage of the century. However, the policy options were limited. State conservation commissions could no longer increase overall supply by raising allowable production levels, as they had done in the past, because excess production capacity had been depleted. If a state commission increased production levels further, it risked diminishing a field's ultimate output.[56] Only the federal government could develop measures adequate to resolve this crisis.

Having initially resisted the pressures to remove import quotas and having rejected the recommendations of a special Task Force which President Nixon himself had appointed to study the problem, the President finally capitulated in April 1973.[57] After fourteen years, the oil import quota system was replaced with a simple token tariff. In response, imports rose dramatically from the previously mandated twelve per cent, prior to the President's action in April, to thirty-six per cent by October, 1973.[58]

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54. Ibid., p. 6.

55. Ibid., p. 6.

56. See Lovejoy and Homan, pp. 202-211.

57. U.S. Congress, Senate, Committee on Finance, "World Oil Developments and U.S. Oil Import Policies", 93rd Cong., 1st sess., 1973, pp. 42-70.

58. Congressional Quarterly, Continuing Energy Crisis in America (Washington: Congressional Quarterly, Inc., 1975), p. 8.

In addition, the Cost of Living Council, established to administer the wage and price control programme, tried to reverse the financial disincentives that the regulatory system had created and to stimulate domestic production. The Council instituted a number of often confusing, increasingly complicated and frequently changing rules.[59] Finally, in August 1973, the Council instituted the most important of these changes, the establishment of the two-tier price system. Domestic oil was divided into three categories: "new", "released" and "old" oil. "New" oil was exempt from price controls. The Council defined this category as any oil from a given well which exceeded that well's production during a base period designated in 1972. "Released" oil was also exempt from oil price controls. As an incentive for oil companies to increase their domestic production, the Council permitted them to match the amount of new oil they produced with an equal amount that would also qualify for the higher uncontrolled price. "Old" oil was that amount produced at a 1972 base level, minus the "released" oil. It remained controlled at $5.25 per barrel. Thus "old" oil was sold at the controlled price, while "new" and "released" oil sold at the same market price (i.e., international price) as imported oil.

The two-tier price system had the immediate impact of deregulating forty per cent of domestic oil, and initially produced the response regulators had intended. Importers were no longer discouraged from selling overseas oil, and domestic drillers increased their production levels.[60] All this occurred in response to an initial $1.00 price increase for "new" and "released" oil, which at this time was the difference between the two price tiers. But these changes did not solve the nation's problem of diminishing supply. They simply masked it for a time. The remedy was temporary. As the price of uncontrolled oil rose the inequities in the two-tier price system became more blatant. Two petrol stations on opposite corners could be selling a gallon of gasoline at different prices

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59. See: Johnson, pp. 99-121.

60. Johnson, p. 109.

because their suppliers, the refiners, did not have sources of "old" oil. Throughout the country, from one region and even one neighborhood to another, these price discrepancies were evident. Refiners and marketers, who lacked access to the lower cost oil, and their customers who were denied the cheaper products, sought a more equitable allocation of less costly "old" oil. Finally, to even out cost disparities, government regulators developed a complicated programme called entitlements. The programme required refiners who received supplies of "old" oil to make cash payments to those who did not.

The consequences of the government's actions to ease the supply crisis -- removal of import quotas and the series of price control changes -- contributed even further to the country's growing energy problems. By removing controls on forty per cent of domestically produced oil, the U.S. market was no longer insulated from the international market. Domestic prices were now determined in part by prices set overseas. And the international market was undergoing even more dramatic changes than those in the United States.

### Influences in the International Market Change

In the international market the same trends that were already evident before 1970 continued from 1970 to 1974. The role of the Middle East as the world's leading production centre continued to expand, further enhancing the region's importance in the world oil market. Demand for oil also continued to increase. Strong industrial growth in the late 1960's, and particularly in the early 1970's, stimulated this demand in both developed and developing countries, who all turned to the Middle East for additional supply. For example, the amount of oil imported into Western Europe almost doubled from 1962 to 1972.[61] Although Europe and Japan had long relied on the Middle East for their oil, the United States had not. Until 1970, U.S. imports from the Middle East only amounted to

61. Darmstadter and Landsberg, p. 22.

approximately three to four per cent of its total oil consumption.[62] But after 1970, this percentage began increasing even before President Nixon suspended import quotas. Under the quota programme, oil from the Middle East replaced permitted imports which previously had been supplied by Canada and Venezuela because these countries' production capacity had been reached. However, even production in the Middle East could not keep pace with this more rapidly growing demand. As a result of these trends, supply and demand were brought into a much closer balance, and then, imbalanced again in favour of the producers. Oil prices in the international market gradually rose in response. Then, in April 1973, President Nixon suddenly ended U.S. import quotas and made the supply problem even worse. As Penrose explained:

> although United States import demand was instrumental in creating and continuing the crisis, the United States did nothing either to control it or to manage the way it hit the market. 63

The market responded with even higher oil prices.

As a result, the producer governments' power continued to grow, and they used this power to further the objectives they had outlined in the 1960's. The year 1970 began with producer governments demanding that the oil companies renegotiate their contracts. The year 1974 ended with the producer governments dictating their own terms of agreement to the companies, and setting oil prices in the international market. The events in between these years show how this dramatic transition occurred.

Libya and Algeria, two of the most militant oil producers, initiated negotiations in 1970 when they threatened to nationalize their oil operations if the companies did not raise posted prices and increase tax revenues to them. While Libya's Colonel Muammar al Gaddafi negotiated with the companies, Algeria grew impatient and nationalized its own oil operations.[64] Algeria's action provided further evidence that circumstances had clearly changed. After

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62. Ibid.

63. Penrose, "The Development of Crisis", in The Oil Crisis, p. 48.

64. Libya followed suit in 1971 when it nationalized British Petroleum's oil operations.

Algeria's action the companies took more seriously Gaddafi's threats, and he won his demands. This contrasted sharply with the oil companies' response in 1951 when Mohammed Mossadeq attempted to nationalize Iran's oil fields and they retaliated with a boycott of Iranian petroleum, while their governments connived in his overthrow. Even more important, Algeria and Libya's successes were not limited to those countries, but set a precedent for all of the oil producer countries, as Penrose noted:

> The Libyan government, thus supported and willing to risk extreme action, forced a settlement on the companies that irrevocably broke the pattern of the past. 65

The governments of producing countries now had enhanced power to bargain with the companies. And bargain they did.

In December 1970, OPEC nations adopted a common strategy to increase their revenues. Two new industry-wide agreements resulted in 1971. For the purpose of these negotiations, producer countries divided into two groups. Persian Gulf countries signed the Teheran Agreement, and the more militant Mediterranean countries signed the Tripoli Agreement. Although prices were set slightly higher in the Tripoli Agreement, the other terms were very similar. Both included a five year commitment, a schedule of automatic price increases designed to keep pace with the projected inflation levels, and an increased share for producer governments in the companies' profits (an 80-20 division rather than the 50-50 agreed to in the 1950's).[66]

The producer governments' growing power was further confirmed when unforeseen circumstances undermined these agreements, and the oil companies capitulated to further demands for additional revisions. Within a year after OPEC members signed the 1971 Teheran and Tripoli Agreements, inflation had risen much faster than the parties had anticipated. The agreements thus failed to provide price increases that kept pace with inflation. In addition, the

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65. Penrose, "The Development of Crisis", p. 41.

66. Ibid., p. 49.

agreements stipulated oil prices in U.S. dollars, as was the industry's common practice. The dollar, as the backbone of the international monetary system since the Bretton Woods Agreement (1944), could be converted into gold. Other currencies had a value in relation to the dollar. But six months after these agreements were signed, President Nixon suspended the dollar's convertibility into gold, an action which threw the international monetary system into a crisis. Currencies floated without relation to one another until countries finally adopted a new system in the Smithsonian Agreement (1971); this restored order, but not without a loss to the producer governments. In this agreement, the dollar was formally devalued by ten per cent. (A second devaluation occurred in 1973.) Thus, the disorder and uncertainty that characterized the market, followed by the devaluation of the currency relied on to provide a standard of value, obviously undermined the intended financial gains of the agreements.

The agreements also failed to provide producer governments with an increased share of the profits. Neither the companies nor the producer governments anticipated that increasing demand for their oil would result in actual transaction prices rising above the posted price levels on which companies calculated revenues to the producer governments. Until 1960, actual market prices, though generally lower than posted prices, were related. In 1960, OPEC members had demanded that companies sever this connection between the two because actual market prices were declining. Now, with actual market prices rising above posted prices for the first time, OPEC members found that their protective action of the 1960's limited their potential profits in the 1970's.

Faced with these developments, producers' demands for revisions were clearly understandable. The fact that the companies complied is further evidence of the OPEC members' still growing power. In January 1972, an addendum was made to the 1971 contract. Referred to as the Geneva I Agreement, it provided a new schedule of quarterly price increases calculated on

a complex formula of a "basket" of currencies. In June 1973, after the second devaluation of the dollar, another addendum was added, the Geneva II Agreement, which raised the price of crude oil by twelve per cent, to $2.90 per barrel. However, in spite of these revisions, producer governments' share of the profits fell short of the 80-20 percentages agreed to in the 1971 agreements, because of the continual growth in demand and the accompanying increase in market prices which still ran ahead of posted prices. Governments instead received only sixty-four per cent of the profits, compared to oil companies' thirty-six per cent.[67] Thus, producer governments demanded further revisions. Meetings to negotiate these changes were scheduled for 8 October 1973.

The timing of these negotiations proved more important than the fact that they were scheduled at all because they coincided with the outbreak of the "Yom Kippur War." On 6 October 1973, just two days before the negotiations were scheduled to begin, Egypt and Syria invaded Israel. Although the tensions that provoked the war were not new, the international implications of the conflict had a broader impact than previous outbreaks. Members of OPEC and OAPEC took separate but almost simultaneous actions in October 1973 to curtail the world's oil supply and to increase oil prices. The oil crisis resulted, as Penrose explained:

> . . . from the progressive interaction of three separate historical developments. Each of these developments had its origin in circumstances unrelated to the others and long preceeding the period of discussion. Each developed independently, but each was approaching its own "crisis" or "turning point," at the beginning of the decade. As it moved toward its own crisis, each interacted with and reinforced the others and produced a concatenated series of events that culminated in what we loosely call the "oil crisis". 68

These historical developments were the growing dependence of western countries - - particularly the United States - - on oil from the Middle East, the resulting enhancement of the producer governments' power, and the worsening political conflict in the Middle East between Arab nations and Israel. Although even before October, 1973, oil prices had begun to rise steadily in response to

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67. Ibid.

68. Ibid., p. 39.

these economic and political changes, after this date price increases accelerated. From the autumn of 1973 to the end of 1974, prices increased nearly fourfold.[69]

Negotiations between OPEC and the oil companies began 8 October as scheduled. It is thought that producers initially demanded an increase of between $2 and $3 per barrel, while the oil companies only offered $.45.[70] But when the companies requested a recess on 12 October producers decided to break off further negotiations and to seize this opportunity to set their own prices. The crisis began on 16 October 1973, when OPEC announced a seventy per cent increase in the posted price of oil, which went from $3.01 to $5.12 per barrel. (Market prices then averaged approximately $3.66.) Their intent was not just to increase prices but to re-establish a link between posted and market prices, and to set the former (upon which taxes and royalties were calculated) at forty per cent higher than the latter. Until this time, oil companies had always determined prices in the international market. Now producer governments were in a position to assert their own power and force the market to meet their prices.

The Arab-Israeli War only served to further bolster producer governments' determination to assert this power. As the Middle East Economic Survey concluded:

> the new Arab-Israeli war probably stiffened the resolve of the Arab price negotiators not to get caught up in any more long drawn-out sessions with the companies. 71

It was the Gulf states (Saudi Arabia, Iran, Iraq, Kuwait, the United Arab Emirates, and Qatar), particularly the Arab members, that led OPEC in recognizing this opportunity to begin setting prices for their own resources.

But the Arab producers also recognized another important opportunity. The same economic and political changes that enabled OPEC to set oil prices also made it possible for the organization's Arab members to use their oil as a

69. Ibid., p. 51.

70. Ibid., p. 49.

71. Middle East Economic Survey, (hereafter MEES), 19 October 1973, p. 1.

weapon to try and coerce western governments into supporting their regional political objectives. For many years Arab producers had asked repeatedly for western help in bringing about a diplomatic solution to the region's long-standing hostilities between Arab countries and Israel, that is, for the United States to put pressure on Israel. Arabs grew increasingly frustrated when they felt their requests were ignored. In 1967 during the "Six Day War", Arab producers became so desperate that they withheld their oil in an attempt to demand assistance in resolving the region's political tensions. This did not force the United States to respond as the Arab nations had hoped, or even to recognize their growing sense of frustration. After the 1967 War, their frustrations grew as Israel continued to occupy Arab territory. This occupation stretched into the Sinai, included Jerusalem and the West Bank of the Jordan River, and encompassed the Golan Heights. During this period Arab nations intensified their pleas for help which, when unanswered, changed to threats. If western governments would not bring their influence to bear on Israel, the producers threatened retaliatory action. They would withhold their oil.

On 18 October 1973, just two days after OPEC had announced its price increases, members of OAPEC (except Iraq) announced a five per cent production cut, and a plan for additional cuts each month that Israel continued to occupy Arab territory captured in the 1967 "Six Day War." Thus, even though the immediate cause of the oil crisis - - a price increase - - was not the direct result of resumed hostilities between the Arab countries and Israel, the second cause of the crisis - - supply shortages - - was. As Ian Seymour analyzed OAPEC's intent:

> . . . the Arabs are giving notice that they do not intend to continue doing favors for nothing, and that any country wanting to ensure a secure supply of oil will in the future have to demonstrate its goodwill towards the Arab world in a positive fashion.
>
> This, of course, implies that mere neutrality is no longer enough; concrete steps against Israel will henceforth be required. 72

Seymour's assessment appeared to be supported by OAPEC's own statements, when they announced "that reductions in output should not affect any friendly

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72. Ian Seymour, "The Oil Weapon", MEES, 19 October 1973, p. 3.

state which has extended or may in the future extend effective concrete assistance to the Arabs."[73]

The seriousness and confidence with which OAPEC intended to use its oil weapon was evident 19 October when Saudi Arabia announced an embargo against the United States.[74] President Richard M. Nixon failed to heed King Faisal's warning that if the country resupplied Israel with military equipment the Saudis would take punitive action. Other Arab nations joined Saudi Arabia, including Iraq, and within a week the embargo was expanded to include the Netherlands as well because of its pro-Israel policies. These actions served as a dramatic warning to other countries.

There was little the western countries could do but oblige. Some nations responded with conciliatory statements supporting the Arabs' position, but stopping short of breaking off diplomatic relations with Israel altogether. Others did nothing. A few tried to stand up to the Arabs. Initially, members of the Nixon Administration threatened to retaliate with economic and military action.[75] To back up these threats, President Nixon placed American military forces on a world-wide alert. But military action could not provide a resolution of the difficulties. Thus, the Nixon Administration had to rely on diplomatic efforts, which continued throughout the crisis.

By November, OAPEC had already instituted production cuts of approximately twenty per cent of its September levels, and no end was in sight when they voted for an additional five per cent cut for December. Then in December, OAPEC decided to forego the five per cent production cuts and an easing of the crisis seemed imminent.[76] However the impact on prices was

73. "Official 17 October Communique", MEES 19 October 1973, p. iii.

74. See U.S. Congress, Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, "U.S. Oil Companies and the Arab Oil Embargo: The International Allocation of Constricted Supplies," 94th Cong., lst sess., 1975.

75. "Excepts From the Kissenger News Conference", New York Times (NYT), 22 November 1973; "This Week's News", MEES, 7 December 1973.

76. "Arabs Ease Oil Curbs for Europe and Japan But Not For Dutch or U.S.", NYT, 26 December 1973.

already dramatic.[77] An auction Iran held in December brought record-breaking prices of $9 to $17 per barrel.[78] Then in January, OAPEC actually instituted a ten per cent production increase in order not to penalize those countries that had made conciliatory statements. But this did not ease the pressure for even higher prices. At their January meeting, OPEC announced further increases, and the official posted price was doubled to $11.65 per barrel, while OAPEC continued its embargo against the United States and the Netherlands, which brought further price increases still. Finally, on 18 March 1974, the embargo was lifted. Although the crisis had officially ended, its ramifications were just beginning.

OPEC and OAPEC actions had broad and long lasting economic and political ramifications. Since the late 1960's, inflation had been a world-wide problem. Thus, the quadrupling of petroleum prices in such a brief time could only worsen this already serious situation. Such dramatic price increases would also result in an unprecedented transfer of between $60 to $100 billion dollars from consumer countries to the producer nations.[79] The oil crisis also signaled a redistribution of power; the producer countries clearly gained power while the consumer nations lost it. These, and other ramifications, required governments throughout the world to modify not only international economic, political, and foreign policies, but their domestic policies as well.

## The U.S. Government Responds to the Oil Crisis

Government action in response to the oil crisis -- by both Congress and the President -- at first appeared timely. Only two weeks after OAPEC announced its embargo against the United States, President Nixon announced

77. Bernard Weinraub, "Oil Price Doubled by Big Producers on Persian Gulf", NYT, 24 December 1973.

78. "This Week's News", MEES, 14 December 1973.

79. Bruce K. Maclany, "OPEC's Billions," The Brookings Bulletin, Vol. 15: 2, Fall 1978; Edward R. Fried and Charles L. Schultz, eds., Higher Oil Prices and the World Economy: The Adjustment Problem (Washington, D.C.: The Brookings Institute, 1975); Robert Z. Aliber, "Oil and the Money Crunch," in Eppen, ed., Energy, pp. 82-95.

"Project Independence." In a nationally televised address Nixon warned, "We must . . . face up to a very stark fact: We are heading toward the most acute shortages of energy since World War II."[80] He proposed total independence from foreign oil as the solution.

> Let us set as our national goal, in the spirit of Apollo, with the determination of the Manhattan Project, that by the end of this decade we will have developed the potential to meet our own energy needs without depending on any foreign energy sources. 81

Following his speech, the President sent Congress a long list of requested measures to launch his new programme.

Members of Congress were already embroiled in a flurry of activity of their own. Within the month after the imposition of the embargo, members sent the President two major energy bills which Nixon signed into law. One bill, the Trans-Alaska Pipeline Authorization Act (PL 93-153), sanctioned construction of the Alaskan oil pipeline, while the other, the Emergency Petroleum Allocation Act, required the President within 30 days to institute a nation-wide mandatory fuel allocation and price controls system. Although intended as a temporary measure, the EPAA was clearly the more important of these two bills because it designated the federal government as regulator and arbiter of the domestic oil market. No longer were oil-price controls simply part of the economic sanctions intended to stem inflation. Controls were now part of the federal government's energy policy, intended to minimize the serious economic impact of the fuel shortages and to distribute more fairly the inadequate supply of oil.

The passage of these bills initially raised expectations that Congress, prodded by the crisis, would respond rapidly with other important legislative solutions. However, both the Senate and House were already in the final stages of considering them when the oil crisis erupted in October. Pressure for the

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80. Cited in Congressional Quarterly, Energy Policy, 2d ed., (Washington: Congressional Quarterly, Ind., 1981) p. 137.

81. Ibid.

enactment of EPAA had resulted from the gasoline shortages of the summer of 1972 and heating oil shortages during the winter of 1972-1973. Thus, the bill's timing was misleading. Beyond the two significant bills - - TAPAA and EPAA - - Congress' track record on energy in 1973 was not good. Although embroiled in lengthy and controversial hearings, mark-up sessions and debates on numerous proposals, members were able to pass only two additional energy measures - - both minor and both of which President Nixon had requested. One bill set a fifty-five miles per hour national speed limit; the other continued daylight savings time. Congress even delayed its adjournment in an attempt to pass other more comprehensive energy bills, but without success.

The congressional energy debate continued at a fevered pitch when members of Congress returned from their Christmas recess while the oil crisis and embargo continued during the winter of 1973-1974. But once the embargo ended in March 1974 and the "oil crisis" ended, the pressure that had kept energy as the legislature's central focus dissipated. A major reorganization of the government's bureaucracy dealing with energy had been approved, including the establishment of the Federal Energy Administration (FEA) to administer the allocation and price controls that the EPAA authorized, but only minor new substantive policy decisions were made. Instead, Congress chose to extend the temporary measures it had enacted (for example, the mandatory allocation and price system, and the fifty-five miles per hour speed limit).

The President's record was not much better. Although Nixon's bold proposal for "Project Independence" appeared to offer apparent long-term solutions, it was a highly unrealistic plan to begin with and one which remained largely in proposal form because the President was too preoccupied with the Watergate scandal. Thus, as this brief record indicates, the legislative measures enacted in response to the 1973-1974 oil crisis were temporary actions without

long term solutions to the country's serious energy problems.[82]

Congress Debates the Oil-Pricing Issue in 1975

In January 1975 - - just ten months after the oil crisis officially ended - - the 94th Congress convened. American policies did not yet reflect the sweeping changes which had taken place. A Ford Foundation study concluded:

> The fundamental fact remains that the United States has entered a new age of energy, and we have not yet adjusted our habits, our expectations, and national policies to the new age. 83

A United States energy policy, particularly an oil-pricing policy, was one of the legislature's top priorities. Members of Congress set out to provide one in 1975, and a complex and controversial debate resulted.

The oil-pricing issue was central to this debate. The question posed was whether the federal government should continue controls on domestic oil prices. The choice raised important and complex political, economic and social questions with positive and negative side effects. But at the heart of the matter was the question of who would or should control U.S. oil prices. Although a consensus had emerged in Congress on the more general objectives of an energy policy - - that is, to increase domestic production, to decrease imports, and to encourage conservation - - there was little agreement on the specific question of the oil-pricing issue. Members of Congress were deeply divided on the issue, generally along party lines; a majority of Democrats supported controls and most Republicans opposed them.

Republicans argued that controls should be ended. They opposed government intervention in the economy on ideological grounds, and so opposed

82. For a more detailed discussion of legislation during this period, see U.S. Congress, Senate, Committee on Interior and Insular Affairs, "A Review of Energy Policy Activities of the 92d Congress," 93rd Cong., lst sess., 1973. Serial 93-1 (92-36) Committee Print; U.S. Congress, Senate, Committee on Interior and Insular Affairs, "Highlights of Energy Legislation in the 93d Congress," 93d Cong., 2d sess., 1974. Serial 93-38 (92-73), Committee Print.

83. Energy Policy Project of the Ford Foundation, Final Report, A Time to Choose America's Energy Future (Cambridge: Ballinger Publishing Co., 1974), p. 1; See also A. Lawrence Chickering, director, No Time To Confuse: A Critique of the Final Report of the Energy Policy Project of the Ford Foundation (San Francisco, California: Institute for Contemporary Studies, 1975).

extension of price controls. Citing the ill-effects - - of which there were many examples - - since controls were first imposed, they argued that prices should be established by market forces free from the federal government's interference. In the free market, higher prices would result, which, they argued, would provide the necessary incentives to achieve other energy policy objectives such as increased domestic production which would lower demand for imports, and encourage conservation. Although they argued that the economic impact of such price increases would be minimal, they proposed a tax on oil company profits. Money collected from this tax would then be rebated to consumers and some segments of industry. Thus dollars spent on the expected higher energy costs would be recycled back into the economy.

Democrats favoured extending controls. They argued that the choice was not whether the market or the federal government should set prices, but whether the U.S. federal government or the OPEC governments would do so. Moreover, they asserted that international price levels, to which domestic prices would rise if uncontrolled, were artificial. These prices were determined as much by political pressures as economic ones. Thus advocates of controls argued that if the U.S. government did not set prices, foreign governments, whose actions were unpredictable, would. They rejected, as unequitable and economically unsound, reliance on higher oil prices as a means to achieve other energy policy goals.

The most controversial point in the debate concerned the difference of opinion over the economic impact if controls were ended. Advocates of controls argued that doubling the price of sixty per cent of all domestic oil would result in serious, detrimental economic effects that might send the country into a depression. Because of this risk, more than for any other reason, they favoured controls.

The controversy that engulfed the oil-pricing issue reflected a major transformation in the politics of energy. As David Howard Davis explained,

"... the events of the 1970's brought the private world of energy politics to public attention."[84] This change occurred because the oil-pricing issue affected people differently in 1975 than it had before 1970, and, as a result, the political environment was transformed. In addition, the congressional environment was also changing. A reform movement, which had been underway, challenged the basic conservatism and undemocratic aspects of Congress. Nowhere was the reform effort more extensive, and its impact on policy more evident, than in the House of Representatives.

84. David Howard Davis, Energy Politics, 2d ed. (New York: St. Martin's Press, 1974), p. 3.

# CHAPTER THREE

## The House of Representatives Adopts an Oil-Pricing Policy

During the first session of the 94th Congress, the Democraticly-controlled House of Representatives attempted to initiate and develop an oil-pricing policy. The development of this policy began on 13 January 1975, in the opening days of the new Congress. Speaker of the House Carl Albert (D. Okla.) held a press conference and announced:

> The 94th Congress . . . must assume a responsibility for decisive and resourceful leadership . . . . The Nation at this juncture could ill-afford a passive Congress which did no more than await and then react in a leisurely, piecemeal fashion to executive recommendations. 1

The executive, diminished by Watergate and presided over by a non-elected conservative Republican, appeared no match for a legislature dominated by a confident liberal-Democratic majority. Await executive recommendations the House did not. At the press conference Albert rejected Republican President Gerald R. Ford's proposals, including his oil-price decontrol measure. Instead, he outlined in general terms the Democrats' energy and economic policies, which included a proposal to continue oil-price regulations under a general economy-wide Wage and Price Controls Program. On the same occasion, the Speaker also announced that he had established a Task Force on Energy and the Economy to develop his proposals into specific, comprehensive policies, from which committees would then write detailed legislation. Later, the Speaker set a ninety-day deadline for completion of this process.

These were unusual actions. They announced the Speaker's intent - - shared by House members - - to play a new, stronger, and more independent role in developing national policies. No Speaker in recent memory had announced a party policy. Moreover, the Task Force was the first one in the

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1. Congressional Quarterly Weekly Report (hereafter CQ) (Washington, D.C.: Congressional Quarterly, Inc., 1975) 18 January 1975, p. 145.

chamber's history. This new procedure departed from the usual one that had characterized Congress for most of the century - - a President sent Congress specific legislation that House and Senate committees then tailored to their liking. A break from this old pattern seemed possible because of important changes within the House, and in the legislature's relationship to the executive branch.

The most evident of these changes was first the large numerical majority the Democrats enjoyed. The ratio of Democrats to Republicans increased slightly as a result of the 1972 election, and dramatically in 1974. The Republican President's involvement in, and handling of, what popularly came to be known as the Watergate Affair discredited the minority party. In response, voters elected seventy-five new Democrats to the House, which gave the party a two-to-one majority in the 94th Congress. With these odds, Democrats boasted of their invulnerability while Republicans decried the evils of a "veto-proof" Congress.

Second, from 1970 to 1975 the chamber's membership underwent a major ideological shift.[2] Conservative members dramatically decreased in number. Conservative southerners alone, long a powerful fraction in the Democratic Party, declined from an average of forty-two per cent of the party's delegation in the 1950's to a mere twenty-eight per cent in 1975.[3] Moreover, the conservatism of this group had also declined. The 1965 Voting Rights Act brought massive registration drives throughout the south which resulted in dramatic increases in the number of black voters previously disenfranchised. These new voters encouraged many southern Democrats to become more supportive of liberal economic and social issues which they had previously opposed. Moderate and liberal members - - once a minority - - emerged as a majority. This shift

2. Lawrence C. Dodd and Bruce I. Oppenheimer, "The House in Transition," in Dodd and Oppenheimer, eds., Congress Reconsidered (New York: Praeger Publishers, 1977), p. 24.

3. Norman J. Ornstein and David W. Rohde, "Shifting Forces, Changing Rules, and Political Outcomes: The Impact of Congressional Change on Four House Committees," in Robert L. Peabody and Nelson W. Polsby, eds., New Perspectives on the House of Representatives, 3d ed. (Chicago: Rand McNally College Publishing Co., 1977), p. 189.

resulted not only from the election of so many new Democrats to the House, but from an unprecedented turnover in the membership of both parties. By 1975, the 435 members of the House actually contained 200 new faces -- members who had not been there five years earlier.[4] The freshmen class of 1974 -- with ninety-two members, was one of the largest in the chamber's history. These new members were different from their predecessors. They were independent-minded, and characteristic of the post-Watergate era, they questioned those in authority. The organization of the freshmen caucus at the outset of the 94th Congress was one of the first indications that they intended to play the game of congressional politics by a new set of rules. [5]

Third, and most important of the internal changes which generated optimism, were the reforms adopted from 1968 through 1975; these had redistributed the power and resources to initiate and develop policies. The average member of the House now shared in the power which committee barons had once monopolized -- and used to impede policy-making. Yet at the same time that these changes decentralized powers, members also adopted "centralizing" reforms that enhanced the powers of the Speaker and majority party Caucus. This was an attempt to strengthen sources of leadership and unity within the chamber, but it had unexpected and unintended effects.

Fourth, these changes (the Democrats' numerical majority, the ideological shift, and the reforms), combined with the consequences of Watergate and the confidence of new members, brought about a greater equality with the executive branch. Congressional-executive relations -- weighted, for most of the century, in favour of the executive -- had already begun to shift in the 1970's because of the Watergate debacle. The weakening of the executive reawakened legislative assertiveness and, ultimately, compelled President Richard M. Nixon to resign.

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4. Ibid., p. 186.

5. Spencer Rich, "New Freshmen in Congress," Washington Post, 26 December 1975; Herbert B. Asher, "The Changing Status of the Freshmen Representative," in Norman J. Ornstein, ed., Congress in Change: Evolution and Reform (New York: Praeger Publishers, 1975), pp. 216-239.

House members' role in Nixon's resignation enhanced their confidence. By 1975, merely one year later, the House was enjoying even greater power; the country was ruled by an appointed President (Ford) and a Congress which had just received a resounding voter mandate. But it was the partisan and ideological shifts in the chamber that led members seriously to question their dependence for policy initiatives on a non-elected President of the opposition party. The House reforms further enhanced members' confidence, which in turn prodded them to try and develop their own policies.

As a consequence of all of these changes, members of Congress, the press and observers held very high expectations at the outset of the 94th Congress that the House could initiate and develop a national energy policy (which included an oil-price control policy) - - independent of the President. Congressional revival was now being characterized as the arrival of "congressional government."[6]

However, by May 1975, just five months after the 94th Congress had convened, these observers' hopes were dashed. The Speaker's deadline had passed and the House had not yet developed an energy bill. Members were not even close to achieving this goal. Moreover, the obstacles that members encountered showed that the changes had not transformed the House into the efficient legislative body some had expected. Although the overwhelming majority of Democrats and the chamber's ideological make-up fostered members' commitment to developing their own oil-pricing policy, it did not make taking this action any easier than in the previous Congresses. The reforms did significantly change the chamber's decision-making process; they did not facilitate or create the institutional mechanisms for policy-making independent of the President (as Speaker Albert had declared was their intent). Indeed, they may have made it harder.

In the President's legislative role vis-a-vis Congress, nothing seemed different. Ford - - in spite of these obvious changes - - proceeded as had his

6. Joanna R. Shelton, "Congressional Government: Can It Happen?," CQ, 28 June 1975, pp. 1331-1332.

predecessors. He submitted legislation to Congress, then lobbied members to adopt his proposals. On 31 January he sent Congress the Energy Independence Act (H.R. 2633) which the Speaker divided among four standing committees: Armed Services; Interstate and Foreign Commerce; Banking, Currency and Housing; and Ways and Means. Although members had set out differently, by May they were responding to most of the legislative proposals in the President's bill in the old way. On issues where the President sent Congress legislative proposals, members relied on these rather than developed their own. This was discouraging to all those who expected change; commentators now questioned whether Congress could act at all.

Finally, House members did act, yet without the independence or vigour Albert's statement promised. Despite Ford's relatively weak position, and his blundering attempts to get his way, the energy bill congressmen finally adopted as their own was mostly the President's bill with some revisions and a new title, the Energy Conservation and Policy Act (EPCA). Although Ford did not propose the oil-pricing policy included in the bill he was a major influence in determining its final content. By proposing his own bill and taking administrative measures, some of which were subject to congressional review, Ford set the parameters of the debate. Then by struggling to have his opposing policies adopted he swayed the members' oil-pricing choices at crucial points in the chamber's deliberations. This battle dominated congressional-executive relations throughout the first session of the 94th Congress, and the chamber's oil-pricing policy was the product of it.

This chapter traces the development leading to the oil-pricing policy's adoption and shows the changing patterns and role of decision-making activity within the House.[7]

7. For a superficial account of the legislative history of H.R. 7014, see Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity To Resolve Energy Issues," Legislative Studies Quarterly, vol. 1 (February 1980), pp. 5-30.

## The House Tries to Develop Its Own Oil-Pricing Policy

The development of the oil-pricing policy illustrates the reforms' impact upon House decision-making. First, however, it is important to suggest how this policy probably would have developed prior to reforms.[8]

If the oil-pricing issue had emerged in the pre-reform House, the course and substance of the legislation would have been different. (See Chapter One, pp. 13-30.) The President would have sent Congress a proposal; in the House the Speaker would have referred the measure to the committee with jurisdiction; and the relevant committees of both chambers would have proceeded to revise the President's bill.

Committees, as the workshops of Congress, have historically been the forum for policy choices. Woodrow Wilson, and a host of later commentators, have made precisely this observation.[9] Usually, committees start their work with hearings, which provide members with further substantive information on the issue, as well as knowledge about the political impact of the policies under consideration, since they serve as a licensed forum for pressure groups.[10] Mark-up of a bill--during which members and their staffs make the actual revisions--follows. The chairman, as the recognized leader and power within the committee or subcommittee, usually had the final word on what changes would be made. Committee members (particularly party colleagues) usually deferred to his decisions on these matters. Committee support showed the chairman he had largely satisfied the limited range of interests or individuals, and it was safe to go to the floor. Once the chairman secured the support he needed within his own committee, he petitioned the Rules Committee to

8. For example, see Stephen K. Bailey, Congress Makes A Law (Boston, Little Brown & Co., 1960); James L. Sundquist, Politics and Policy (Washington, D.C.: Brookings Institute, 1968); Daniel M. Berman, A Bill Becomes A Law: Congress Enacts Civil Rights Legislation, 2d ed. (London: McMillan, 1966).

9. Woodrow Wilson, Congressional Government (New York: Houghton Mifflin, 1913), p. 79; Randall B. Ripley, Congress: Process and Policy, 2d ed. (New York: W. W. Norton & Company, 1978), p. 153.

10. David B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1951), p. 372.

schedule his bill so he could get to the floor. The Rules Committee had the power, in denying or granting a rule, and in setting its terms, virtually to ensure a bill's demise or passage.

Although, in theory, the full membership of the House debates and decides on legislation, accepting or rejecting a committee's proposals, in practice, in the days of the committee barons, members rarely exercised this power in a critical or independent manner.[11] This acquiescence did not result simply from the committee barons' powers, including their role as the floor managers of bills, firmly in control of proceedings, accepting or rejecting amendments; rather it came from the nature of the committee system which divided and decentralized decision-making, the reciprocal support of the barons, and the political balance on the floor favourable to the conservative chairmen. Committees, with thirty or forty members, were certainly more efficient decision-making units than the whole 435 member chamber. Because of this and because party loyalty was insufficient to guarantee discipline, power came with seniority and with the norms such as specialization and reciprocity which developed. Members generally respected and deferred to the decisions made by their colleagues in other committees. Committee decisions created an expectation of acceptance on the floor, partially because they usually reflected members' expectations of what the larger membership of the House would accept, and partially because chairmen reinforced their own power by trading their support of colleagues' proposals for support of their own.[12]

The development of the oil-pricing policy in 1975 proved quite different from the scenario just described, as was evident at every stage of the decision-making process. The President did not first send Congress an oil-pricing policy embodied in a legislative proposal which members could simply revise. Instead,

11. Nelson Polsby, "Strengthening Congress in National Policy-Making," Yale Review (Summer 1970), pp. 485-486.

12. Richard F. Fenno, Jr., The Power of the Purse (Boston: Little, Brown & Co., Inc., 1966), Chaps. 1-2; John F. Manley, The Politics of Finance (Boston: Little, Brown & Co., Inc., 1970), Chap. 4.

the Speaker rejected the President's proposals and established a special Task Force to develop the Democrat's position before Ford formally presented his own bill. They adopted a very general position in support of continued price controls but left the details of this policy to the two standing committees - - Interstate and Foreign Commerce and Ways and Means. The former committee had sole responsibility for the oil-price regulations, but because some pricing policy options included taxing provisions, the latter became involved as it necessarily did whenever revenue matters were under consideration. The committees therefore needed to coordinate their efforts, but they had had little experience in so doing before reforms because jurisdictions were exclusive. They also lacked incentives to synchronize committee proceedings. Competition and rivalry still guided two new chairmen trying to establish themselves in the chamber in the only way they knew - - through a legislative track record for which they could claim sole credit. The reforms did not change these motivations; they might have even intensified them. As a result, the committees' failure to coordinate their activities, made resolution of their own internal differences impossible; the chairmen clearly no longer had the "clout" to bring members into line. In both instances, the committees transferred the important oil-pricing policy decisions to the floor of the House.

As this brief overview suggests, and the following story will show, the difference in policy-making before and after reforms was dramatic. Under the old system the likely scenario would have been very different. The President would have sent his bill to Congress. Because of its tax provisions and Ways and Means' power within the chamber, it alone would have claimed jurisdiction over these matters and would have come to some agreement at the committee level. This position would then have been protected under a closed rule as members, during the floor debate, upheld the committee's bill. Under such a decision-making process the outcome would most likely have been more favourable to the

President's position on substance, and more quickly resolved in procedure. However this is not what happened.

## The Committees Fail to Develop a Consensus Oil-Pricing Policy

### The House Democratic Task Force on Energy and the Economy Takes a Stand on Oil-Pricing

Speaker Albert set an ambitious goal for the Task Force on Energy and the Economy. It was expected to provide the Democratic majority in the House with a comprehensive energy and economic policy - - in other words, what Presidents had provided in the past. The energy issue cut across many committees' jurisdiction. Albert established this special committee because he (and many of his colleagues) believed that this policy could not be developed through the Congress' fragmented committee system. But they believed the Task Force could accomplish this objective because it was created without jurisdictional boundaries.

From the very beginning, the Task Force encountered difficulties trying to achieve its objective because it lacked any real power under the House rules, and neither the Speaker nor the Caucus had the sufficient political force to support it. The ad hoc committee had no authority to develop legislation. Nor did members on the Task Force even have very much leeway to choose policy options. Members lacked both the expertise in the subject matter and the usual committee proceedings (such as hearings) that would have facilitated their decision-making. Moreover, Speaker Albert had already outlined the Democrats' solutions to the nation's energy and economic problems when he established the committee. And, to ensure that members followed his proposals, the Speaker appointed a trusted ally, Majority Whip James Wright (D. Tex.) to chair the committee. In consequence, Task Force members were extremely cautious and

slow in their deliberations. Because of this, Wright characterized their meetings as "disastrous."[13]

House members also had to work out common positions with their colleagues on a Senate Task Force, and these negotiations slowed the decision-making process even further. Members from the House and Senate have enough difficulty working out compromises during conference committees when both chambers have already adopted legislation and when negotiators have the backing of their colleagues for the positions they have taken. In this instance, members lacked the already established positions and the support from their colleagues, making the task of agreeing to policies all the more difficult. Then, in addition, as Wright explained, senators made this already difficult situation worse when instead of attending these joint meetings themselves, they sent their staffs to negotiate with House members. In consequence, many of the House members felt slighted, tempers flared, and some refused even to deal with the Senate staff.

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13. The quotations without citation in this chapter, have been taken from interviews conducted by the author from February to July 1976 with members, staff and lobbyists. Notes were taken during these interviews, and expanded immediately following the sessions. In some instances quotes from members and staff are not attributable because those interviewed preferred not to be identified with a remark that might revive the old political tensions which surrounded the oil-pricing controversy. In alphabetical order, those interviewed on the role of the House included: Rep. Brock Adams (D. Wash.); Ross D. Ain, Office of Legislative Council (House); Rep. Clarence J. (Bud) Brown (R. Ohio); William Burhop, Lobbyist, Congress Watch; Charles B. Curtis, General Counsel Committee on Interstate & Foreign Commerce; William Demerest, Energy & Power Subcommittee; Rep. John Dingell (D. Mich.); Rep. Robert (Bob) Eckhardt; Carolyn Emight, Oversight & Investigations Subcommittee; Thomas Green, Oversights & Investigations Subcommittee; Debra Gottheil, Legislative Assistant to Rep. Moffet; Bruce Heinke, Legislative Assistant to Rep. Brown; Elgie Holstein, Legislative Assistant to Rep. Mcguire; Peter Kirby, Lobbyist, Air Transport Association; Rep. Robert Krueger (D. Tex.); Michael Lemov, Oversight & Investigations Subcommittee; Kenneth Levine, Legislative Assistant to Rep. Eckhardt; Rep. Philip R. Sharp (D. Ind.); Rep. Harley O. Staggers (D. W. Va.); James Stuberg, Legislative Assistant to Rep. Rogers; Rep. James Stuckey (D. Ga.); Jan Vlcek, Minority Counsel, Committee on Interstate and Foreign Commerce; Rep. Timothy E. Wirth (D. Colo.); Rep. James Wright (D. Tex.); and, Perry Woffter, Lobbyist, American Petroleum Institute.

As a result of all of these factors, inconclusive deliberations dragged on for over six weeks. Finally, simply in order to complete their task and in response to Speaker Albert's prodding, the Task Force weakened the proposals until they felt a majority of members could support them. The committee generally followed the Speaker's initial policy proposals. On the oil-pricing issue, the Task Force rejected

> the fundamental premise of the President's program that the only way to achieve energy conservation is deliberately to raise the price of all petroleum products to all American consumers by heavy indiscriminate additions in taxation. 14

Instead they endorsed a policy of mandatory conservation proposals and price controls on oil. The objective of oil-price controls was "to have the price of U.S. domestic energy set by the U.S. [government]."[15] This position failed to acknowledge the changed realities of the oil market.

On 27 February 1975 the Task Force made public these policy positions when it released its final report. Some of the Democrats, like Wright, were bitterly disappointed. He characterized the document as "lacking bite." But most of the Democrats were relieved just to have a policy because they could now make an important claim; they had an official programme - - one that they characterized as comprehensive and clearly contrary to the President's plan. And because of this alternative plan many members' high expectations of the chamber's newly emerging role seemed bolstered as they boasted of it.

Speaker Albert, apparently also euphoric, set his ninety-day deadline for committees to develop their energy bills. The standing committees had to take these general policy statements and develop specific legislation. Attention now shifted to the progress being made in the Ways and Means and the Interstate and Foreign Commerce Committees.

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14. The Wright-Pastore Task Force Report, "The Congressional Program of Economic Recovery and Energy Sufficienty," 27 February 1975, p. 3. Unpublished: Document in author's possession; see also: U.S. Congress, Senate, Committee of the Budget, Task Force on Energy, "Energy Policy Options," 94th Cong., lst sess., 1975. Committee Print.

15. Ibid., p. 7.

## The Ways and Means Committee Considers the Oil-Pricing Issue through a Related Windfall Profits Tax Provision

On 3 March 1975, only three days after the Task Force released its final report, Al Ullman, the new chairman of Ways and Means, announced that his committee was ready to begin considering their energy bill; the Energy Conservation and Conversion Act of 1975 (H.R. 6880). This was the first congressionally-authored legislative measure in the 94th Congress to deal with oil-pricing. It included a windfall profits tax which recouped a portion of the substantial profits oil companies were expected to make if prices were decontroled. (See Chapter Two, p. 93.) It also advocated price decontrol, but Ways and Means did not have jurisdiction over that matter, and thus, could not specify how price increases were to be achieved. Price regulation fell under the jurisdiction of the Interstate and Foreign Commerce Committee. Therefore, the Ways and Means, and Interstate and Foreign Commerce Committees needed to work together to insure that their policies were compatible. Recognizing this, Ullman and John Dingell (D. Mich.), chairman of the Commerce Committee's Energy and Power Subcommittee, agreed to bring their respective bills to the floor at the same time. Some members were encouraged by this agreement and by the announcement so soon into the session of what was expected to be one of the chamber's major energy bills. They were further encouraged that Speaker Albert's deadline for the standing committees to develop their energy bills appeared feasible. But as the Ways and Means Committee began its mark-up under the new open committee rule members were soon discouraged.

Ways and Means had a hard time trying to resolve members' differences on the bill's most important aspects, including the windfall profits tax.[16] Ullman had several reasons for including a windfall profits tax in his committee's bill. First, it established Ways and Means' role in the energy debate by giving the oil-pricing policy a fiscal dimension. Second, it broadened members' oil-pricing options by making higher oil prices seem economically more plausible and politically more acceptable, since the tax was to finance rebates to consumers. Without a tax, politicians feared that if they voted for further price increases, their constituents would vote for new representatives.

The tax measure was crucial because the public had been outraged by the record-breaking profits accruing to oil companies during the oil crisis. Members feared (and rightly so) that voters' reaction to another price hike would be directed at them. Politicians also feared the economic predictions that sudden price increases would leave consumers even less to spend in the country's already recession-ridden economy and this would result in a full fledged depression.[17] If the country's economic health declined further, members of Congress would have

16. The complexity of the issues dealt with in this bill warrants a much more thorough discussion than can be provided here. However, because the focus of the present study is the oil-pricing issue, this section deals in some detail with the profits tax, and particularly how it affected the chamber's oil policy. For a more thorough account, see Elizabeth Drew, "A Reporter At Large: The Energy Bazaar," The New Yorker, 21 July 1975, pp. 35-72.

17. For example, see U.S. Congress, Senate, Committee on Interior and Insular Affairs, "The National Fuels and Energy Policy Study," Hearings on the Competitive and Economic Impacts of Permitting the Decontrol of Petroleum Prices and the Termination of Allocation Authority," September 4 and 5, 1975, 94th Cong., lst sess., 1975 Serial 94-23 (92-113); U.S. Congress, House, Committee on Interstate and Foreign Commerce, "A Summary of Economic Analyses of Sudden Decontrol," 94th Cong., lst sess., 1975. Committee Print; U.S. Congress, House, Committee on Interstate and Foreign Commerce, "Major Effects of Decontrol of Domestic Oil Prices," 94th Cong., lst sess., 1975. Committee Print; U.S. Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations," Staff Analysis of Economic Arguments Claimed to Support Decontrol of 'Old' Cruce Oil Prices," 94th Cong., lst sess., 30 April, 1975; Library of Congress, Congressional Research Service, "Economic Impact of President Ford's Energy Package," Memorandum of John E. Moss, 17 January 1975; Library of Congress, Congressional Research Service," The Impact of Crude Oil Prices on the U.S. Economy," Report Preparred by Warren E. Farb and Lawrence Kumins, 10 July 1975; Library of Congress, Congressional Research Service, "Post Embargo Macroeconomic Impact of Energy Price Increases and Implication Regarding Old Oil Decontrol," Memorandum to Edward M. Kennedy and Ernest F. Hollings, 2 September 1975.

to take the blame. Advocates of the policy argued that the tax alleviated these concerns. The tax offset the serious economic consequences of higher prices by limiting oil company profits and by passing the monies collected via the tax back to the consumer through a rebate system. The tax also provided politicians with a defense to constituents' criticism in that they could argue that it provided a disincentive to oil profiteering; the tax made it look as if they had at least tried to guard against excessive prices while decontroling them. Many members were skeptical about how effective the tax would be, or was even intended to be, in limiting company profits or in rebating monies to consumers. Their skepticism appeared justified - - those making the claims were often the very ones who had looked after oil interests in the past. As one Republican member confirmed, "I'm not so worried about the tax - - the lawyers will make swiss cheese out of it poking holes in it."

However, on 12 May 1975, the windfall profits tax measure was defeated in the Ways and Means Committee. Members split three ways with Democrats and Republicans in all factions. One group opposed government intervention in the market in any form - - whether price controls or a tax to restrict company profits. Another group supported the tax as a politically expedient way to achieve passage of a decontrol proposal. And yet another opposed the tax to achieve different political ends - - they wanted to block decontrol proposals, or at the very least, to assure that controls would be removed over an extended period. An unusual alliance emerged between those who opposed government controls and those who supported them; together, their votes defeated the windfall profits tax.

Ullman and other supporters of the tax vowed to have the measure reinstated during the floor debate. In light of the agreement between Ullman and Dingell, this seemed possible because the two bills would be considered simultaneously, which many assumed would sway the decision in favour of higher prices and a profits tax. But then Ullman, disregarding his agreement with

Dingell, decided to take his bill to the floor separately. He argued that because the Energy and Power Subcommittee had fallen so far behind schedule, he could wait no longer; in fact, he wanted to capture the issue for himself and his committee. At first, Speaker Albert prevented the Rules Committee from granting Ullman's initial request - - a request which, if honoured, would have allowed the chairman to take his committee's bill to the floor. But Ullman's persistence finally secured a rule. However, in contrast to the days of Wilbur Mills' tenure, the Ways and Means bill did not go to the floor under a closed rule; open rules had now become the norm, and thus members would have every opportunity to amend it.

On 9 June 1975, the House began its debate of the Ways and Means' bill, under an open rule which allowed members latitude to propose amendments - - 160 of them. One of these proposals was for a windfall profits tax, which members defeated. In consequence, the bill that finally passed failed to address even indirectly the central energy policy question - - oil-pricing. This failure not only diminished the bill's importance; it undermined any further major role for Ullman in the central issue of the energy debate in this Congress and, most importantly, it limited members' oil-pricing policy options. With the tax defeated, members' fears over the economic and political repercussions of higher oil-prices could not be assuaged. Without it they lost the opportunity for what might have proven to be a compromise between the two extremes of controls versus decontrol, a proposal that would remove controls at a fast enough pace to satisfy the decontrol advocates but with the safeguard of the tax to appease those who advocated controls. Even in the political situation of 1975, the old rules would probably have produced a different result. The full responsibility for the development of the chamber's oil policy now rested with the Interstate and Foreign Commerce Committee.

## The Interstate and Foreign Commerce Committee Adopts a Bargaining Position on the Oil-Pricing Issue

### The Committee's Profile

The broad jurisdiction of the Interstate and Foreign Commerce Committee (hereafter the Commerce Committee) assured its prominence in the energy debate, regardless of what actions other committees took. This was particularly true of the oil-pricing issue, which fell under the committee's jurisdiction. The fact that this particular committee had responsibility for so many of the energy issues further bolstered members' optimism at the outset of the 94th Congress; for nowhere in the House were the changes which generated optimism about the chamber's abilities -- the large number of Democrats, the new type of member, the shift in ideological make-up, and the reforms -- more evident than in this committee.

In the 94th Congress the Commerce Committee had twenty-nine Democrats and fourteen Republicans (see membership breakdown in Table 3.1).

Table 3-1

Membership of the Interstate and Foreign Commerce Committee

| Democrats (29) | State | Year Elected |
|---|---|---|
| Harley O. Staggers (Chairman) | (W. Va.) | 1948 |
| Torbort MacDonald | (Mass.) | 1954 |
| John Moss | (Cal.) | 1952 |
| John D. Dingell | (Mich.) | 1955 |
| Paul Rogers | (Fla.) | 1955 |
| Lionel Van Deerlin | (Cal.) | 1962 |
| Fred B. Rooney | (Penn.) | 1963 |
| John M. Murphy | (N.Y.) | 1962 |
| David Satterfield | (Va.) | 1964 |
| Brock Adams | (Wash.) | 1964 |
| W. S. (Bill) Stuckey | (Ga.) | 1966 |
| Bob C. Eckhardt | (Tex.) | 1966 |
| L. Richardson Preyer | (N.C.) | 1968 |
| James W. Symington | (Mo.) | 1968 |
| Charles J. Carney | (Ohio) | 1970 |
| Ralph Metcalfe | (Ill.) | 1970 |
| Goodloe E. Byron | (Md.) | 1970 |
| James A. Scheuer* | (N.Y.) | 1974 |
| Richard L. Ottinger* | (N.Y.) | 1974 |
| Henry A. Waxman | (Cal.) | 1974 |
| Robert Krueger | (Tex.) | 1974 |
| Timothy E. Wirth | (Colo.) | 1974 |
| Philip R. Sharp | (Ind.) | 1974 |
| William M. Brodhead | (Mich.) | 1974 |
| W. G. Hefner | (N.C.) | 1974 |
| James J. Florio | (N.Y.) | 1974 |
| A. (Toby) Moffett | (Conn.) | 1974 |
| James Santini | (Nev.) | 1974 |
| Andrew Maguire | (N.J.) | 1974 |

| Republicans (14) | State | Year Elected |
|---|---|---|
| Samuel Devine | (Ohio) | 1958 |
| James T. Broyhill | (N.C.) | 1962 |
| Tim Lee Carter | (Ky.) | 1964 |
| Clarence J. (Bud) Brown | (Ohio) | 1965 |
| Joe Skubitz | (Kans.) | 1962 |
| James F. Hastings | (N.Y.) | 1968 |
| James M. Collins | (Tex.) | 1968 |
| Louis Frey, Jr. | (Fla.) | 1968 |
| John Y. McCollister | (Neb.) | 1970 |
| Norman F. Lent | (N.Y.) | 1970 |
| John H. Heinz, III | (Penn.) | 1971 |
| Edward R. Madigan | (Ill.) | 1972 |
| Carlos J. Moorhead | (Cal.) | 1972 |
| Matthew J. Rinaldo | (N.J.) | 1972 |

* Members are listed in the order of their seniority on the Committee. Scheuer and Ottinger had served previous terms in the House and returned after re-election separated by one term.

Fifteen of these members were new to the committee, twelve were Democrats elected in 1974, and three were Republicans elected in 1972 who transferred to Commerce from other assignments after serving one term in Congress on other committees. The much larger number of Democrats on the Committee reflected the party's two-to-one ratio in the House resulting from the November election.

With the dramatic increase of Democrats elected also came an accompanying change in the ideological make-up of the committee. As table 3-2 shows, members' general political views shifted to a much more liberal outlook.

Table 3-2

A Comparison of the Conservative Mean Support Ratios of the 91st and 94th Congresses of the Commerce Committee Members

| | Democrats | | Republicans | |
|---|---|---|---|---|
| | 91st Cong. (1969-1970) | 94th Cong. (1975-1976) | 91st Cong. (1969-1970) | 94th Cong. (1975-1976) |
| Committee Members | 38 (N = 21) | 34 (29) | 85 (16 | 81 (14 |
| Departing Members (91st Cong.) | 35 (8) | - | 84 (10) | - |
| Remaining Members (91st Cong.) | 39 (13) | 40 (13) | 88 (6) | 87 (6) |
| New Members (92nd-93rd Cong.) | - | 36 (4) | - | 80 (5) |
| New Members (94th Cong.) | - | 26 (12) | - | 71 (3) |
| Full Committee | 91st Cong., 58 (37) | | 94th Cong., 49 (43) | |

Source: Norman J. Ornstein and David W. Rohde, "Shifting Forces, Changing Rules, and Political Outcomes: The Impact of Congressional Change on Four House Committees", in Robert L. Peabody and Nelson W. Polsby, eds., New Perspectives on the House of Representatives, 3d. ed. (Chicago, Illinois: Rand McNally College Publishing Co., 1977), p. 200. The conservative means support ratio used by Ornstein and Rohde is taken from the Congressional Quarterly's compilation of voting scores, and is computed by dividing the conservatives coalition support scores by the sum of the support and opposition scores.

Given these figures, the ideological changes appeared likely to be an even more important influence in shaping the committee's policy than the favourable partisan breakdown.

The party and ideological shifts finally made effective reform of the committee possible. Reforms redistributed power and resources within the committee from the chairman to rank-and-file members, and from the full committee to its subcommittees. This shift occurred at the outset of the 94th Congress when the younger, recently-elected members joined forces with the committee's small cadre of liberal-tenured members to challenge their unenlightened chairman, Harley Staggers (D. W.Va.). Staggers was the prototypical chairman that reformers set out to eliminate when they proposed reforms, and one who had successfully resisted these changes before the 94th Congress. Twenty-two year veteran member John Moss (D. Cal.) led the committee's reform efforts, which began with the adoption of new committee rules, consistent with the Democratic Party Caucus' "Subcommittee Bill of Rights," already adopted by most other committees in 1973. These rules guaranteed members their rights and powers, and assured subcommittees their independence.

Once the committee adopted these rules, subcommittees, no longer subject to Staggers' whims and wrath,[18] became potential centres of policy initiative and political power. But for this potential to be realized the committee's subcommittees had to be reorganized, and some needed new leadership. The workload among these subcommittees was uneven (for numerous reasons) and Moss devised a subcommittee reorganization plan which realigned the boundaries, as table 3-3 shows.

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18. For a account of Staggers behaviour, see Joan Claybrook, "Consumer Protection," in David E. Price, director, The Commerce Committees (New York: Grossman Publishers, 1975).

Table 3-3

The Subcommittees of the Interstate and Foreign Commerce Committee

| 93rd Congress (1973-1974) | 94th Congress (1975-1976) |
|---|---|
| Investigations (Staggers, D. W. Va.) | Oversight and Investigations (Moss, D. Cal.) |
| Commerce and Finance (Moss, D. Cal.) | Consumer Protection and Finance (Van Deerlin, D. Cal.) |
| Communications and Power (MacDonald, D. Mass.) | Communications (MacDonald, D. Mass.) |
| Public Health and Welfare (Rogers, D. Fla.) | Health and Environment (Rogers, D. Fla.) |
| Transportation and Aeronautics (Jarman, D. Okla.) | Transportation and Commerce (Rooney, D. Penn.) |
| | Energy and Power (Dingell, D. Mich.) |

The increased importance of the energy issue over which the committee already had jurisdiction justified a new separate subcommittee - - the Energy and Power Subcommittee. General counsel to the committee, Charles Curtis, commented: "It was created in large part simply to separate out and refine the energy issue." Such action follows the pattern typical of Congress' response to changing public policy issues; as a former congressional aide George B. Galloway explained:

> . . . the Committee list may be viewed as an outline of American history, for the creation of each major committee was associated with some important historical event or emerging public problem. 19

However, whereas Galloway wrote of the Congress in the 1940's, when members would have created a new standing committee, in the 1970's the more appropriate response of members was to establish a subcommittee. But the establishment of this new subcommittee was also done so that reformers could wrestle the issue away from Torbort MacDonald (D. Mass.), Chairman of the Commerce and Power Subcommittee, under whose jurisdiction the issue would have otherwise fallen.

19. George B. Galloway, History of the House of Representative (New York: Thomas Y. Crowell Co., 1969), p. 67.

Moss and many of his colleagues believed that MacDonald was in failing health and lacked the force of personality to lead on such a complex and controversial issue.[20]

Thus with subcommittee realignment also came new leadership. Now that subcommittee chairs were elected, any member could make a bid for these positions. Although a power struggle erupted as members jockied for some of these subcommittees' chairs, this was not the case with the Energy and Power Subcommittee.[21] The committee's caucus elected John Dingell (D. Mich.) chairman on the first ballot. He had no opposition. Fifth in the committee's hierarchy (preceeded by Harley O. Staggers (D. W.Va.), Torbort MacDonald (D. Mass.), John Jarman (D. Okla.) and John Moss (D. Cal.)) Dingell's election under the new procedures would have occurred under the old rules of seniority as well.

With Dingell's position secure, committee reformers and liberals throughout the chamber breathed a sigh of relief that Dingell was at the helm of the subcommittee responsible for such a major portion of their energy policy. A veteran of more than twenty years in the House, he had succeeded his father in representing Michigan's 16th District after winning a special election in 1955. On the basis of his lengthy and consistent voting record, both liberal and moderate members trusted that he would give appropriate direction to the chamber's energy policy. As a leading conservationist, he had been influential on environmental matters on the Merchant Marine and Fisheries Committee, as chairman of its Fisheries and Wildlife Conservation and the Environment Subcommittee. As a leading spokesman for consumers and small business interests, he had also played an important role on the Small Business Committee as chairman of its Regulatory Agencies Subcommittee. Thus, many believed his

20. MacDonald died in early 1976.

21. For example, the contest between Staggers and Moss for the chair of the Investigations Subcommittee required six ballots before Moss was declared the winner.

positions on the energy issues would reflect his prior record - - positions that were consistent with the chamber's majority.

Moreover, the make-up of the subcommittee with ten Democrats to only four Republicans, further encouraged Democratic members' optimism. (See Table 3-4.)

Table 3-4

Membership of the Energy and Power Subcommittee

| Democrats (10) | State | Year Elected |
|---|---|---|
| John D. Dingell, Chmn. | (Mich.) | 1955 |
| Timothy E. Wirth | (Colo.) | 1974 |
| Philip R. Sharp | (Ind.) | 1974 |
| William M. Brodhead | (Mich.) | 1974 |
| John M. Murphy | (N.Y.) | 1962 |
| Bob C. Eckhardt | (Tex.) | 1966 |
| Richard L. Ottinger | (N.Y.) | 1974 |
| Robert Krueger | (Tex.) | 1974 |
| A. (Toby) Moffett | (Conn.) | 1974 |
| Andrew Maguire | (N.J.) | 1974 |
| **Republicans (4)** | **State** | **Year Elected** |
| Clarence J. ("Bud") Brown | (Ohio) | 1965 |
| Carlos J. Moorhead | (Calif.) | 1972 |
| James T. Broyhill | (N.C.) | 1962 |
| H. John Heinz III | (Penn.) | 1971 |

Members are listed in the order of their seniority on the subcommittee.

Seven of the Democrats were freshmen, which clearly resulted from the newly adopted selection procedures. Members who had already served on another established subcommittee selected it as their first choice so that they did not jeopardize their seniority there. This left the Energy and Power Subcommittee to the freshmen, many of whom chose it as their first choice. All of these newly-elected Democrats - - with Robert Krueger (D. Tex.) the only exception - - had campaigned as a liberal in the 1974 election. Of the two

veteran majority party members -- Robert (Bob) Eckhardt (D. Tex.) and John Murphy (D. N.Y.) -- the former also had a consistently strong liberal voting record.[22] In consequence, all of the subcommittee's Democrats, except Krueger and Murphy, appeared to be ideologically compatible in their views. The Republican members on the subcommittee, all with conservative voting records, were expected to support the President. But even this did not appear likely to impede the Democrats from passing their own policies because there were only four of them. Thus, it was against the background of all of these changes, and the optimism they generated, that the Commerce Committee's Energy and Power Subcommittee began its deliberations.[23]

### The Energy and Power Subcommittee Adopts an Oil-Pricing Policy Backed Primarily by Minority Members

The Energy and Power Subcommittee laboured throughout February, March, April and part of May, trying to develop the committee's energy bill, the centrepiece of which was the oil-pricing policy. In spite of the subcommittee's comfortable majority of apparently like-minded Democrats, an oil-pricing policy to which a majority could agree on its substantive merits failed to emerge.

The subcommittee began with public hearings on 17 February 1975, before the Task Force had released its final report. In spite of Speaker Albert's claim that Congress would develop its own policy, independent of the President's proposal, Ford's energy bill, not the Democrats' own bill, was the focus of these hearings. At the outset Dingell announced that the President's bill would play a central role in the chamber's development of an energy policy: "it will necessarily and quite appropriately, serve as the principal point of reference."[24]

22. Michael Barone, Grant Ujifusa and Douglas Matthews, The Almanac of American Politics 1976 (New York: E. P. Dutton & Co., Inc., 1976), pp. 829 and 584.

23. The author gratefully acknowledges the cooperation of Commerce Committee staff, who provided access to the committee's files, including memoranda, committee minutes, and substantive proposals.

24. U.S. Congress, House, Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce Committee, Presidential Energy Program, "The Implications of the President's Proposals in the Energy Independence Act of 1975," Cong., lst sess., 1975, Serial No. 94-20, p. 1.

From Dingell's perspective they had no choice but to rely on the President's bill. Even though the Task Force had adopted a policy, the Democrats still did not have a congressionally-authored energy bill. Dingell made clear how central the President's bill was in his opening remarks when he outlined the objectives of the subcommittee's hearings: "to review the underlying goals of the program, the means selected to accomplish these goals, and their economic impact."[25] But this one set of hearings, scheduled for only four days, proved much too brief to accomplish these ambitious goals.

The energy issue itself--its complexity and the controversy it stirred--required more time for members even to begin to understand, especially in the context of national problems. For example, it was during these hearings that most members first became aware of the connection between the nation's energy and economic problems, particularly the crucial role of oil-pricing policies. These brief hearings could not give members an adequate measure of the views of different groups on the subject because the energy issue had so recently changed that even congressmen with expertise in the energy field needed time to analyze this new information. Moreover, most members of the subcommittee--with Eckhardt the exception--knew very little about energy at all. In part this was because of the large number of freshmen members on the subcommittee. But as veteran Republican member Clarence (Bud) Brown explained, freshmen were not the only ones on the subcommittee with this problem: "In January I hardly knew the difference between 'old' oil and 'new' oil." Moreover, most members also lacked expert staff on whom they could have depended. Even Dingell was at a disadvantage. He had to borrow former staff from the Small Business Subcommittee until he could assemble the subcommittee's new staff. Thus, corresponding to the low level of subcommittee members' knowledge on energy matters was a temporary staff which also lacked expertise, or in some cases even familiarity, with the issues.

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25. Ibid.

In addition to the nature of the issue, the first set of hearings proved insufficient because they raised serious questions as to the soundness of the President's policies--particularly his reliance on oil-prices to achieve other goals, such as conservation. From the testimony at these hearings, it appeared that the President's policy had been hastily compiled, was not well-thought out and had few supporters. As Chairman Dingell announced after the hearings: "We discovered in these proceedings that great controversy attends the energy policy decisions made by the President."[26] Even Republican members in the House, like Brown, who at the outset of the session had given Ford their unqualified endorsement, now questioned his immediate oil-price decontrol policy: "Philosophically I was still for decontrol but the testimony persuaded me [to support] gradual decontrol." In consequence, the President's bill became not a point of reference, but a point of departure.

Chairman Dingell therefore scheduled a second set of hearings which focused primarily on the price of petroleum, of its by-products, and of other fuels. Much more extensive than the first set of hearings, they began on 10 March and lasted for ten days, during which time subcommittee members heard from over 131 witnesses.[27] It was during these hearings that Dingell made his announcement that he and Al Ullman (D. Ore.), chairman of the Ways and Means Committee, had agreed to coordinate their respective committees' efforts.

At their end Dingell directed his subcommittee staff to develop a bill. With assistance from the Legislative Counsel's Office, his staff used the President's bill as a basis for what became the Energy Policy and Conservation Act (EPCA) (H.R. 7014). On almost every issue, except oil-pricing, the staff used the provisions in the President's bill with only minor revisions. Thus, the bill that

26. U.S. Congress, House, Congressional Record (hereafter CR), 94th Cong., 1st sess., 5 March 1975, p. H. 1413.

27. U.S., Congress, House, Subcommittee on Energy and Power of the Interstate and Foreign Commerce Committee, "Energy Conservation and Oil Policy," Hearings on "Bills to Increase Domestic Energy Supplies and Availability; To Restrain Energy Demand; and To Prepare For Energy Emergencies, and For Other Purposes." 94th Cong., 1st Sess., 1975, Serial No. 94-17.

subcommittee members would mark-up was very similar to the one the President had proposed. Mark-up began on 9 April, almost three weeks after the subcommittee had concluded its last hearing. For over five weeks, until 13 May, in twenty-nine lengthy sessions, members drafted the legislation. The oil-pricing provision was the most difficult issue to resolve.

From the beginning of mark-up, Chairman Dingell set out to orchestrate a compromise on the oil-pricing issue. He delegated this important task to two staff members, Commerce Committee general counsel Charles Curtis (who had extensive experience and knowledge of the energy issue), and Energy and Power Subcommittee counsel William Demerest (who was from Dingell's staff at the Small Business Committee, and thus had very little expertise on energy matters though he was close to his chairman). The compromise they were supposed to work out was to emerge from private meetings with staff from the Federal Energy Administration (FEA) and Ullman, chairman of the Ways and Means Committee. Dingell viewed these people as the principal actors in the decision-making process. He expected this approach to result within a short period of time in a bill that the various actors all supported. As Curtis explained: "Dingell's first priority was to produce a passable bill, that is a bill that the House and Senate would adopt, and the President would then sign into law." Dingell later confirmed this in an interview when he confided, "sometimes any bill is better than no bill at all."

Dingell viewed such a compromise energy bill as a means to several ends. A bill which he steered through the House could enhance his political influence within the chamber. Curtis explained that as the chairman of a newly formed subcommittee dealing with such a salient issue, Dingell had "a real opportunity for leadership which could greatly enhance his congressional career." According to Demerest, "Dingell desperately wanted to establish himself as the chamber's leader on energy," although he was not the only one who wanted to enhance his congressional reputation on energy. In addition, Dingell also honestly believed

that a "passable bill" was quite simply good public policy, which as subcommittee chairman he had an obligation to pursue. Only after Curtis and Demerest worked out such an agreement, did Dingell then intend to return to his own subcommittee colleagues for their comments and support.

The chairman was so committed to this strategy that he wanted to keep the subcommittee from even discussing the oil-pricing issue until an agreement had been reached. In consequence, each time his subcommittee colleagues tried to place the issue on the agenda (which happened on 11 & 14 April, and 5 May), he struck it off. Alas, very few of Dingell's colleagues agreed with this strategy. Members on Dingell's subcommittee, as well as others, became concerned with what they regarded as the chairman's delaying tactics. Shut out of the decision-making process, and frustrated because of it, individual members set out on their own to try and develop their own policy - - behaviour that would have been unimaginable in the old days of the committee barons. As a result, several factions emerged within the subcommittee, and Dingell lost credibility and control.

All of the subcommittee's freshmen, except Krueger (D. Tex.), initially formed one faction. Toby Moffet (D. Conn.) and Andrew Maguire (D. N.J.) organized meetings in which they and the subcommittee's four other freshmen developed their own oil-pricing policy. Their proposal very much reflected the consumer interest of the states they represented: it rolled back current oil prices, extended controls to all categories of oil (including foreign oil) and continued controls indefinitely. Realizing that their proposal had little chance of being taken seriously because its authors were freshmen, they sought the support of a more senior member. Eckhardt (D. Tex.) was the only choice, albeit a good one.[28] Although he was the only available senior member he was also chairman of the Democratic Study Group (DSG) and an acknowledged expert on oil matters.

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28. However, even after Moffett and Maguire swung their support behind Eckhardt, they, along with three of their freshmen colleagues who were not members of the subcommittee - - Jerome Ambro (D. N.Y.), Herbert E. Harris (D. Va.), and George Miller (D. Calif.) - - released their own energy plan. "Consumer Energy Plan," March 1975. Unpublished: Document in author's possession.

However, Eckhardt rejected the freshmen's proposal as "impractical," and instead enlisted their support for one that he had been developing. Eckhardt's policy extended controls to all domestically-produced oil, established four price tiers for different grades of domestic oil, and set a five year limit on controls.[29] This policy position was consistent with Eckhardt's previous liberal legislative record, though it was an unusual position for a Texan to take. Eckhardt had always been a maverick in his home state, where he had served for eight years in the state legislature fighting for liberal causes before being elected in 1966 to the 8th congressional district in Houston.[30] Having no one else upon whom they could rely, the freshmen readily agreed to support his proposal. As Elgie Holstein, legislative assistant to Congressman Maguire explained: "After they reached their decision, they were like little kids on a field trip. They were so happy to have made a joint decision." And they had reason to be so encouraged because, with the support of seven out of the subcommittee's ten Democrats, they only needed one additional vote to secure passage of Eckhardt's proposal.

At the same time freshman Democrat Krueger (Tex.) developed another oil-pricing policy, which was more consistent with the typical pro-oil representative from one of the leading oil-producing states. He proposed that controls only be extended for two years, and then only on old oil. In contrast to Eckhardt's many price levels, Krueger's proposal was relatively straightforward - - with one exception. Krueger also included an "inflation minimization tax" in his plan, a provision which recaptured a percentage of the profits oil companies were expected to receive when prices jumped to much higher levels. Similar to what the Ways and Means Committee called the windfall profits tax, this provision was necessarily vague because the Commerce

29. "Eckhardt's Price Tiers," Fact Sheet, Legislative Staff, Rep. Robert (Bob) Eckhardt's Office. Unpublished: Document in author's possession.

30. See Robert Sherrill, "A Texan v. Big Oil", New York Times Magazine, 12 October 1980, p. 38 et seq. In 1980 Jack Fields, a Republican, largely financed by the oil interests, defeated Eckhardt.

Committee had no jurisdiction over taxes. For example, Krueger did not even specify what percentage of the profits would be taxed. This was for the tax committee to decide. Given Dingell and Ullman's gentlemen's agreement, it was reasonable at this stage to assume that the Ways and Means Committee would fill in the details.

Krueger's strategy was to have his policy adopted with the support of the Republicans and the votes of a few of his party colleagues. He eventually succeeded in doing this, but initially had a difficult time getting anyone's attention. Even though his proposal was the most favourable to the Republicans' position, they ignored him. As Krueger explained: "I was a freshman [who] they didn't think would be able to do much." Brown confirmed this assessment: "Krueger was not perceived as an important person to the process in the beginning. He wasn't a Dingell, an Eckhardt or a Brown." However, this perception soon changed. Krueger impressed his colleagues, junior and senior, with the rapidity with which he made himself one of the few acknowledged energy experts. With ambitions to run for the Senate in 1976 he did this by having one of his legislative staff devote full time to the issue and by making it his first priority. This enabled him to compete with Eckhardt as no other member on the subcommittee could.[31]

Testimony during the hearings forced Republicans to reassess their substantive position on oil-pricing and what was realistic politically. After the testimony raised such alarm over an immediate end to controls, minority members adjusted their policy objectives, as Vlcek explained, "to support the best decontrol proposal we can get." The difficulty of this position was, as Brown so poignantly explained that, "it makes you a little pregnant because you acknowledge some good of controls." But they were being realistic at the same time; according to Brown's legislative assistant, Bruce Heinke, they also realized that this proposal, "given the political climate, would have to be authored by a

31. The following year Krueger played a major role in the national gas bill. See Paul Burka, "So Close, So far," Texas Monthly, April 1976, p. 26 et. seq.

Democrat." Heinke continued, "we knew a Republican pricing provision would not fly no matter how fair it was." With such a large Democratic majority, the bill had to have a Democrat as its author. Ford, by dealing with Dingell, showed he had realized this. But Krueger's proposal also fitted these requirements, and Republicans became Krueger's only sure block of support during the subcommittee's proceedings. The Republicans were led by ranking minority member Brown who had his own personal motivations for becoming active on the energy issue. As he explained in an interview, after losing out on a minority leadership post in 1973 he thought he needed to build up his own legislative record.

Thus, the factions within the subcommittee became clear. Dingell, Eckhardt and Krueger lobbied to have their proposals, or in the chairman's case, his approach, prevail. But Eckhardt and Krueger, not the chairman, ended up leading the debate on oil-pricing in the subcommittee, the full committee, and eventually the full House. A power struggle resulted.

Dingell, displeased with these development, directed Curtis and Demerest to push the FEA even harder to commit themselves to a policy, and tried to block efforts by the Eckhardt faction to gain the one extra vote they needed to secure passage of their proposal. The chairman continued to bar any discussions of the oil-pricing issue in subcommittee meetings. But while he could thwart their public discussion and lobbying, he could only discourage their "cloakroom" activities. When Eckhardt and his group of freshmen supporters approached him to secure his vote, Dingell rejected the proposal out of hand. Calling it "politically unrealistic" - - a pricing policy that the President was sure to veto - - he urged these members to remain uncommitted until Curtis and Demerest could work out a policy that was acceptable to the Administration. And he succeeded in scaring off four of Eckhardt's supporters - - Richard L. Ottinger (D. N.Y.); Philip R. Sharp (D. Ind.); William M. Broadhead (D. Mich.) and Timothy Wirth (D. Colo.). Uncertain and fearful of the sanctions their chairman

might impose if they did not heed his warnings, they withdrew their support for Eckhardt's proposal.

As a result, the Democrats were now no closer to consensus on a policy than at the outset of the subcommittee's proceedings. Coalition building had to begin again for Eckhardt, and had to continue for Krueger. While Dingell's efforts vis-a-vis his staff continued, another freshman, Wirth, set out on his own in hopes of forging a compromise. Wirth was no stranger to the executive branch, as a former White House Fellow, Special Assistant to the Secretary of HEW (1967-1968), and Deputy Assistant Secretary of Education at HEW (1969-1970). He contacted people he knew in the FEA and other administrative agencies and tried to devise an acceptable policy. He hoped he could enlist Dingell's support and that of the three other freshmen who were now uncommitted. Eckhardt was thus left with only Moffett and Maguire's support.

In May the subcommittee finally began formally addressing the oil-pricing issue. Dingell could not postpone its consideration any longer for the subcommittee had already decided most of the other issues in the energy bill. With the debate finally underway, and the realization that a decision was near, the power struggle intensified.

Subcommittee Republicans now actively joined in the fray, coming to Krueger's aid. Once the subcommittee began considering Krueger and Eckhardt's proposals, Brown, as the ranking minority member, presented his own proposal in order to broaden the debate and to place Krueger's proposal in a more favourable light. He proposed that oil prices be decontrolled at a much quicker pace than Krueger's and at much higher price levels.[32] His policy did not include any further taxes on oil company profits, as Krueger's did. Brown's proposal expanded the options subcommittee members debated, and, most important, it made Krueger's policy appear the centrist position of the three. Brown and Eckhardt's proposals appeared at the two extremes of the policy spectrum, while

32. "Brown's Gradual Decontrol Proposal," Fact Sheet, Legislative Staff, Rep. Clarence Brown's Office. Unpublished: Document in author's possession.

Krueger's fell in the middle. Ford did not publically commit himself to Brown's proposal but this did not seem unusual at this preliminary stage of its discussion. Moreover, Brown did not seek the President's endorsement. His intent was simply to help Krueger; Republicans were eager to have a policy that they could feel safe voting for - - a policy that was more reasonable than Ford's proposal for immediate decontrol. With the four Republican members firmly committed to his policy, Krueger lobbied Dingell, Murphy and Wirth for their votes. He needed only two of their votes to secure passage of his proposal but Dingell and Wirth continued to waiver because of their concern about the vague tax provisions and about voting for a minority party-backed proposal. Their indecisiveness gave Eckhardt another opportunity.

Increasingly threatened by the Krueger-Brown strategy, and frustrated by their own failure to hold together a coalition, Eckhardt, Moffet and Maguire intensified their efforts to rebuild a majority for their proposal. This made Dingell try even harder to block their efforts, intensifying the struggle between the chairman and Eckhardt. By May the substantive aspects of the policy no longer had much to do with this struggle.

Each group was now trying to establish its political clout within the subcommittee. Dingell was still trying to establish his position as chairman, the formal leader of the subcommittee. Eckhardt was trying to make the most of this opportunity to establish himself as an expert on the energy issue. As one senior staff person explained: "These guys search out power centers. Eckhardt had the left and Dingell was trying to get the center." Because of the nature of this struggle, compromise was no longer an option even though neither man had sufficient power to forge a consensus on his own. Dingell's advantage lay in his strategic position as chairman, as Curtis noted:

> He [Dingell] was clearly out of step with his subcommittee. [But] his power position was that he had to deal with the Minority, which the FEA represented, and he could provide them with a bill the administration would sign.

But the administration was not giving Dingell any help. Ford was not yet ready to settle for anything short of total decontrol. Therefore he did not even try to help Brown help Krueger because he still believed he could force Congress to accept immediate decontrol, or at least a policy very close to it. But he was mistaken. Had Ford backed Krueger or worked out a proposal with Dingell, he very likely would have gotten in early April what he finally argued for on 22 July. (See Chapter Five, p. 207.) But the FEA would not endorse a plan. While Eckhardt appeared more in tune with the majority, he had neither the formal power as chairman (and thus access to the FEA to work out a compromise) nor the votes needed to secure passage of his proposal.

As a result, the fight between Dingell and Eckhardt turned nasty as members waged it on a personal rather than a political level. Usually when congressmen disagree as Dingell and Eckhardt did they see it as simply a difference of opinion. But in this instance, the disagreement developed into a challenge to the chairman's integrity. Dingell viewed his position as statesman-like - - the proper role for a chairman. In contrast, the Eckhardt faction thought Dingell's view of the chairman's role outdated. More seriously, they not only saw it as anachronistic, but, worse, unprincipled. Thus, as one member privately confided, either "he sold out to [the oil] industry, or was in the back pocket of the Administration." Dingell bitterly resented these insinuations. He felt trapped between the policy he would have wanted if he could have followed his ideological convictions, and the one he felt he had to pursue to uphold his responsibilities as subcommittee chairman. Cast in these terms, resolution of their differences was made all the more difficult. Moreover, the tensions would continue to get in their way as they emerged at various times throughout the proceedings.

Finally, on the evening of 13 May 1975, close to midnight, the impasse within the subcommittee was broken. The first step in this shift came when the Eckhardt faction set out to regain all of the freshmen members' votes except

Krueger's. Wirth appeared to be the key to re-enlisting the support of other freshmen. Wirth had won election to the House in 1974 from Colorado's second district (which included part of Denver and its western suburbs in Jefferson and Boulder counties) with the strong support of liberal groups - - particularly environmentalist and labour interests. These groups had already aligned themselves with Eckhardt, whose policy was clearly the most favourable to their interests. Wirth's failure to support Eckhardt, and his attempts to find a compromise that was acceptable to the Administration, made him appear to be supporting a position viewed as a conservative anti-consumer oil-pricing policy. Wirth's defection appeared to be connected to Denver's fast-expanding oil industry. As Eckhardt said later: "He appeared to be wobbling on the issue." During public mark-up sessions, Eckhardt, Moffet and Maguire took every opportunity to accuse Wirth of changing his position and favouring measures which hurt the very interests which had sent him to Washington in the first place. Or, as another congressman characterized his actions, Wirth appeared to be "selling out to the oil-industry." It was that perception which left Wirth vulnerable to pressure from outside interest groups.

A congressional aide and a Washington lobbyist instigated this pressure. Elgie Holstein, Maguire's legislative assistant, overheard his boss talking with Moffet about how upset they were over Wirth's actions. On his own initiative, he and William Burhop, lobbyist for Ralph Nader's Congress Watch, contacted Colorado interest groups which had been important in Wirth's campaign. The groups at home mobilized. Newspapers were contacted; damaging headlines soon appeared in the local press: "Wirth defends plan to boost price of oil by $24.5 billion."[33] Letter campaigns were organized for constituents to write Wirth and criticize his position; others visited his office; and several of his large campaign contributors were prompted to call and express their displeasure. Although angered by these actions, Wirth rejoined the Eckhardt faction - - at least

33. "Wirth defends plan to boost price of oil by $24.5 billion," Rocky Mountain News, 11 May 1975, p. 22.

temporarily - - to try to correct what he characterized as simply "misimpressions." He continued to defend his efforts to work out a compromise as a "politically practical move", but admitted that his constituents could easily interpret his actions as a serious shift in his position, and that this could cause him to lose votes at the next election. Wirth appeared to be caught between conflicting constituency pressures. But he had decided that, even under the new rules, the way to congressional advancement was still to court the chairman and generally to favour statesmanlike compromises.

As a result, Wirth and Eckhardt circulated a slightly modified oil-pricing policy, renamed the Eckhardt-Wirth Amendment for the 13 May subcommittee meeting. Because there was no other majority-party policy option, this proposal regained the support of Ottinger, Sharp and Broadhead. With seven out of the subcommittee's fourteen votes, the Eckhardt faction once again needed only one additional vote to secure passage of its proposal. Eckhardt believed Dingell would now be forced to join them.

Democrats and Republicans alike predicted Eckhardt's proposal would be adopted as the subcommittee's pricing policy. A number of factors favoured his proposals. The subcommittee was seriously behind schedule, and no other competing policy had emerged from Dingell's contacts with the administration. The Ways and Means Committee had just defeated a windfall profits tax, seriously undermining Krueger's proposal, which was contingent on just such a tax. And if Dingell did support Krueger's policy, he would be in the untenable position of voting for a largely minority-backed policy. Thus, it appeared that the Eckhardt faction finally had a winning line-up of supporters for the first ballot, a line-up including the chairman. However, when the votes were counted on 13 May 1975, after five weeks of cloakroom negotiations and public sessions, the Eckhardt-Wirth Amendment failed in a tie vote, seven to seven.

Table 3-5

Subcommittee Vote on the Eckhardt-Wirth Amendment

13 May 1975

| Ayes (7) | | Nays (7) | | |
|---|---|---|---|---|
| Brodhead | D | Brown | | R |
| Dingell | D | Broyhill | (P) | R |
| Eckhardt | D | Devine* | | R |
| Maguire | D | Heinz | | R |
| Moffett | D | Krueger | | D |
| Ottinger | D | Moorhead | | R |
| Wirth | D | Murphy | (P) | D |

(P = vote by proxy)

Members are listed alphabetically. *Devine, as ranking minority member of the Commerce Committee, was an ex officio member, with vote, of the Subcommittee. Although he did not actively participate, he appeared to vote with the Republicans on key provisions. Chairman Staggers, who had the same privilege, chose not to participate.

As the above table shows, the subcommittee divided largely along party lines. A majority of Democrats opposed all of the Republicans.

Party affiliation is one of the most influential determinants in congressional voting behaviour, particularly on issues where the parties have different ideological positions - - as did the Democrats and Republicans on oil-pricing.[34] From the time a member declares his candidacy for office, the partisan nature of politics encourages his identification with and loyalty to the party, because of the identification with and loyalty to it of his voters. Politicians adopt a party label to run for Congress because they share a traditional identifiable set of party values with their voters. These values

34. Julius Turner, Party and Constituency: Pressure on Congress (Baltimore: The John Hopkins University Press, 1951), revised edition by Edward J. Schneier, Jr., 1970; David B. Truman, The Congressional Party (New York: John Wiley & Sons, 1959); Lewis Froman, Jr., Congressmen & Their Constituents (Chicago: Rand McNally, 1963); Lewis Froman, Jr. and Randall Ripley "Conditions for Party Leadership: The Case of the House Democrats," American Political Science Review, vol. 59 (March, 1965), pp. 52-63; Aage Clausen, How Congressmen Decide: A Policy Focus (New York: St. Martin's Press, 1973).

translate into shared goals and approaches to dealing with issues in Congress.[35] Once they enter Congress, other influences continue to foster party loyalty if not discipline. For in a vast and heterogeneous country like the United States, party outlooks vary from one region to another, and party organization and party voting in constituencies, by themselves, cannot guarantee a representative's re-election. But even so, entering members depend on their party leaders and senior colleagues for guidance in getting themselves established, and for help in shaping their congressional careers by securing the right committee assignment even under the new rules. In exchange, party leaders and senior members lobby younger ones to support the party's position.[36] Members also organize into state party delegations to discuss bills and to develop legislative strategies.[37] On the oil-pricing issue, the parties' opposing views reflected the two parties' dissimiliar ideological approach to economic regulation, a question of public versus private management. Thus the partisan divisions were not surprising.

However, unlike a disciplined parliamentary system, party affiliation does not explain all members' voting behaviour. Members, as Krueger and Murphy show, deviate from their party's position. This is so because just as the broad ideological identification explains why members of the same party generally vote together, it also explains why some members vote against their party's position. Parties traditionally have had recognized divisions within their own membership. The Democrats were divided into a conservative faction, largely comprised of its southern members, and a moderate to liberal wing, made-up primarily of

35. Helmut Norpoth, "Explaning Party Cohesion in Congress: The Case of Shared Policy Attitudes," American Political Science Review, vol. 70 (1976), pp. 1156-1171.

36. Ann Cooper, "House Democrat Whips: Counting, Coaxing, Cajoling", CQ, 27 May 1978, pp. 1310-1306.

37. Richard Born, "Cue-Taking within State Delegations in the U.S. House of Representatives", Journal of Politics, vol. 38 (February 1976), pp. 71-94; Donald R. Matthews and James A. Stimson, "Decision Making by U.S. Representatives: A Preliminary Model", in S. Sidney Ulmer, ed., Political Decision-Making (Cincinnati: Van Norstrand Reinhold, 1970).

northern members.[38] Although the Republican Party generally has been more united than its rival party, Republicans from the northeastern states usually were more liberal than those from other areas. But by the mid-1970's they were a declining breed. Krueger and Murphy voted with the Republicans' position because they were influenced more by their ideological views than their party.

Dingell's vote can not be explained by these usual determinants of party or ideology. He initially cast his vote with his party colleagues in favour of the Eckhardt-Wirth Amendment, but he did so knowing that his support would not secure the provision's passage. Sharp, one of the policy's supporters, was absent, at a political fund-raising dinner near the Capitol. He had been telephoning the subcommittee room throughout the evening to monitor the proceedings, in order to return if a vote seem imminent. Sharp missed the vote, causing the Eckhardt Amendment to fail. However, the fault did not lie with Sharp's monitoring system but in Wirth and Dingell's maneuverings. They could go on record as voting with the majority of their party colleagues but without securing passage of Eckhardt's proposal only if Sharp were absent. This successful attempt to evade accountability was characteristic of the behaviour in Congress before reform, which reformers purported to but could not change. Holstein commented, "it was their way of sticking it to us." A congressman explained how their maneuverings were not simply a case of taking advantage of a situation. They were actually setting Sharp up. (Wirth, of course, denied this. )

After Eckhardt's Amendment was defeated, the subcommittee then adopted the Krueger Amendment by one vote, eight to seven, with Dingell's support.

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38. John F. Manley, "The Conservative Coalition in Congress", in Dodd and Oppenheimer, eds., Congress Reconsidered, pp. 75-95.

Table 3-6

Subcommittee Vote on the Krueger Amendment

13 May 1975

| Ayes (8) | | | Nays (7) | | |
|---|---|---|---|---|---|
| Brown | | R | Brodhead | | D |
| Broyhill | | R | Eckhardt | | D |
| Devine | (P) | R | Maguire | (P) | D |
| Dingell | | D | Moffett | | D |
| Heinz | | R | Ottinger | | D |
| Krueger | | D | Sharp | | D |
| Moorhead | | R | Wirth | | D |
| Murphy | | D | | | |

(P = vote by proxy)

Members are listed alphabetically.

As the Table 3-6 shows, all of the Republicans voted for the amendment's passage, and a majority of Democrats voted against it. Krueger, Murphy and Dingell's votes were the only exceptions. Krueger and Murphy voted the way they did for the same reasons that they voted against Eckhardt's policy - - ideology. Dingell's motivations were more complex. Although he did not support the substance of Krueger's policy on ideological grounds, he voted for it for political reasons. Responding to the internal subcommittee struggle, Dingell wanted to block Eckhardt's attempts to lead the subcommittee. He also wanted to formulate a compromise with the Administration to ease the political tensions with Ford. He believed Krueger's policy would achieve both.

Thus the subcommittee's pricing policy was chosen not because of its substantive merits but because of the political divisions among the Democrats. Krueger's policy was now the subcommittee's official oil-pricing policy. The subcommittee had adopted a minority-backed proposal, which was likely to be

unacceptable to a majority-dominated committee. In consequence, although the subcommittee had laboured long and hard to develop an oil-pricing policy, when it finally completed its deliberations on H.R. 7014, the issue was far from resolved. The Democrats would have to try again during the full committee's review.

### The Full Committee Reverses the Energy and Power Subcommittee's Oil-Pricing Policy and Adopts Instead a Bargaining Position

On 9 June, 1975, shortly after members returned from their two week Memorial Day Recess, the Commerce Committee began its review of H.R. 7014. The review of most of the bill's provisions was merely cursory. However on the oil-pricing section it was extensive. After two weeks of deliberations the full committee reversed the subcommittee's decision. On 18 June 1975 members adopted another pricing proposal from Eckhardt, a policy very similar to the one he had presented to the subcommittee.

Eckhardt's Amendment was adopted by a majority of only one vote after a fierce struggle. The power struggle that had so dominated the subcommittee's deliberations continued during the full committee's sessions, but the liaisons that had been forged among subcommittee members shifted: three members now vied for committee members' support of their pricing policies where only two had offered alternatives during the subcommittee stage. Dingell withdrew his support for Krueger's minority-backed policy to take the middle ground himself and offer his own proposal as a compromise to the Krueger and Eckhardt's proposals. Eckhardt ended his affiliation with Wirth on whom he could no longer rely, to join forces with Moss and offer a counter amendment to Dingell's and Krueger's proposals.

At the outset of the committee's deliberations, Krueger, Eckhardt, and Dingell had an almost equal number of supporters. However, the debate soon narrowed to two proposals because these were viewed as the Democrats' only legitimate options. As Thomas Green, a member of the committee's professional staff, explained: "Two proposals by respected senior Democrats resulted in two

recognized leadership positions." In this situation, Dingell and Eckhardt competed to be the leader on the energy issue. More was at stake in the House than what mattered for the country -- that is, which oil-pricing policy was adopted.

Dingell's proposal decontrolled oil prices over five years at price levels which were high relative to then current prices and Eckhardt's alternative proposals.[39] He included a windfall profits tax effective only in the initial months of the decontrol programme. Guided by his objective to have members adopt a "passable" bill acceptable both to his colleagues and the President, Dingell borrowed features from both Eckhardt and Krueger's proposals. From Eckhardt, he took the length of time that controls would be in force, which was more than twice as long as the duration stipulated in Krueger's plan. From Krueger's policy, he borrowed the price levels, which were more than twice as high as those in Eckhardt's policy. And although he included a windfall profits tax to placate the critics of decontrol, he limited its impact by making the tax applicable only in the beginning months of the programme, and then only to profits that were not reinvested in oil and gas exploration, to assuage the advocates of decontrol. In consequence, Dingell's proposal looked very much like compromise between the two extremes. Because of this, and the fact that Dingell was chairman of the Energy and Power Subcommittee, he gained the support of some mid-level and senior Democrats.

But Eckhardt was not without his supporters. He proposed a decontrol programme that very gradually removed controls over five years. His plan included three price levels set much lower than the other two plans, so low that a windfall profits tax was unnecessary.[40] Because his policy took positions compatible with the more liberal orientation of the committee, Eckhardt also enlisted the support of some senior committee colleagues, including second and third ranking members MacDonald (D. Mass.) and Moss (D. Calif.).

39. "Dingell's Price Proposal", Fact Sheet, Legislative Staff, Rep. John Dingell's Office. UnPublished: Document in author's possession.

40. "Eckhardt's Price Proposal," Fact Sheets, Legislative staff, Rep. Robert (Bob) Eckhardt's Office. Unpublished: Document in author's possession.

In spite of the obvious substantive differences between Eckhardt and Dingell's proposals, the committee's debate focused only tangentially on the policies' dissimilarities. Instead its primary focus was the political repercussions of each course of action. Dingell argued that the Democrats' most important objective was to enact an oil-pricing policy that a majority of members in Congress could support, and that the President would sign into law. He claimed his proposal could accomplish this. He argued that if the committee reported out Eckhardt's proposal, they would end up with no bill at all because a majority in the House would not support it, and even if they did, President Ford was sure to veto it. As Curtis explained: "Dingell sincerely feared that if Eckhardt's pricing policy was adopted, Ford was dumb enough to veto the bill and leave the country without any policy." Dingell believed that Ford was waiting for just such an opportunity to win his initial policy of immediate decontrol and to do so with little risk to the Republicans. If the policy of immediate decontrol was instituted and failed - - as Dingell believed was a certainty - - Ford could blame the Democrats for not enacting a reasonable policy. And they would then suffer in elections. Because other members shared Dingell's fears about the President's intention, this became a strong argument in support of the chairman's compromise proposal.

Dingell's bid for support was strengthened by some members' distrust of Eckhardt's own intentions. Some of his colleagues believed that Eckhardt had adopted the position he did in order to push the President to veto the bill, the so-called "cynical Democratic strategy" or "depression syndrome." Members thought Eckhardt believed that the electorate would hold the Republicans, not the Democrats, accountable for the serious economic impact expected to result from immediate decontrol - - and that the Democrats would benefit in the forthcoming 1976 election when the congressional majority hoped to regain control of the White House.

These suspicions of Eckhardt's intentions were not confined to his opponents on the issue. Even some of Eckhardt's staunchest supporters believed

that such a strategy existed. Peter Kirby, lobbyist for the Air Transport Association, traced the birth of this strategy to a meeting, which he attended, in a St. Louis hotel room. The meeting occurred during the Democrats 1974 mid-term convention:

> Top House and Senate leaders and members from every significant pressure group in the country plotted this strategy for recapturing the White House.

Kirby was not alone in his assessment but evidence is necessarily very fragmentary. As Holstein explained: "It was such a scary and sensitive issue, we were afraid to even discuss it." But there is no doubt in some members' minds not only that the strategy did exist but that they were participating in furthering it. Yet Eckhardt himself argued that there was nothing cynical about his proposal -- it was simply good politics. Realizing that the price controls provisions of his policy were too liberal to rally a majority of votes for his policy on its substance, he argued that his policy provided the Democrats with a bargaining position to negotiate with the President. Ford could not refuse negotiations for fear of the political and economic impact of a sudden hike in oil prices. Moss, for example, reasoned that in adopting Eckhardt's policy, the committee was not endorsing the policy <u>per se</u>, but simply a strong position, or bottom line, from which to begin bargaining with Ford over the final details of the pricing policy.

Ford's own misjudgments, incapacity, and miscalculations for 1976 played into the liberals' hands. They provided ample evidence to support Eckhardt's argument that the President was pursuing his own bargaining strategy and they had to respond in kind. As Eckhardt reminded his colleagues, if the President did not support Krueger's policy, which was the closest position to his own, it was unreasonable to believe that he would even consider supporting Dingell's proposal. And the President had plenty of opportunity to prove Eckhardt wrong because Dingell kept claiming to have Ford's endorsement. This was an important claim -- if only it could have been substantiated. But without proof, Dingell could not convince his fellow Democrats. As Peter Kirby explained:

"We felt that if Dingell had had a letter from Ford guaranteeing his support, saying he would sign it, we would have gone with him." However, not only would Ford not make Dingell's claim plausible, his rather crude attempts to exploit the issue as part of his 1976 election campaign against the Democrats fueled the adversary relationship and, in so doing, bolstered Eckhardt's political case by making the liberals more willing to "play chicken" and confront the President with the "depression syndrome."

Further to support his bargaining strategy, Eckhardt sought to convince his colleagues that Ford's failure to endorse Krueger's or Dingell's proposals was just one more incident in the game that the President had been playing with them since January. Eckhardt had a long list of incidents to support his point. From the outset of the 94th Congress, Ford had been pressuring Congress with what most members of Congress now viewed as unreasonable deadlines, particularly in light of the complexity and controversy of the oil-pricing issue. In May, just before the full committee began its review, Ford intensified this pressure, delivering a speech in which he launched his most critical attack on Congress yet. Referred to as the "calendar speech," Ford tore off the months of a calendar to show the time that had passed in which Congress had been unable to adopt an energy bill. Ford timed his speech for maximum effect to be broadcast on national television during the members' Memorial Day Recess. The speech generated the intended outcry from constituents. Members were angered because Congress was indeed vulnerable to criticism. It was May and the 94th Congress was not living up to its own members' expectations much less those of the general public. Members themselves were having their own crisis of confidence. As Elizabeth Drew explained the congressional mood,

> Beneath [the debate on the issues] . . . lay the question of whether any action could be taken at all -- whether we believed ourselves. The symbolism of the issue had become more important than the details. 41

41. Drew, p. 62.

But members were also angry because Ford himself was guilty of procrastination and delay. He had revised his position on oil pricing in April from immediate to gradual decontrol (over twenty-five months) and had delayed sending his proposal to Congress for their review. (See Chapter Five, p. 198.)

In addition to Ford's pressuring tactics, Eckhardt had other incidents to support his case against the President. He was given the most help in convincing his colleagues of Ford's ploys from the President's own executive office. The Office of Management and Budget (OMB) sent all Commerce Committee members an unsigned letter which listed their objections to Krueger's pricing provision - - the policy that was closest to the President's now-revised pricing position. Although this letter later turned out not to have been authorized by the White House, members thought it had been and the damage was done. The letter's arrival brought about what Curtis described as a "turning point" in the oil-pricing policy's debate.

Congressional-executive relations were already in a sorry state, but the letter dissolved any semblance of cooperation between the two, and began what subcommittee counsel Demerest described as the "strategy of confrontation." Curtis recounted members' response:

> [Before the recess] they had been working until nine, ten, eleven o'clock at night to do a conscientious job, and they were angry that he didn't acknowledge this. After a while it introduced a "the hell with you feeling" toward the President.

Capitalizing on the anger and frustration felt by Democrats, Eckhardt (according to Curtis) repeated to his colleagues that,

> The President was now beholden to Congress. His oil-pricing policy had been totally discredited. Not even his own Party members could honestly support it anymore.

This became one of Eckhardt's most persuasive arguments in support of his policy, powerfully aided by the FEA's incompetence and Ford's intransigence. However, it took time for Eckhardt to convince his colleagues of this. The major obstacle Eckhardt and his supporters continued to encounter in trying to convince colleagues to support his position was the fear that he was actually

pursuing a "depression syndrome" rather than using it to push the President to be more reasonable. Through an intensive lobbying campaign, these doubts were gradually eased. (See Chapter Six, pp. 216-252.)

Finally, when Dingell failed to get the President's endorsement and lost the backing of his most senior supporter (Brock Adams, D. Wash.) he withdrew his amendment. Eckhardt praised Adams "for breaking the apparent stalemate" in the committee. Once convinced that Eckhardt was genuinely pursuing a bargaining strategy, Adams appealed to his fellow Democrats, in what Eckhardt characterized as "the most important thing that affected the outcome of the committee's deliberations." Subcommittee counsel Demerest recounted Adams' argument:

> By the time we got to the floor, then the Senate fools around with it in conference, we will have nothing left. If the Administration wants to play hard games, we will too. John Dingell, we're going to give you the best possible bargaining position we can by giving you the hardest bargaining position.

Adams' appeal made sense. When Dingell withdrew his amendent, the contest within the committee then shifted from one between Dingell and Eckhardt to that between Krueger and Eckhardt.

Numerous factors undermined Krueger's position and made his option an unlikely choice. First, Krueger's proposal was still primarily a minority-backed proposal. For such a majority-member dominated committee, this was a difficult policy to adopt regardless of its substantive merits. Second, Ford not only failed to endorse it, but when the OMB attacked it, he did not publicly disagree with its objections. Third, the windfall profits tax that was an integral part of Krueger's proposal now seemed unlikely ever to be enacted. After first being defeated in the Ways and Means Committee during the Energy and Power Subcommittee's proceedings, the measure was reconsidered during the floor debate of the Ways and Means bill and once again defeated. Fourth, and in Krueger's mind the most important factor undermining his position was Dingell's decision to withdraw his support. As Krueger explained:

> Some of these negative elements could have been offset if Dingell had stayed with my proposal as it went into the full committee. We could have won because it would have been more difficult to open up the alternatives.

But Dingell did open up the alternatives, and thus made the committee's decision to reverse the subcommittee's oil-pricing policy predictable, an assessment shared by the Republicans. As Bruce Heinke, Republican legislative assistant to Congressman Brown, explained: "We knew it would be knocked out." In light of these factors, not Krueger's defeat but his ability to muster an impressive twenty-one out of forty-three votes in the full committee was surprising. It showed how worried members were about the substance of Eckhardt's policy, and about a presidential veto.

Committee members cast their final votes on the oil-pricing policy 18 June 1975. After two tie votes, the Eckhardt Amendment passed by one vote, as table 3-7 indicates:

Table 3-7

Committee Vote on the Eckhardt Amendment

18 June 1975

| Ayes (22) | Nays (21) |
|---|---|
| Brock Adams (D. Wash.) | Clarence J. (Bud) Brown (R. Ohio) |
| William M. Brodhead (D. Mich.) | James T. Broyhill (R. N.C.) |
| Charles J. Carney (D. Ohio) | Goodloe E. Byron (D. Md.) |
| Bob C. Eckhardt (D. Tex.) | Tim Lee Carter (R. Ky.) |
| James J. Florio (D. N.J.) | James M. Collins (R. Tex.) |
| W. G. Heftner (D. N.C.) | Samuel Devine (R. Ohio) P |
| Torbort MacDonald (D. Mass.) | John D. Dingell (D. Mich.) |
| Andrew Maguire (D. N.J.) | Louis Frey, Jr. (R. Fla.) |
| Ralph Metcalfe (D. Ill.) | James F. Hastings (R. N.Y.) P |
| A. (Toby) Moffett (D. Conn.) | John H. Heinz, III (R. Penn.) |
| John Moss (D. Cal.) | Robert Krueger (D. Tex.) |
| Richard L. Ottinger (D. N.Y.) | Norman F. Lent (R. N.Y.) |
| Mathew J. Rinaldo (R. N.J.) | Edward R. Madigan (R. Ill.) |
| Paul Rogers (D. Fla.) | John Y. McCollister (R. Neb.) |
| James Santini (D. Nev.) | Carlos J. Moorhead (R. Cal.) P |
| James A. Scheuer (D. N.Y.) | John M. Murphy (D. N.Y.) P |
| Phillip R. Sharp (D. Cal.) | L. Richardson Preyer (D. N.C.) |
| Harley O. Staggers (D W.Va.) | Fred B. Rooney (D. Penn.) |
| W. S. (Bill) Stuckey (D. Ga.) | David Satterfield (D. Va.) |
| James W. Symington (D. Mo.) | Jo Skubitz (R. Kans.) |
| Lionel Van Deerlin (D. Cal.) | Timothy E. Wirth (D. Colo.) |
| Henry A. Waxman (D. Cal.) | |

(P = vote by proxy)

Members are listed alphabetically.

These votes in the full committee, like those of its energy subcommittee, divided predominantly along party lines, with a majority of Democrats voting against a third of their party colleagues aligned with all but one of the Republicans. Twenty-one of the committee's twenty-nine Democrats voted in favour of Eckhardt's Amendment. Thirteen of the committee's fourteen Republicans voted against.

However, eight Democrats and one Republican did not vote with their party's identified position. With six of the eight Democrats who voted against

Eckhardt's proposal - - Rooney, Murphy, Satterfield, Preyer, Byron, and Krueger - - ideology and/or constituency interests influenced their behaviour.[42] All of these members had conservative voting records.[43] But in addition, with the expanding number of members voting, constituency pressure also emerged as an influence, especially evident in the lone Republican's vote against his party's position. After party, constituency is probably the most important determinant in predicting a member's voting behavior. After all, members are elected to represent a particular constituency's interests and views.[44] Some studies have shown that when a congressman votes against the mainstream of his party, as Rinaldo did, most often he does so in respect to a constituency interest which differs from the majority of constituents of his party elsewhere.[45] This was the case when the New Jersey Republican voted with the Democrats in this instance. As Nader lobbyist Burhop explained: "The credit for securing Rinaldo's support goes to the AFL-CIO." In 1975 Rinaldo was planning a 1976 gubernatorial campaign bid in his state, a race in which labour's endorsement was essential for winning.

The voting behaviour of other members is not as easy to explain. For example, Dingell and Wirth's decision to vote with the Republicans could not be attributed to the usual predictors of party, ideology or constituency. In their case, their votes must be viewed against the backdrop of the power struggle within the committee and their objective of adopting a "passable bill."

42. See John W. Kingdon, Congressman's Voting Decisions, 2d ed. (New York: Harper & Row Publishers, 1981), Chaps. 11 and 2; David R. Mayhew, Congress: The Electoral Connection (New Haven: Yale University Press, 1974).

43. See Barone, Ujifusa, and Matthews, The Almanac., pp. 746; 584; 878; 636; 364; 852.

44. Turner, Party & Constituency; Frank J. Sorauf, Party & Representation (New York: Atherton, 1963); Warren E. Miller & Donald E. Stokes, "Constituency Influence in Congress," American Political Science Review vol. 57 (1963), pp. 45-56; Raymond A. Bauer, Ithiel de Sola Pool, & Lewis Anthony Dexter, American Business & Public Policy (New York: Atherton, 1964), Chap. 30; Richard Fenno, Home Style (Boston: Little, Brown, 1978), Chap. 1; Lewis A. Dexter "The Representatives & His District", in Robert L. Peabody & Nelson W. Polsby, eds., New Perspectives on the House of Representatives, 2d ed. (Chicago: Rand McNally, 1969), pp. 9-11.

45. Froman, p. 102.

Moreover, questions as to why a member voted the way he did were not limited to those who departed from their party's position. For example, the vote of Democrat Stuckey (D. Ga.) raised questions precisely because he voted with his fellow party colleagues. Stuckey, after twice voting "present," broke the tie when he cast his vote unexpectedly in favour of Eckhardt's more liberal position. Stuckey's vote surprised both the Krueger and Eckhardt factions. Although both groups had lobbied hard to enlist his support, neither thought they had secured it. The Eckhardt faction believed that because of his conservative voting record he would not vote for their amendment. Stuckey supported the substance of Krueger's Amendment (which was consistent with his more conservative voting record), but he did not want to vote for a Republican-identified position. Stuckey thus promised Krueger that he would vote "present" so that his vote would not count. Krueger felt betrayed by Stuckey's change of heart and went so far as to question whether Eckhardt and Stuckey had made a deal. Stuckey's vote was clearly inconsistent with his voting history, so much so that Krueger was not alone in expressing these doubts. Stuckey himself contributed to these questions when during the vote he called out to Eckhardt: "how bad do you want it?" Although Eckhardt acknowledged that this made it appear as if they had made a deal, he explained:

> We didn't have an agreement, never any commitment . . . he likes to be the swing vote, he likes to keep people guessing. That's all he was doing.

A former member of Stuckey's staff, Carolyn Emight, who by 1975 was working for Moss on the Investigations Subcommittee, confirmed Eckhardt's view of her former boss - - and showed the influence of staff on members - - thereby providing better understanding of the influences that swayed Stuckey:

> He basks in the glory of being sought after by his colleagues. On the full committee he held out for three rounds. For him, this is the really fun part of the mundane parliamentary system. There are very few issues he really cares how it comes out - - he just wants to get it over with. We told him this was how he could get a compromise. He was willing to give away half the loaf if it's labeled as a "compromise."

She also knew from working with him "that it's the last person he talks to before he votes that matters." Emight made sure no one else had this opportunity because she followed him around the day the committee voted to ensure that Krueger's supporters would not gain access. Her efforts paid off, and provide a striking example of the way the staff of congressmen can influence not only their own bosses but their colleagues as well. But as Stuckey's vote illustrates, complex influences determined members' votes, not all of which can always be explained by the usual predictors of party, ideology or constituency.

On the oil-pricing issue, the Commerce Committee now had a bargaining position. It was a weak one, however. For, as the close vote indicated, the committee did not have a consensus position. Krueger therefore still believed he had another chance during the floor debate to have his policy reinstated. Thus, the committee, by failing to develop an oil-pricing policy which a majority of members supported on its substantive merits, effectively transferred the decision to the full membership of the House - - taking a very different approach to decision-making from the one Wilbur Mills epitomized in the era of the committee barons.

## The Full House Debates and Decides the Oil-Pricing Issues

The Rules Committee sent the Commerce bill to the floor under the now usual open rule. It also bent the rules for Krueger, not to please him but the leadership who were desperate for a bill and feared procedural log-jams without it. Krueger thus could make good on his promise to have the full membership of the House reconsider the pricing policy options. A lengthy, complex and controversial debate ensued on H.R. 7014. This debate which began on 14 July 1975 continued throughout that month's remaining days and then, after an interruption for a congressional recess in August, resumed in September. Although for this debate the House sat as the Committee of the Whole - - a format intended to expedite proceedings - - final passage did not occur until 23

September.[46] The debate, covering nine legislative days, was lengthy compared to the time usually allocated, even for a controversial bill. This was largely because of the difficult task House members were being asked to tackle.

The task at hand was for members to approve the Commerce Committee's energy bill, a task which included reconsidering the controversial pricing provision. On the pricing question, they were being asked to do what their colleagues during committee proceedings had failed to accomplish: to agree on a position acceptable to themselves both substantively and politically, as well as to a President of the opposition party and ideological persuasion. This was a tough assignment; oil pricing was such a complex and controversial issue. It would have been difficult enough if members had only to deal with one bill on the issue but because the oil-price controls authority (EPAA) was due to expire 31 August, the House also had to enact two other simple extension bills to buy time to complete work on HR 7014.[47] (Both of which the President vetoed. See Chapter Five, pp. 204-212.) This distracted them from the substantive pricing issue. In addition, their task was made all the more difficult because the floor was simply less conducive to such decision-making than were committees, and traditionally, had not been used for this purpose. In part, this was because of the lack of information and expertise of the majority of members; in part, it was because of the customs that still dictated members' behaviour during floor deliberations. At this stage, only a small minority of members would have been privy to the information which committee members already had from hearings, study, and mark-up, and which they needed to make informed decisions. Although Eckhardt and Krueger made a gallant effort to overcome this deficiency with an extensive educational campaign, they had only limited success. During floor proceedings,

46. The Committee of the Whole, according to Walter Oleszek, is "simply the House in another form." See Walter J. Oleszek, Congressional Procedures and the Policy Process (Washington, D.C.: Congressional Quaterly Press, 1978), pp. 109-110.

47. The extension bills were: (1) Oil Pricing Policy (HR 4035). Final Passage occurred 17 July 1975; (2) Emergency Petroleum Allocation Act Extension (S 1849). Final passage occurred 31 July 1975. Congressional Quarterly Almanac 1975, House Votes #300 and #350, pp. 92-93H and 108-9H (Washington, D.C.: Congressional Quarterly, Inc., 1976).

it is difficult for members to hold the attention of their colleagues for long. Congressmen typically meander on and off the floor. When they are present, they are often distracted or simply uninterested - - more than one congressman has been caught there taking his afternoon nap (which is not even considered a breach of legislative courtesy). In brief, the floor was not a very suitable forum for this onerous task; the reforms had done nothing to change this fact.

Floor consideration was made all the more difficult since Commerce and Ways and Means had failed to coordinate their bills so that both could be debated at the same time. Without a Ways and Means bill which included a windfall profits tax, Krueger's proposal was not in technical compliance with the chamber's rules. By including a tax provision (however vague) Krueger's proposal encroached on the Ways and Means Committee's jurisdiction. By making the decontrol portion of his policy contingent on whether Congress also enacted a windfall profits tax, he created an unknown and uncertain situation. No one knew whether such an amendment would bind the Ways and Means Committee to develop this policy, or, even if it did, whether that committee could ever develop such a proposal after it had just rejected a similar tax in its recent committee proceedings; or then, whether the House would accept a detailed proposal of the kind it had already once rejected. But when Krueger requested that the Rules Committee set aside the chamber's rule, they complied because the issue was so important and they feared it could not be resolved unless the House was given the opportunity to reconsider it. No one anticipated that reconsideration of the oil-pricing issue would entail the machinations that it did.

Informal polling by staff of both members suggested that Krueger and Eckhardt had an almost equal number of supporters at the outset of the debate. In fact, the division of support followed the pattern which had emerged during the committee proceedings; Democrats remained closely divided between the two, Republicans overwhelmingly favoured Krueger. However, there was no evidence of this close division within the Democrats' ranks when members cast

their first vote on the oil-pricing issue. In this vote - - on another of Ford's revised decontrol plans (over thirty-months) - - an almost straight party division emerged with Democrats overwhelmingly (262) rejecting the Republican President's proposal (167).[48] When the House cast its first vote on a congressionally-authored proposal concerning the oil-pricing issue on 23 July, the close division among the Democrats was evident; only after intense lobbying efforts did support shift slightly, and Krueger's Amendment was defeated, 202 to 220. But there was still no majority for Eckhardt's policy. This became obvious when, soon after members rejected Krueger's Amendment, they voted 215 to 190 to adopt the Wilson Amendment, which struck the pricing provision from H.R. 7014 altogether.

This action created what John B. Anderson (R. Ill.) described as "an almost hopeless situation from a legislative and parliamentary point of view."[49] Charles Wilson (D Tex.), a pro-oil conservative, tried to resolve this situation by proposing his amendment which kept both pricing policy options on par.[50] Members hoped that the Rules Committee could give them another opportunity to consider both policies, and once again, in an even more controversial decision, it complied when it granted Krueger yet another special rule. Eckhardt joined forces with Staggers (D. W.Va.), who, as chairman of the Commerce Committee, could offer a substitute amendment to Krueger's. They renamed Eckhardt's proposal the Staggers-Eckhardt Amendment. President Ford then intervened, sending the House a third policy option, a revised decontrol proposal similar to Krueger's. (See Chapter Five, p. 207.) Ford hoped to have the House adopt his proposal so he might take credit for an oil policy, or if that failed, at least to influence the legislation that was passed. In so doing, however, he severely weakened Krueger's even though the House was much more likely to pass a

48. Ibid.; House Vote #308 (H.Res. 605), pp. 95-99H.
49. CR. 30 July 1975, p. H. 7866.
50. CR. 23 July 1975, pp. H. 7336-7341.

Democratic rather than a Republican-sponsored policy. On 30 July 1975, with these three proposals before them, members voted first to reject Ford's proposal,[51] then to adopt the Staggers-Eckhardt Substitute Amendment, 218 to 207. With this vote, the House finally had its oil-pricing policy.

In making this decision, members were guided by numerous influences which can be discerned from the issues raised during debate and from the specific votes. Although they debated the economic, social, and political ramifications of each proposal, members kept getting sidetracked from these substantive arguments to the procedural problem that Krueger's Amendment raised. The problem for them was how they were supposed to make a decision on a policy option which required action by two committees, unable to coordinate their bills. Krueger referred to it as the "chicken and the egg" dilemma. As he explained to his colleagues:

> The Ways and Means Committee has been waiting for a deregulation proposal; if the Commerce Committee had waited for a tax proposal, we would never develop an oil-pricing policy. 52

His amendment, he argued, solved the problem by providing detailed pricing regulations which brought higher oil prices, yet presented only a vague outline of the related windfall profits tax. However, the first vote on the Krueger Amendment, 23 July, reflected members' uneasiness with this approach. And regardless of what Krueger did or said to assuage members' fears, this aspect of his proposal weakened his position. Then, after the Rules Committee granted members a second chance to reconsider his amendment, Ford's very similar proposal eroded his position because Republicans who had solidly supported Krueger now transferred their support to the President.

Throughout the debate, members remained concerned about which proposal the President would veto and which one he would sign into law. But by the time Ford sent Congress his revised decontrol plan, it was given little more than a cursory review. The House was too near to deciding its own policy and his

51. Congressional Quarterly Alamanac 1975, House vote #349 (H.Res. 641), pp. 106-107H.

52. CR. 18 July 1975, p. H. 7069.

motives too suspect to give in to the President in their on-going power struggle. And this was one of the strong motivations which guided members' final votes on 30 July when they adopted the Staggers-Eckhardt Amendment.

Once the President's proposal had been rejected, both Krueger and Eckhardt believed that House members - - exhausted and eager to get the decision on oil pricing behind them - - would adopt the first congressionally-authored amendment proposed. Both lobbied the leadership to come to the floor first, although normally the Staggers-Eckhardt Amendment would have priority because of Staggers' seniority and position as Commerce Committee chairman. The Speaker did not upset convention on this for the freshman representative.

Members' votes tell much about the influences that guided their oil-pricing policy vote. Consistent voting behaviour emerged on these amendments: Krueger's (23 July); Wilson's (23 July); and Staggers-Eckhardt (30 July). As table 3-8 shows, on all three congressmen remained closely divided but a strong pattern of party affiliation emerged; with a majority of Democrats continuing to oppose a majority of Republicans as they had during the committees' deliberations. Constituency, regional, and ideological factors were also evident influences in addition to party. Of the eighty Democrats who joined the Republicans to vote for Krueger's Amendment, against the majority of their party colleagues, sixty-five, or more than seventy-five per cent, represented sun-belt and oil-producing states, which corresponded largely with the old southern and border states bloc - - still home of the Democratic Party's most conservative members.[53] Of the eighteen Republicans who voted with the Democrats, thirteen were from consuming Northeastern states - - home of the Republican Party's most liberal wing.[54]

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53. The states included: Virginia, North Carolina, South Carolina, Georgia, Florida, Alaska, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Arizona, Nevada, New Mexico, Oklahoma, Kentucky, West Virginia, Maryland, and Delaware.

54. The states included: Massachusetts, Vermont, New Hampshire, Maine, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania.

On closer examination of these cross-voting members ideology can not provide an adequate explanation, for some members voted more conservatively on this issue than they usually did on other matters. With these members - - comprised mostly of members from the major producing states - - constituency (expectedly) proved an even more persuasive influence than ideology. Although researchers disagree over how important constituency is in members' voting patterns, they agree that it becomes very important on an economic issue which directly affects a member's district.[55] Oil-pricing was just such an issue. Of these eighty maverick Democrats, thirty were from the largest producing states - - Arkansas, Louisiana, Oklahoma and Texas - - which together produced a majority of the country's oil production in 1975; of the fifty other Democrats who defected from their party's position, more than half represented districts with some oil production.

The physical location of petroleum reserves established a regional pattern to the voting behavior.[56] Oil-pricing pitted the producing regions against the non-producing, or consuming, regions. In the early 1970's, the dramatic increases in oil prices resulted in equally large increases of revenues for oil-producing states. For example, from 1973 to 1975, Texas state oil revenues increased by ninety-seven per cent.[57] But these gains in the producing states were largely at the expense of the consuming states.[58] Members from the northeast, the largest consuming region, were so alarmed that they organized a regional caucus to work to reverse this trend.[59]

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55. Kingdom, Congressmen's Voting Decision, p. 37.

56. Sally Coor Lopreato and Fred Smoller, "Explaining Energy Votes In The Ninety-Fourth Congress," (Austin: The University of Texas Center for Energy Studies, 1978), p. 23.

57. Bob Bullock, Second Quarter Energy Report (Austin: Office of the Comptroller, April 1976), p. 3.

58. William H. Miernyk, "Regional Economic Consequences of High Energy Prices in the United States", The Journal of Energy & Development, vol. 1 (Spring 1976), p. 230.

59. "Regionalism in Congress: Formulas Debated", CQ, 20 August 1977, p. 1747.

The patterns of party and constituency dominated the votes on all amendments, including Wilson's. But in Wilson's vote a further set of factors come into play. Even though it was portrayed merely as a procedural measure, members voted on Wilson as if it were a referendum on Krueger and Eckhardt's substantive policies. Most of Krueger's supporters voted for, and most of Eckhardt's supporters voted against, this amendment. Thus the voting pattern on Wilson's Amendment was almost identical to the one on Krueger's. However, the patterns diverged in a significant respect. One group of members who had originally voted for Krueger's Amendment, now voted against Wilson's for a variety of reasons. Some voted against Wilson's proposal in order to further their substantive position on oil-pricing. As staunch supporters of immediate decontrol, they reasoned that if Eckhardt's pricing proposal was the only one before the House, members would reject it, or, even if they adopted it, the President would veto it. In consequence, on 31 August 1975, the date when controls were due to expire, immediate decontrol would occur. Others voted this way for jurisdictional reasons. As Ways and Means Committee members, they resented Krueger's encroachment on their committee's turf. They reasoned that if Wilson's Amendment were defeated, Krueger's Amendment would not be reconsidered. Still others voted against Wilson's position for more general procedural reasons: they were genuinely concerned that this amendment would establish a bad precedent of members reconsidering an issue after they had already decided it.

The shift of support by this entire group, regardless of the differences in members' reasons, also resulted in another distinction between the voting patterns on the Krueger and Wilson Amendments. Whereas on Krueger's Amendment, the position supported by a majority of Democrats prevailed, on Wilson's, the position supported by a majority of Republicans was victorious. This occurred because, on the Wilson Amendment, the conservative coalition re-

emerged - - a majority of southern Democrats joined a majority of Republicans to defeat a position backed by a majority of northern Democrats. On the Staggers-Eckhardt Amendment, with few exceptions, those who voted for it had voted against Krueger's Amendment, and vice-versa. The same influences which had then been operative again came into play.

With passage of this amendment, the House now had an oil-pricing policy. This policy established the price of domestic old oil - - the amount of oil production from a well prior to 1972 - - at $5.25 per barrel, and decreased the price of domestic new oil - - the amount of oil produced from a well in excess of the 1972 levels - - from $13.00 to $7.50 per barrel to offset the impact of prices in the international market, and to bring the two prices closer together in preparation for gradual decontrol. It also gradually removed these price controls, over sixty months, at a set percentage rate each month. It designated higher prices - - up to $10.00 for oil produced from the Outer Continental Shelf and the Artic, areas where the increased cost of production appeared to justify these higher prices.[60]

From 30 July, when this oil-pricing policy was chosen, until 23 September, when H.R. 7014 was finally passed, the power struggle between the executive and legislative branches continued. Now, however, the focus of this struggle shifted from the oil-pricing policy itself (further negotiations would now have to wait until the conference committee) to a retroactive short-term extension of controls that would allow the House and Senate to complete their proceedings. But President Ford used the threat to veto the extension to encourage timely consideration of the House bill. When members cast their final votes for H.R. 7014, 255 to 148, President Ford agreed to sign a six weeks' extension bill.[61] As table 3-8 shows, members' votes shifted on the final bill.

60. U.S. Congress, Senate, Committee on Interior and Insular Affairs and Committee on Commerce, Overview of S. 622 and H.R. 7014, 94th Cong., 1st sess., 1975, pp. 16-17.

61. The extension bill was The Oil Price Controls Extension Act (H.R. 9524). Final passage occurred 26 September 1975. See: Congressional Quarterly Almanac 1975, House Vote #413, pp. 128-129H.

Table 3-8

House Floor Votes

| | | | | |
|---|---|---|---|---|
| 1. | Krueger Amendment | | (23 July 1975) | |
| | | Ayes | | Nays |
| | D. | 80 | | 202 |
| | (ND | 24) | (ND | 174) |
| | (SD | 56) | (SD | 28) |
| | R. | 122 | | 18 |
| | Total | 202 | | 220 |
| 2. | Wilson Amendment | | (23 July 1975) | |
| | D. | 90 | | 184 |
| | (ND | 35) | (ND | 157) |
| | (SD | 55) | (SD | 27) |
| | R. | 125 | | 15 |
| | Total | 215 | | 199 |
| 3. | Eckhardt-Staggers Amendment | | (30 July 1975) | |
| | D. | 203 | | 79 |
| | (ND | 171) | (ND | 23) |
| | (SD | 32) | (SD | 54) |
| | R. | 15 | | 128 |
| | Total | 218 | | 207 |
| 4. | Final Vote on H.R. 7014 | | (23 September 1975) | |
| | D. | 224 | | 40 |
| | (ND | 180) | (ND | 5) |
| | (SD | 44) | (SD | 35) |
| | R. | 31 | | 108 |
| | Total | 255 | | 148 |

Source: Congressional Quarterly Almanac 1975, House Votes: #313, pp. 96-97H; #315, pp. 96-97H; #347, pp. 106-107H; and, #405, pp. 124-125H.

The voting pattern changed because members now were influenced by different factors. Party affiliation emerged as the primary determinant of a member's vote. With fewer members defecting from their party's identified position, the vote was no longer as close.

However, there was an interesting difference between the way votes shifted in the two parties. Those Democrats who had voted against their party's majority position on the oil-pricing amendments -- these were mostly members from the southern and border states -- generally moved toward their party's identified position. For the Republicans the opposite was true: those who switched their positions on final passage generally moved away from their party's position. These members (regardless of party) who had opposed the Staggers-Eckhardt Amendment overlooked the fact that this was the centrepiece of the bill they now helped to enact. This is a typical pattern in congressional voting. A member may oppose a specific provision in a bill -- even if it is the heart of the legislation -- and yet vote for the bill on its final reading because of the overall importance of the legislation's other provisions, or because of members' perceived need just to resolve the matter. In the instance of H.R. 7014, these other provisions constituted the chamber's only major energy bill.

## Reforms Result in Change, but the House is Still Not Capable of Developing a Policy Independent of the President

In developing H.R. 7014, particularly its oil-pricing provision, the House did not live up to the unrealisticly high expectations voiced at the outset of the 94th Congress. As the account above makes clear, the changes upon which members, the press, and other observers had expressed such optimism -- the two-to-one Democratic Majority, the ideological outlook of the chamber, and the reforms -- failed to bring about the anticipated improvements. Even though the two-to-one party ratio and the ideological shift made it seem more likely that the Democrats could pass whatever policies they wanted, the difficulty members had in developing this complex and controversial oil-pricing policy showed this

hope to be an illusion. Although these factors, at least initially, made the Democrats more committed to developing their own policies, they also made united congressional action more difficult when it became most necessary. The reforms brought about significant changes in the decision-making process - - a point that is particularly evident when one compares the way the oil-pricing policy would most likely have been developed before the reforms and the actual events in 1975. But these same changes did not facilitate the House's ability to make decisions effectively.

The shifts in the chamber's membership did not bring about the hoped for ease in enacting party policies simply because congressional parties were undisciplined and disunited. National parties had declined. The Speaker - - as the Democrats' formal congressional leader and, in fact, their only leader, without a Democrat in the White House - - lacked the powers or the personality to provide this kind of leadership. Even though some of the Speaker's powers had been enhanced - - particularly his powers of appointment - - his role had not been transformed. Moreover, Albert was not a forceful enough leader to make use of those powers which had been increased. Reactivating the Steering and Policy Committee initially made Albert appear to be the new chief party spokesman, one who was capable of initiating and developing national policies independent of the executive branch. Some members envisioned a mythical leader who had the authority of Cannon but without the accompanying power to abuse his position.

However, these visions were quickly dispelled. To begin with, the Task Force on Energy and the Economy which the Speaker established was nothing more than a "figurehead" committee - - comprised of members most of whom lacked expertise in the subject matter, and who had no legislative authority. Even if circumstances of the Task Force had been different, and it had developed a party policy for the standing committees, the Speaker still had no power to impose these proposals on the committees. The Speaker's ninety-day deadline passed without much notice. More generally, the Speaker's enhanced powers

were checked by power vested elsewhere. For example, when the Speaker proposed committee members, it was the caucus, not Albert, which had the final vote of approval on committee assignments. And it was a power that the caucus was not reluctant to use. At the outset of the 94th Congress, the caucus rejected several of Albert's Committee on Committee's recommendations for chairmanships, and instead elected its own choices. Thus, on balance, the leadership's powers in the House did change - - but not enough for the Speaker to emerge as a leader capable of developing, and then guiding a policy through the House, even with the large majority of apparently like-minded members. He was, however, better able to help legislators in their efforts. As Robert L. Peabody concluded in his important study (1976):

> The party leadership's contributions to most of these legislative endeavors is marginal at best; they schedule legislation; work out appropriate floor strategy; and corral a few votes here and there. This is not to say that their contributions have no import. Indeed, the leaders' involvement or non-involvement may be critical to the success or failure of many important bills that are held or passed by a given Congress. . . .
>
> Although leadership contributions may be marginal, most important decisions are made at the margins. 62

Albert lacked the force of personality that might have made it possible for him to leave his imprint - - even at the margins. "An iron fist or even a little meanness seemed lacking," as Peabody commented.[63] And many members, disappointed at Albert's failing in this regard, blamed him for their difficulty in developing an oil-pricing policy. Even his long-time friend and trusted ally, Jim Wright (D. Tex.), was critical: "If Rayburn had presided we would have made the hard choices." But the fault was not entirely Albert's.

Rank-and-file members had to share the blame for not having a leader, whether the Speaker or anyone else in Congress, who could provide a centralizing function - - that is, develop a policy, coordinate its development, and then secure the votes needed for its passage. Such a leader would have gone against the

62. Robert L. Peabody, Leadership in Congress (Boston: Little, Brown & Co., Inc., 1976), p. 9.

63. Ibid., p. 47.

whole tenor of the House. It was inconsistent with the rise of individualism resulting from the decline of parties. As David Broder explained: "No one can lead men and women who refuse to be led."[64] And in fact, members themselves had done everything they could to further the decentralizing trend. Parodoxically, they did this by using the reforms effected from 1968 through 1975.

By September 1975, after nine months of deliberations on the nation's energy problems, House Democrats and Republicans alike agreed on one thing - - because of the approaching election year any energy bill was better than no bill at all. However, Congress still had no bill and no oil-pricing policy. And the House had merely a negotiating position to take to conference with the Senate. The final bill necessarily would be the product not only of the labours of the House members but of their Senate colleagues as well. By the time the House finally cast its vote on H.R. 7014, the Senate had already, much earlier, adopted its response to the oil-pricing issue. The development of the Senate's bill, shaped by very different institutional and political factors than those acting in the House, will be examined next in Chapter Four.

64. David S. Broder, "Majority's Discipline," Washington Post, 8 June 1975.

# CHAPTER FOUR

## The Senate Extends the Existing Oil-Pricing Policy Rather than Develop a New Policy

On 13 January 1975 Majority Leader Mike Mansfield (D. Mont.) followed Speaker Carl Albert's (D. Okla.) lead and announced that he had also established a Task Force on Energy and the Environment. The Majority Leader's actions were as unusual as Speaker Albert's: this was the first time that such a committee had been established in either chamber. Although the expectations of the Senate were not as great as those of the House, Mansfield's actions establishing the Task Force fueled the general optimism of members, the press, and other observers that Congress would initiate and develop a national energy policy, independent of the President's leadership.

Initially, the Senate appeared just as determined and committed to developing a congressionally-authored policy as the House. As the Task Force began to formulate policy options, numerous standing committees also began to investigate the energy problem and develop their own legislative proposals. In part these committees were prodded into action by the assignment at the end of January of President Ford's Energy Independence Act (S. 594), a bill identical to H.R. 2633 introduced in the House. (See Chapter Three, p. 99.) Mansfield divided the bill among eight standing committees: Armed Services; Finance; Banking; Housing and Urban Affairs; Judiciary; Labor and Public Welfare; Public Works; and Interior and Insular Affairs. Although these were the main committees which claimed jurisdiction over some aspect of the energy issue, they were not the only ones. At least eight other committees were also involved.[1] From all this activity observers had reason to believe that the Senate would play its part in this task.

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1. U.S. Congress, Senate, Temporary Select Committee to Study the Senate Committee System, "The Senate Committee System," Staff Report, 94th Cong., 2nd sess., July 1976, pp. 104-105.

In addition, the Senate had undergone changes in its membership which, observers believed, made it possible for Democratic bills to pass easily.[2] In the 1974 election (with thirty-four contested seats), Senate Democrats attained a sixty-one to thirty-eight majority, with one seat undecided.[3] Excluding the contested election, the gain of three seats was the largest increase for Senate Democrats since 1968. Moreover, it further contributed to the decreasing number and proportion of southern conservative Democrats. In the 1950's, this group made up forty per cent of the Senate Democratic Party members; by the mid-1970's they accounted for only twenty-six per cent.[4] Thus, not only did Senate Democrats have a majority of votes - - only six short of the two-thirds necessary to override a presidential veto - - but a liberal plurality as well. With this party ratio, consensus on an energy policy appeared an obtainable goal.

However, Senate Democrats' gains in 1974 - - or for that matter their gains since 1968 - - were certainly not as dramatic as those in the House. As a consequence, the Senate did not undergo the striking ideological shift in its membership nor the major reforms the House experienced from 1968 through 1975. In large part, this was because the Senate is a very different institution

2. See Rod McLeish, "Return of the 94th Congress," Washington Post, June 7, 1975; "The Senate: At Least 3 More Democrats In 1975," Congressional Quarterly Almanac 1974 (Washington, D.C.: Congressional Quarterly, Inc., 1975), p. 841; "Congressional Government: Can It Happen?," Congressional Quarterly Weekly Report (hereafter CQ) (Washington, D.C.: Congressional Quarterly, Inc., 1975) 28 June 1975, p. 1331.

3. The challenged seat resulted from the New Hampshire race, the chamber's closest election since 1913 (when senators were first popularly elected). Republican Louis C. Wyman and Democrat John A. Durkin campaigned for the seat of retiring Senator Norris Cotton (R. N.H.). After two ballot counts, which gave victory first to Republican Wyman and then to Democrat Durkin, the Republican dominated state election committee declared Wyman the victor by a margin of only two votes. But the Democraticly-controlled Senate refused to seat Wyman at the opening of the 94th Congress until its Rules and Administration Committee investigated the matter. For eight months, amidst much partisan bickering, the seat remained vacant until 16 September 1975 when a special election was finally held. In this contest Durkin won a clear majority of votes. See "1974 Elections: A Major Sweep for the Democrats," Congressional Quarterly Almanac 1974, pp. 839-942.

4. Norman J. Ornstein, Robert L. Peabody, and David W. Rohde, "The Changing Senate: From the 1950's to the 1970's," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., Congress Reconsidered (New York: Praeger Publishers, 1977), pp. 4-5.

from the House; a continuing body only a third of whose membership is up for re-election at any one time; and because it had already adopted reforms in the years just preceding 1968. The point is that, as a consequence of these differences, expectations for the Senate at the outset of the 94th Congress were less than those for the House. In terms of the role each chamber eventually did play in developing an oil-pricing policy - - at least until the conference committee - - the lower expectations of the Senate proved justified.

The Senate's commitment and determination to develop an oil-pricing policy came under question very early in the session. As the House began to formulate a new structure of oil prices that attempted to incorporate the oil market's dramatic changes since oil-price controls were first enacted, the Senate decided to side-step the issue altogether. Under the guidance of Henry M. Jackson (D. Wash.), the Interior and Insular Affairs Committee (which claimed jurisdiction over the pricing issue) recommended extending the authority of Emergency Petroleum Allocation Act (EPAA), the existing oil-price controls, almost unchanged in a new bill, the Standby Energy Authorities Act (S. 622). This Act extended controls for seven months, from the 31 August 1975 deadline to 31 March 1976. It was primarily concerned with presidential authority to deal with supply and allocation problems caused by potential crises - - an authority which enjoyed the broad support Jackson hoped would ensure speedy passage. By doing this, rather than developing a wholly new policy, the Senate could avoid the conflicts which policy development and the consequent negotiations among competing groups would unavoidably have entailed. As a result, the Senate enacted this Act very early in the session on 10 April.

After passage of S. 622, the Senate awaited final action by the House on H.R. 7014. During these five months, senators reviewed the President's decontrol proposals, continued to debate the broader oil-pricing issue, and enacted three other bills which simply extended the EPAA for forty-five days to six-months as a fallback should S. 622 fail. The intent of these bills was to avoid an abrupt end

to price controls when the EPAA expired on 31 August, and to ensure that Congress and the President had additional time beyond this deadline to develop a new policy. Congress tried to buy time; the President wanted to use deadlines to prod it into accepting his policies, and vetoed the first two extension bills. (See Chapter Five, pp. 204-212.)

This chapter traces the development of the Senate's oil-pricing policy as embodied in S. 622 and shows the different role the two chambers played - - at least until the conference committee - - in this important task. The different roles bore out the different expectations of the two chambers at the outset of the 94th Congress - - expectations largely based on the two houses' divergent records on reform. The Senate's reform, begun much earlier than that in the House, had been not only more gradual but less dramatic. Moreover, the Senate's decision to continue oil-price controls in S. 622, instead of developing a new comprehensive policy, does not afford the same opportunity to analyze the impact even of these few reforms. However, as in the House, institutional changes, which in the Senate occurred over the previous 15 years, help explain the fate of the issue in the upper chamber. One member - - Henry M. Jackson - - determined the Senate's role. Other senators, guided by political and institutional influences (some of which are characteristic of the Senate) followed Jackson's lead.

## Senate Committees Work on Developing an Oil-Pricing Policy

In the Senate as in the House, committees are important centres of legislative decision-making. At least seventeen Senate committees and forty subcommittees claimed jurisdiction over some aspect of the energy issue, but only two dealt specifically with oil-pricing - - an ad-hoc partisan committee created by the Majority Leader, the Task Force on Energy and the Economy, and one standing committee, the Interior and Insular Affairs Committee.

The Task Force on Energy and the Economy Takes a Stand on Oil-Pricing Controls

Majority Leader Mike Mansfield (D. Mont.) established the Task Force on Energy and the Economy in early 1975, as a subcommittee of the Democratic Policy Committee and as a co-committee to the House Task Force. The Majority Leader appointed Senator John Pastore (D. R. I.), long an outspoken critic of the oil industry, to chair the committee.[5] The Task Force lacked all the basic organizational requirements of a committee that would have facilitated its decision-making: members who had expertise in, or at the very least some familiarity with, the energy issue; committee staff to give members direction; hearings and mark-up to provide them with some measure of the political consensus on the issues; and most fundamental of all, the time and authority to develop legislation. As a result, Senate members of this Task Force were as disappointed as their House colleagues over the difficulty they had in reaching agreement on policy proposals. Because there was so little agreement among the Task Force members, most of their final proposals were watered down - - with one exception. Members from both chambers' Task Forces, without deciding any of the specific details, agreed that a new oil-pricing structure had to be developed and that oil-price controls should be continued as part of this structure.

On 27 February when the Task Forces released their joint final report, members had completed their work. The final report provided House and Senate committees with the same blueprint to follow in developing energy legislation: without legislative authority there was nothing more this committee could do. Developing an energy policy was now solely up to the standing committees.[6] Initially it appeared as if the standing committees would follow these recommendations. In a rare show of unity, Senate committee chairmen endorsed the Task Force's recommendations and Majority Leader Mansfield made a strong

5. "Senate Democrats Prepare Their Own Economic Plan," CQ, 15 February 1975, p. 321.

6. U.S. Congress, Senate, Committee of the Budget, Task Force on Energy, "Energy Policy Options," 94th Cong., 1st sess., 1975. Committee Print.

plea to all Senate members to follow these recommendations and to act within ninety days. However, in most instances the endorsements of the committee chairmen were so easily accorded because they were meaningless, as should have been obvious. Committee chairmen were not about to give up so easily control over one of the most important and politically visible issues to come before the chamber. The remarks of Russell Long (D. La.) - - the powerful chairman of the Finance Committee (under whose jurisdiction energy taxes fell) - - provided evidence of this. After endorsing the report, he stated: "Let Pastore have his day . . . Some of these things we'll do and some we won't."[7] Soon after committees began their work, the Task Force's lack of influence became evident. On most issues, any similarity between the standing committee's final proposals and the Task Force's recommendations was merely accidental. By and large the committees did not follow the Task Force's lead. This was clearly the case with the Senate Interior and Insular Affairs Committee's handling of the oil-pricing issue.

### The Interior and Insular Affairs Committee Continues the Old Price Control Authority As Is

As table 4-1 shows, nine Democrats and five Republicans made up the 1975 membership of the Interior and Insular Affairs Committee (hereafter the Interior Committee).[8]

7. "Economy and Energy: Democratic Alternatives," CQ, 22 February 1975, p. 353.

8. For background on the Interior Committee, see Arthur J. Magida, "The House and Senate Interior and Insular Affairs Committees," in Mark Nadel, director, The Environment Committees: A Study of the House and Senate Interior, Agricultural, and Science Committees (New York: Grossman Publishers, 1975), pp. 3-127.

Table 4-1

Membership of the Senate Interior and Insular Affairs Committee

| Democrats (9) | State | Year Elected | Republicans (5) | State | Year Elected |
|---|---|---|---|---|---|
| Henry M. Jackson (Chairman) | Wash. | 1952 | Paul J. Fannin | Ariz. | 1964 |
| Frank Church | Ida. | 1956 | Clifford P. Hansen | Wyo. | 1966 |
| Lee Metcalf | Mont. | 1960 | Mark O. Hatfield | Ore. | 1966 |
| J. Bennett Johnston | La. | 1972 | James A. McClure | Ida. | 1972 |
| James G. Abourezk | S.D. | 1972 | Dewey F. Bartlett | Okla. | 1972 |
| Floyd K. Haskell | Col. | 1972 | | | |
| John Glenn | Ohio | 1974 | | | |
| Richard (Dick) Stone | Fla. | 1974 | | | |
| Dale Bumpers | Ark. | 1974 | | | |

Members are listed in the order of their seniority on the Committee.

The almost two-to-one Democratic Majority on the committee reflected the party's membership ratio in the Senate. Although the total number of Democratic members did not change from the 93rd to the 94th Congress, three members - - John Glenn (D. Ohio), Richard Stone (D. Fla.) and Dale Bumpers (D. Ark.) - - were new to the committee. All freshmen, these senators replaced members who had retired, been defeated or transferred to another committee. The number of Republicans decreased by one when James L. Buckley (R. N.Y.) transferred to another committee in order to maintain the same party ratio in the Interior Committee as in the parent chamber. It was these fourteen senators who were charged with developing the chamber's oil-pricing policy.

In contrast to what happened in the House, however, the committee's chairman, Henry M. Jackson (D. Wash.), was able to preempt members' initiative and to decide the committee's oil-pricing policy for them. And, unlike John Dingell in the House, he was an established chairman with an experienced staff

upon whom he could call. In January, Jackson requested that his senior staff outline the policy options in a memo to him.[9] The options ranged from a simple extension of the then current controls, with no changes, to a complete revamping of controls - - the last option was similar to what the House was trying to do. The staff were to take into consideration all of the oil market's changes since controls were first imposed, and to analyze the various proposals' strengths and weaknesses. Not one of these options was without drawbacks. For example, although simply extending price controls unchanged offered the best chance of quick passage (and thus of removing the President's ability to end controls abruptly) it carried the great risk of opening the Democrats to the harsh criticism that they were side-stepping their responsibility to develop a comprehensive policy. On the other hand, as the memo pointed out, although a complete revision of the oil-pricing controls structure would provide members with an acceptable response to these particular criticisms, the controversy and dissension sure to result from such an ambitious attempt carried another and, some thought, even greater risk. If the Senate failed to develop a comprehensive policy quickly - - and it was fairly safe to assume failure - - then when price controls ended abruptly, Congress would bear the brunt of constituents' anger. In the next election, as voters felt the anticipated economic impact of a sudden steep increase in oil prices, they could express their displeasure by voting many senators (presumably a large number of whom would be Democrats) out of office. In other words, it was the "cynical Democratic strategy" backfiring against legislators rather than directed at the President. Weighing the pros and cons of these various proposals, Jackson decided a simple extension was the best option. The chairman made his decision even though, as his staff pointed out, the choice "only postpones an inevitable debate on both the procedural and substantive content of petroleum price control authority."[10] But postponement was exactly what Jackson wanted.

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9. Memorandum: Re "S. 621 to prohibit for ninety days the lifting of price controls on Domestic Oil," To: Members, Senate Interior and Insular Affairs Committee, From: Bill Van Ness, Chief Counsel and Arlon Tussing, Chief Economist, February 27, 1975. Unpublished: Document in author's possession.
10. Ibid., p. 4.

Jackson was an ardent supporter of oil-price controls. He had consistently been one of the Senate's most outspoken critics of higher oil-prices, and had repeatedly introduced legislation to roll back even the relatively small price increases which had occurred on price-controlled oil and to impose ceilings on that oil not subject to price controls. Thus Jackson's most immediate objective was simply to continue price controls, and to block President Ford's proposed decontrol of them. A simple extension would achieve this aim.

But in addition, Jackson's more important objective was to impose his policy views on a new oil-price control system. He believed that a simple extension might also accomplish this. Jackson realized that developing a new policy - - one that would set the policy agenda for the foreseeable future - - offered a rare opportunity, one that he did not want to waste. But he needed more time for that. An extension would preserve the opportunity while maintaining the status quo. Delay, Jackson hoped, would result in a more favourable political environment in which to develop a new oil-pricing policy - - that is, one in which Jackson's views were more likely to prevail.

In the 93rd Congress, Jackson's Senate colleagues had repeatedly rejected his own hard-line oil-price control proposals, and forced Jackson to compromise. In 1975 there had been no significant changes in the Senate - - or in his committee - - to assure him that this situation would not persist. In fact, Jackson feared he might not have the votes needed to win acceptance of the type of policy he envisioned, even in his own committee. The three new Democratic members did not change the committee's ideological make-up, and Jackson did not know whether he could win the support of Senators Glenn and Stone. Without their support, he feared the committee's five Republicans - - along with conservative Democrat J. Bennett Johnston from oil-producing Louisiana - - might produce a winning coalition to defeat his pricing proposals. This uncertainty posed a high risk.

Moreover, in another respect Jackson believed the political environment had worsened. Pre-election year presidential politics intensified the usual partisan sparring between party members; Republicans and Democrats in Congress were more outspoken in their allegiance to party principles and thus less willing to compromise. For Jackson, who was a declared presidential contender, this fact posed a unique problem of strategy. A former national party chairman under President John F. Kennedy, he had several times sought his party's presidential nomination - - but with limited success.[11] At the opening of the 94th Congress, Jackson was again running for president, and this time was considered by many to be one of the top contenders. But in 1975 Jackson's presidential bid appeared directly linked to the energy issue.[12] As Interior Committee Counsel William Van Ness explained:

> Jackson's chances for the White House had been strengthened by the public attention he gained from his handling of the energy issue. Night after night as he appeared on the evening news blaming the oil companies and the Republican President for the shortages of oil and the embargo, his name became a household word. People [who] were forced to drive less, live in colder homes in winter and hotter ones in summer, were angry, and they identified with him. Jackson was becoming their folk hero, as he lashed out at the perceived villians and vented some of their anger. His candidacy rose [in response]. 13

Thus, Jackson did not want to appear as if he was changing his policy positions now, or was unable to lead his committee to deliver his commitments, or was

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11. See Peter J. Ognibene, Scoop, The Life and Politics of Henry M. Jackson (New York: Stein and Day, 1975); Michael J. Malbin, "Political Actions: Jackson announces candidacy for 1976; Baker says he may seek GOP nomination," National Journal, 15 February 1975, p. 263.

12. See Jules Witcover, "Energy Crisis, Economy Bolster Jackson for 1976," Washington Post, 11 February 1974; Ted Vadem, "Jackson: Energy, Environment, Anti-Communism," CQ, 30 August 1975, pp. 1889-1895.

13. Interview conducted by author. All further quotations not footnoted in this chapter are from material collected from interviews which focused on the Senate's role. These interviews were conducted from February to July 1976. In alphabetical order, these included: Richard Arnold, Legislative Assistant to Sen. Dale Bumpers (D. Ark.); Charles Curtis, General Counsel, House Interstate and Foreign Commerce Committee; Benjamin Cooper, Senate Interior and Insular Affairs; Richard Grundy, Senate Interior and Insular Affairs; John Hill, Deputy Administrator, FEA; William (Bill) Pursley, Legislative Assistant to Richard Stone (D. Fla.); David Staing, Minority Counsel, Senate Interior and Insular Affairs Committee; and, William (Bill) Van Ness, General Counsel, Senate Interior and Insular Affairs Committee.

caving in to President Ford. While other Democrats also wanted to distance themselves from President Ford's policies, many who were up for re-election in 1976 did not want to be put in a position of having to take a strong anti-oil position that would antagonize the powerful oil interests and mobilize greater opposition in their forthcoming campaigns. Given the political stakes, delay thus seemed the least risky alternative, particularly since it might improve the likely chance that a Democrat more favourable to his position would be in the White House making policy - - if indeed Jackson was not there himself.

Thus, on 7 February 1975, Senator Jackson introduced the Standby Energy Authorities Act (S. 622), a bill which proposed the numerous emergency powers President Ford had requested in his own bill, S. 594, including the authority to allocate and ration oil in times of severe fuel shortages. This bill also granted the President the necessary authority to carry out the international treaty obligations of the International Energy Agency, which included the power to share oil with other countries in the event of another embargo. These proposals engendered strong bi-partisan support for they pushed difficult crisis decisions on to the President. But in one important aspect S. 622 differed from the President's bill. S. 622 granted the President these emergency powers by extending the Emergency Petroleum Allocation Act (EPAA) - - the authority under which the price controls were originally imposed and upon which their continuation depended. Furthermore, the extension continued price controls, initially until 31 December 1980 and then (in response to staff pressure for a shorter period) only until June 1976, and, finally until March 1976. Because of these important differences Republicans opposed the final bill.

During the one day of hearings the Interior Committee held on 13 February, Republicans stated their opposition to the bill because of the price control extension provision.[14] In furtherance of President Ford's position, Frank Zarb, Administrator of the Federal Energy Administration (FEA), testified:

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14. U.S. Congress, Senate, Committee on Interior and Insular Affairs, "Hearings on S. 622," 13 February 1975, 94th Cong., 1st sess., 1975. Serial 94-7, p. 95.

> The most troublesome deficiency of S. 622 is that it would extend the Allocation Act through December 31, 1980 . . . Continuation of the present, rigidly formulated statutory requirement for allocation and price controls would be a regressive step to the improvement of the nation's domestic energy picture . . . rather than developing sound legislation designed to achieve the energy and economic goals that are necessary for the nation's long-term prosperity and security. 15

Jackson, however, argued that the Senate could not develop the sound legislation Zarb urged by the President's imposed deadline of 1 April for the decontrol of oil prices; the chairman summarily rejected the minority committee members' and the Administration's requests that he schedule more lengthy hearings.

Instead, Jackson scheduled the committee's mark-up of S. 622 to begin on 19 February. Members met over five days, during which time the chairman did not even attempt to enlist the minority members' support. No amendments were proposed which concerned the oil-pricing issue. S. 622 was now labeled by Republicans as a partisan bill - - one that embodied the Senate Democrats' oil-pricing policy. Committee members' final vote on 28 February reflected this split. In an almost straight party vote - - eight to six - - seven of the committee's other Democrats affirmed Jackson's choice of policy options, as table 4-2 shows.

15. Ibid., p. 84.

Table 4-2

Final Committee Vote on S. 622

28 February 1975

| Ayes (8) | | Nays (6) | |
|---|---|---|---|
| Abourezk | D. | Bartlett | R. |
| Bumpers | D. | Fannin | R. |
| Church | D. | Hatfield | R. |
| Glenn | D. | Hansen | R. |
| Haskell | D. | Johnston | D. |
| Jackson | D. | McClure | R. |
| Metcalf | D. | | |
| Stone | D. | | |

Members are listed alphabetically.

Johnston was the only committee member who did not vote with his party's identified position. His constituent interests in Louisiana - - the powerful oil producers - - and his ideologically conservative views overrode his loyalty to his party's identified position on this bill. The five Republicans voted against the bill because of its oil-price controls provision. In a minority dissent to the committee's final report, they characterized the extension of the EPAA authority just as Jackson's staff had warned they would, as "a shirking of congressional responsibility."[16]

Several influences made it possible for Jackson to convince his committee party colleagues to support his approach. Jackson had established himself as the chamber's recognized energy expert. As chairman since 1963 of the Interior Committee, the Senate committee with the broadest jurisdiction over energy matters, Jackson had gained considerable expertise. In 1971, senators established the National Fuels and Energy Policy Study to analyze the country's energy outlook and to recommend legislation, and they designated Interior as the lead

16. "Congress Pushes Hard on Energy and Tax Bills," CQ, 15 March 1975, p. 512.

committee. Although majority and minority members from eight other committees were also appointed as ex-officio members, these senators deferred to Jackson and his committee colleagues. The study produced little more than a series of hearings and staff reports, but it further established Interior - - particularly its chairman - - as the "expert."[17] Jackson cultivated this image as he eagerly seized the opportunity to lead on energy issues during the tense period of the "oil crisis" of 1973-1974. Under his leadership, the Interior Committee gained national attention as it grappled with the crisis and investigated the oil industry, successfully shifting its orientation on energy matters from a local, state and regional, to a national outlook. One of the more dramatic examples of Jackson's ploys, which Anthony Sampson describes as "the most opportunist attack,"[18] occurred at the height of the 1973-1974 oil crisis. Jackson, as Chairman of the Permanent Subcommittee on Investigations, held hearings to investigate the supply practices of the major oil companies. Calling before the subcommittee oil company experts on supply, Jackson lined them up before the national television cameras.

> Together they stood up to raise their hands and take the oath in front of Jackson, to provide a front page picture of the Sisters in the dock. 19

As a result, Jackson further enhanced his, as well as his committee's, role. By 1975, as Richard Corrigan observed: "Jackson generally is regarded as the most influential senator on energy matters."[20] In a body as highly individualized as the Senate these things make a difference. It is not uncommon in the Senate to postpone an important vote that a particular senator is interested in to accommodate the member's travel plans, or for members to recognize a particular colleague as a policy specialist. Jackson had that status when it came to the energy issue.

17. For a list of the studies, see U.S. Congress, Senate Committee on Interior and Insular Affairs, "National Fuels and Energy Policy Studies, 94th Cong., 2d sess., 1976. Committee Print.

18. Anthony Sampson, The Seven Sisters (London: Hodder and Stoughton, 1975), p. 269.

19. Ibid., p. 270.

20. Richard Corrigan, "Energy Report/Ford Position Strengthened by Lack of Consensus in Congress," National Journal, 7 June 1975, p. 840.

Finally, in 1975, Jackson's leadership on energy was further bolstered by another important factor - - his candidacy for the presidential nomination. That this fact influenced members is evident from a comment during an interview with William (Bill) Pursley, staff assistant to Senator Richard Stone:

> Stone was more conservative on his pricing position than Jackson . . . [Thus] the toughest position [for us] was to look like we weren't opposing the Democrats' position because at the time Jackson was the leading Democratic [presidential] contender.

This factor would continue to influence Democratic members throughout the Senate's consideration of the Interior Committee's bill, S. 622.

## Senate Debate on S. 622 Results in Only Minor Changes

S. 622 was considered - - as is most Senate business - - under a unamimous consent agreement, a device for the chamber to set aside its formal rules and abide by the terms of an oral agreement between the chamber's leader and the bill's floor leader, Jackson. This is usual procedure for the smaller chamber, which does not have a committee comparable to the powerful Rules Committee in the House. Senate rules, as Walter Oleszek has explained, are so complex that they "are generally ignored."[21] In fact, the responsibility for scheduling legislation (when the Democrats have the majority) rests with the Democrats' Policy Committee under the leadership's guidance. In practice, consistent with the more informal and less rule-conscious Senate, interested members of both parties meet to decide when the debate will be held, because unanimous consent is required.

The debate of S. 622 began on 12 March, but after only two days senators agreed to halt the discussion, in order to consider more pressing budget issues before they adjourned for the Easter recess. Upon returning from their Easter recess, senators resumed debate on 7 April, with final passage taking place three

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21. Walter J. Oleszek, Congressional Procedures and The Policy Process (Washington, D.C.: Congressional Quarterly Press, 1978), p. 136. Although the Senate has the Rules and Administration Committee which deals with the chamber's internal business its jurisdiction does not include scheduling legislation.

days later on 10 April. During the floor debate and in this final vote, Democrats and Republicans continued to divide along partisan lines as they had in the Interior Committee.

During its debate, the Senate adopted only two amendments dealing with the oil-pricing controls authority. The first, proposed on 9 April by Senator J. Bennett Johnston (D. La.), exempted from price controls all oil produced by secondary and tertiary recovery methods. These production techniques -- more costly than usual production methods -- are necessary to recover oil from wells where the natural pressures that bring oil to the surface have been depleted. Johnston argued that the higher prices for this category of oil were not only reasonable, reflecting the higher costs required to produce it, but were also one of the least costly means for increasing the nation's overall level of production.

Jackson, however, opposed this amendment in spite of his colleague's claim that its incentives would result in additional oil production. Instead he argued that it was simply the wrong time to make any change in the nation's oil-pricing policy. As he explained:

> I think it is unwise to proceed at this time to provide for a special pricing in this one area when we do not have before us all the facts . . . in attempting to embark precipitously today on a new program, we run the risk of not knowing what we are doing. 22

But Jackson's colleagues were under tremendous pressure to respond to the nation's energy ills or, at the very least, to appear as if they were. Johnston's Amendment offered them a fairly safe way to increase production without waiting for further study.

When Jackson realized he could not defeat the amendment, he introduced a "perfecting amendment" placing a ceiling of $7.50 per barrel on oil in this category. The Senate then adopted the revised amendment forty-six to thirty-eight, as table 4-3 shows.

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22. U.S. Congress, Senate, Congressional Record (hereafter CR), 94th Congress, 1st sess., 9 April 1975, p. S. 5610.

Table 4-3

Floor Vote on the Johnston Amendment

9 April 1975

| | Ayes | | Nays |
|---|---|---|---|
| Democrats | 38 | | 13 |
| (ND | 30) | (ND | 4) |
| (SD | 8) | (SD | 9) |
| Republicans | 8 | | 25 |
| Total | 46 | | 38 |

(15 non voting members)

Source: Congressional Quarterly Almanac - 1975, Senate Record Vote #128 (Washington, D.C.: Congressional Quarterly, Inc., 1976), p. 20S.

Party, more than any other factor, influenced how members voted on this amendment, with Democrats largely voting for, and Republicans against, it. Twenty-one members broke away from their party's identified position - - eight Republicans and thirteen Democrats. The eight Republicans - - Brooke (Mass.), Case (N.J.), Hatfield (Oreg.), Javits (N.Y.), Pearson (Kan.), Schweiker (Pa.), H. Scott (Pa.) and Stafford (Vt.) - - supported the amendment either because of their consumer state constituencies, or because of their willingness to compromise. As the Interior Committee's minority counsel, David Staing, explained: "Some Republicans were willing to take anything they could get in terms of [higher] prices." The Democrats who broke from their party's position, including the amendment's sponsor, J. Bennett Johnston, - - were mostly from the southern and western states, bastions of the more conservative faction of the Democratic Party, or from oil states, or both. The thirteen were: Bentsen (Tex.), Long (La.), McGee (Wyo.), Eastland (Miss.), Stone (Fla.), Johnston (La.),

Burdick (N.D.), H.F. Byrd (Va.), McClellan (Ark.), Montoya (N.M.), Nunn (Ga.), Randolph (W.Va.), and Stennis (Miss.). All appeared to support higher oil prices, but most of them opposed the amendment even though it would have increased oil prices, either because of their powerful oil-producing state interests or their strong conservative ideological positions. They opposed controls of any kind even if they provided higher prices for this one category of oil. However, at least one of these Democrats - - Johnston - - cast his vote as a protest against Jackson. As Interior Committee majority counsel Van Ness explained:

> Some of these members resented Jackson's action. He got in their way of raising prices even higher. Some cast it [their vote] in hopes of keeping the issue alive. They believed that there was such a strong consensus for higher incentive prices that they would have another crack at it.

They did not get another opportunity, for Jackson was able to block any of their further attempts.

On 10 April, freshman Senator John Glenn (D. Ohio) offered the second amendment changing the pricing authority in the bill. Glenn's Amendment established a price ceiling for "new oil" - - oil which previously had not been controlled - - at the price level prevailing on 31 January 1975. In effect, Glenn's Amendment decreased the price of "new oil" by approximately $1 per barrel, the exact amount by which President Ford's import fee had raised the price on 1 February, and guarded against any future price increases from the President's scheduled additional price hikes. (See Chapter Five, p. 191.) There was a strong consensus against this aspect of the President's policy, since it raised prices even higher than OPEC's price levels. The Senate readily adopted Glenn's Amendment with little debate, fifty-four to thirty-one, as Table 4-4 shows.

Table 4-4

Floor Vote on the Glenn Amendment

10 April 1975

| | Ayes | | Nays |
|---|---|---|---|
| Democrats | 48 | | 6 |
| (ND | 35) | (ND | 2) |
| (SD | 13) | (SD | 4) |
| Republicans | 6 | | 25 |
| Total | 54 | | 31 |

(15 non voting members)

Source: Congressional Quarterly Almanac 1975, Senate Record Vote #136 (Washington, D.C.: Congressional Quarterly, Inc., 1976), p. 21S.

Party continued to be the major influence which guided members' voting behaviour. Seven of the Democrats who had voted against Johnston's amendment as perfected by the Jackson Amendment now swung their support back to the party's identified position. These Senators were: Burdick (N.D.), H.F. Byrd (Va.), McClellan (Ark.), Nunn (Ga.), Randolph (W.Va.), Stennis (Miss.), Stone (Fla.). Only six majority members broke with their party, and these members were all from oil-producing states - - Bentsen (Tex.), Eastland (Miss.), Long and Johnston (La.), McGee (Wyo.), and Gravel (Alaska). Six Republicans - - Stafford (Vt.), Brooke (Ma.), Case (N.J.), Javits (N.Y.), Schweiker (Pa.) and Weiker (Conn.) - - voted with the Democrats. All from New England and mid-Atlantic states, they appeared to be more strongly influenced by their constituents who were heavily dependent on oil and thus bore a greater burden if oil prices increased.

Following the vote on Senator Glenn's Amendment, the Senate adopted S. 622, sixty to twenty-five, (Table 4-5).

Table 4-5

Final Floor Vote on S. 622

10 April 1975

| | Ayes | | Nays |
|---|---|---|---|
| Democrats | 51 | | 3 |
| (ND | 35) | (ND | 2) |
| (SD | 16) | (SD | 1) |
| Republicans | 9 | | 22 |
| Totals | 60 | | 25 |

(15 non voting members)

Source: Congressional Quarterly Almanac 1975, Senate Record Vote #138 (Washington, D.C.: Congressional Quarterly, Inc., 1976), p. 21S.

Once again senators voted almost along straight party lines. Even the more conservative Democrats and those from the oil-producing states, who had broken from their party on the earlier votes, now moved toward their party's position on the final vote. Only three Democrats voted to defeat the bill. Two of these members were from states with significant producing interests -- Gravel of Alaska and Long of Louisiana -- and the third -- Abourezk of South Dakota -- was also from a state with producing interests, though less substantial ones. Of the nine Republicans who voted with the Democrats, six were from the more liberal and heavily oil-dependent New England and mid-Atlantic region. These six were: Brooke (Mass.), Case (N.J.), Javits (N.Y.), Roth (Del.), Schweiker (Pa.), and Stafford (Vt.). The other three -- Packwood (Ore.), Pearson (Kan.), and Percy (Ill.) -- were all from consuming states.

Thus, S. 622 as finally passed in the Senate continued the oil-pricing policy of the EPAA until 31 March 1976 with two changes. These two changes extended

price controls to "new oil", and established a special category of oil produced through secondary and tertiary recovery methods. The bill fell far short of the objectives outlined by the Task Force - - to develop an oil-pricing policy which took into consideration the changes in the oil market. The Senate was criticised because of it. As one seasoned observer, Washington Post columnist David Broader, concluded:

> By the most charitible interpretation, the Senators abdicated their own responsibility for hard decisions and left the country with what can only be called a false-front facade of an energy policy. 23

But it was this policy, as embodied in S. 622, that set the parameters within which the Senate would negotiate a final oil-pricing policy with the House during their conference committee.[24] (See Chapter Seven, pp. 253-299.)

## Senate Awaits Action by the House from April until September

From 10 April, when the Senate passed S. 622, until 23 September, when a companion bill (H.R. 7014) was passed in the House, senators continued their debate on the broader question of whether oil price controls should be ended or continued. Senators reviewed and rejected President Ford's compromise decontrol proposals, but adopted three other bills extending the EPAA authority.[25] These bills reaffirmed the strong consensus in the chamber for a continuation of oil-price controls while Congress and the President tried to work out their differences on the issue. But they also became part of the power struggle between Congress and the President, and between Democrats and Republicans as the 1976 election came closer. The question was, whose oil-pricing policy would prevail? President Ford, in a show of force, vetoed the first

23. Cited in David P. Staing, "Is the U.S. Running Out of Gas?", National Review, 1 August 1975, p. 821.

24. Richard Corrigan, "Energy Report/Ford, Congress Move Toward Oil Price Decontrol Compromise," National Journal, 10 May 1975, p. 705.

25. These three bills were: 1) The Petroleum Pricing Review Act (S. 621). Final passage occurred 16 July 1975. President Ford vetoed the bill 22 July 1975; 2) The Emergency Petroleum Allocation Act (S. 1849). Final passage occurred 15 July 1975. President Ford vetoed the bill 9 September 1975; 3) The Oil Price Controls Extension Act (H.R. 9524) passed 26 September 1975. President Ford signed it 27 September 1975.

two of these bills, and Democrat's failed to override the vetos. The third bill, which extended price controls for only ten weeks, the President signed into law after the House passed H.R. 7014. The House and Senate then scheduled a conference on H.R. 7014 and the Senate's energy bill, S. 622.

The foregoing account shows that the Senate played a very different role from the House - - at least until the conference committee stage of Congress' development of its oil-pricing policy. The Senate decided not even to try to develop a new policy, but instead to maintain the status quo. The Senate played a different role because the House and Senate are very different institutions with distinct constituencies and thus are susceptible to different pressures and influences. In the Senate, where members serve six as opposed to two year terms, there is simply less pressure for two-thirds of the members to establish a legislative track record as soon as in the House. The political stakes of delaying a decision were not as high for senators as for representatives. If senators did not pass an energy bill in this Congress, most had four to six more years to enact one before they had to defend their record for the next campaign. In contrast, by the end of the first session of every Congress, representatives are already planning their next campaign. Moreover, because of senators' broader constituencies they have been characterized as policy generalists concerned with the larger policy questions, while representatives have been referred to as policy specialists more concerned with the details of legislation.[26] The Senate's debate confirmed these general characterizations of the two chambers.

An even greater difference in the two chambers, at this stage of the decision-making process, was the importance of one member - - Henry M. Jackson. While individual senators had always counted for more in their chamber than representatives in theirs, under the new House rules it was even more difficult for an individual representative to match, in his own chamber, anything like the power of an influential senior senator. However, in the Senate, given the unwritten rule which often leads senators to defer to a colleague whom they see

26. Oleszek, pp. 25-26.

as "the" leader on a particular issue, it would be hard to exaggerate the influence wielded by Jackson. In addition, Democratic senators were especially willing to follow Jackson because he appeared to hold a strong position in the struggle for the presidency. The growing influence presidential politics has enjoyed in the Senate has earned the chamber the title of "presidential incubator."[27] As Jackson's leadership and influence attest, when the chamber is incubating a presidential candidate, this can have a decisive and broad impact on the outcome of a policy, even on one as controversial and important as oil-pricing.

While these differences between the House and Senate were most pronounced, there was one important similarity between the two Houses - - the President's influence and involvement. It remained a central factor. The President's position on so important an issue as oil-pricing became crucial to senatorial presidential calculations. Even with a President in as weak a position as Ford was, Jackson's conduct, in important respects, was determined by what the President had done or might do. Moreover, in spite of the many changes in the Senate itself- - the breakup of southern hegemony, the rule changes, the decline of party and the rise of presidential ambitions - - the "old club" too still waited for presidential initiatives. It is therefore to the man in the White House that this study now turns.

27. L. Peabody, Norman J. Ornstein, and David W. Rohde, "The United States Senate as a Presidential Incubator: Many Are Called but Few Are Chosen," Political Science Quarterly, Vol. 91, No. 2, Summer 1976, pp. 237-258.

# CHAPTER FIVE

## The President Tries to Impose His Oil-Pricing Policy on a Recalcitrant Congress

On 13 January 1975, in a nationally televised address, President Gerald Ford previewed the economic and energy policies of his State of the Union Speech. This speech followed by a few hours the press conference which Speaker of the House Carl Albert (D. Okla.) had called to preempt Ford's television appearance with an announcement of the Democrats' party policy. Two days later, on 15 January, Ford delivered his State of the Union Address to Congress. And on 31 January, the President sent Congress an omnibus bill, the Energy Independence Act, and some of his administrative proposals subject to congressional review. (He did not send his oil-price decontrol measure until July.) From this point on, Ford involved himself extensively -- if not always effectively -- in the legislative process. He monitored the congressional review of both his bill and his administrative proposals, launched a campaign to garner support for them, and lobbied individual members for their votes.

President Ford's actions were not unusual. In fact, over the twenty years preceeding Ford's appointment to office, congressmen and voters had come to expect a President to do these things, to the extent that a hostile Congress would blame him for not submitting measures it firmly intended to reject.[1] The chief executive had effectively become the nation's chief legislator.[2] As the legislative role of Presidents expanded, they became keenly aware that

1. Joseph Kallenbach, The American Chief Executive (New York: Harper & Row, 1966) p. 340. Kallenbach cites the example in 1947 when the congressional majority (then Republican) criticized President Harry Truman for not sending legislators a draft bill on economic policy. For other examples, see also Richard E. Neustadt, "Presidency and Legislation: Planning the President's Program," American Political Science Review XLIX, No. 4 (December 1955), p. 1015.

2. Pendleton Herring used the term "Chief Legislator" as early as 1940 in his study, Presidential Leadership: The Political Relations of Congress and the Chief Executive (New York: Farrar and Rinehart, Inc., 1940), p. 12. Many other scholars have also used the term, including: James L. Sundquist, The Decline and Resurgence of Congress (Washington, D.C.: Brookings Institution, 1981) p. 127; Stephen J. Wayne, The Legislative Presidency (New York: Harper & Row, 1978).

legislative success - - to have Congress adopt their proposals - - rested partly on their ability to generate public support; increasingly, as party influence grew weaker, they relied on television to accomplish this.[3] At times generating public support for policies might begin in a presidential election campaign. In Ford's case, it began with his televised message a fortnight before he formally presented his proposals to Congress. Thus, Gerald Ford began 1975 as had his predecessors; his actions followed well-established precedent. But he was playing from an unprecedentedly weak presidential position and neither the timing nor the substance of many of his moves was particularly well-judged.

However - - as is evident from the House and Senate actions discussed in the preceeding two chapters - - Congress did not initially react according to custom. Members of the 94th Congress responded differently to President Ford's initiatives from their predecessors. From Speaker Albert's announcement that congressmen should and could develop their own policies and that he was establishing a Task Force to carry out this objective, to rank-and-file members' reliance on newly acquired resources for challenging the President's proposals and developing their own, the message was loud and clear. Congress was trying to reject its traditional role - - a role often described as "the President proposes, Congress disposes" - - in order to take the initiative and compel the President to comply with its own policy.

The apparent executive decline and congressional resurgence made it easy for many to assume that Congress could indeed play this new role. The Watergate Affair and Nixon's consequent resignation had led to the appointment of a conservative Republican President, heading a discredited administration and governing without an electoral mandate. When Gerald Ford was sworn into office as the thirty-eighth President on 9 August 1974, some observers

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3. See Ronald Garey, Congressional Television: A Legislative History (Westport, Connecticut: Greenwood Press, 1984), pp. 15-20; Nelson W. Polsby, Congress and the President, 2d ed. (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1971), p. 138.

understandably viewed him as a caretaker President.[4] A long-serving Michigan congressman (25 years' seniority), and later a Republican House leader, Ford was not a national political figure; he had never run in a state-wide, much less a national, election.[5] His career was more the traditional congressman's, and perhaps he understood the old House better than the new. Initially, he viewed his new job as that of trustee, entrusted with healing the country's wounds after Watergate--as with his politically costly pardon for Nixon--and with restoring faith in the executive branch. Upon his appointment, he disavowed any plans for or interest in running for the office in 1976. In so doing, he apparently made himself a lame-duck President, which only added to his other disadvantages. Ford did not provide the profile of a strong executive.

Congress presented a very different picture. A large liberal Democratic majority--whose electoral mandate could not be questioned after their landslide victory in the 1974 mid-term election--was in control. This placed legislators in a position of relative political strength. Watergate had forced legislators to try and reduce their dependence on the executive and to place constraints on unbridled presidential authority. Since these actions (on the budget, impoundment and war powers) had been taken so recently and so resoundingly, it was reasonable to assume that Congress would continue to act the same way. Moreover, members of Congress gained new confidence in their abilities, in part because of the way they had handled Watergate, and in part because of the congressional reforms which were under way. These changes, intended to make the congressional decision-making process more effective, redistributed power and provided resources so that members did not have to depend so heavily on the executive for information and analysis. These changes

4. "The 25th Amendment: Time For A Change?," Congressional Quarterly Weekly Review (hereafter CQ), 4 January 1975, pp. 35-36; "Ford Wields a Broom," Time, 16 September 1974, p. 20; "Ford With Loose Steering," Newsweek, 14 October 1974; "Can Ford Cope With Congress?," U.S. News and World Report, 6 January 1975, pp. 15-16.

5. See Jerald F. ter Horst, Gerald Ford (London: W. H. Allen, 1975).

were far-reaching enough for Ford plausibly to exploit them by warning at the outset of the 94th Congress that the country risked having only "congressional government."[6]

However, Ford, in spite of his charges and these changes, did not envisage his presidency as a caretaker President. His actions showed that he had a very different idea of how the relationship between Congress and the President should work; he intended to follow the rules and customs that had governed his predecessors. He expanded the White House congressional liaison staff to help him.[7] No doubt it was unrealistic to expect any modern President so readily to accept a diminution of his authority. But for Ford, a conservative Republican who had long battled with the liberal Democrats in Congress, it was even more unrealistic. In the past, partisan differences - - with the President of one party and the majority in Congress of another - - had combined with the usual institutional rivalries between the two branches of government to create tensions, and forced members of Congress to question their dependence on an opposition party executive. But in 1975 these usual tensions were magnified even more because of the legacy of Watergate, the fundamental ideological disagreement between Ford and the Democrats, and the fact that it was a pre-election year and that Ford had changed his mind and decided to run for re-election. Since Ford was unlikely to be able to make a record with the liberal Democrats, he was likely to try to make a record against them in preparation for seeking his party's nomination and election as President in 1976, just as Truman had done against a conservative Congress in 1948. Under these circumstances, even temporary cooperation was impossible. In consequence, a power struggle between the two branches erupted as Congress attempted to assert its independence of the executive and the President tried to establish his dominance

6. Joanna R. Shelton, "Congressional Government: Can It Happen?," CQ, 28 June 1975, pp. 1331-1332.

7. "The Liason Team," CQ, 1 February 1975, pp. 227-228; Charles O. Jones, "Presidential Negotiation With Congress," in Anthony King, ed., Both Ends of the Avenue (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1983), pp. 115-118; Eric L. Davis, "Congressional Liason: The People and The Institutions," in King, ed., Both Ends, pp. 59-95

over the legislature.

This chapter traces the President's active role in the development of the oil-pricing policy (which emerged as the centrepiece of the Energy Policy and Conservation Act) and the power struggle that occurred between the two branches of government. At the outset of 1975, congressional observers' assumptions about the role the President would play were very different from what actually evolved.[8] By the end of 1975, the President's involvement in the passage of an oil-pricing policy left little doubt of the continuing influential role Presidents play in the legislative process - - and provided interesting evidence of the way a particular President, Gerald Ford, performed his role. The President was able to exercise his influence in spite of the factors that many believed would make this impossible. The executive branch had just undergone a constitutional crisis and, in consequence, this President was governing without an electoral mandate. Moreover, the legislature had been flexing its own institutional muscle by limiting the executive's powers (for example, with passage of the War Powers Act), and by expanding its own authority (for example, with greater reliance on the legislative veto). (See Chapter One, p. 34.)

Although these influences somewhat altered the role of the two branches of government, the President continued to have at his disposal the substantial powers of the office - - such as the presidential veto. Moreover, as the power struggle revealed, neither Watergate, congressional reform nor Democratic dominance of both houses of Congress had changed the fundamental interdependence of the legislative and executive branches. It had simply changed the balance between the two protagonists. It was this continuing interdependence that assured the President's involvement in and influence on the legislative process.

8. "1974 Support in Congress: Ford Low, Nixon Up," CQ, 18 January 1975, pp. 148-150.

President Ford Proposes an Energy Policy

President Ford unveiled his energy and economic plan by warning voters that the country faced a crisis. The seriousness of the country's energy and economic situation demanded that the government launch "a three front campaign against recession, inflation and energy dependence."[9] His energy plan imposed burdens and demanded sacrifices from Americans, but he promised his policy would achieve the necessary result of energy self-sufficiency by 1985 - - an ambitious goal by anyone's standards.[10] Beyond 1985, Ford envisioned an even more grandiose aim: he claimed his policy would move the country toward regaining its former role as world supplier and stabilizer of international petroleum prices. (Even if he were re-elected, he would not have to make good on that claim.) And he reassured the country that his programme was the means necessary to accomplish these ambitious goals, and was sound:

> The energy decisions I announced as part of my State of the Union Address resulted from the most comprehensive review this Nation has ever made of its energy problems. ll

In fact, the formulation of the policy revealed that it did not result from "the most comprehensive review."

The Federal Energy Administration (FEA) had official responsibility for conducting the Ford Administration's comprehensive review and for developing its energy policy. The process began in mid-November under the leadership of the agency's Administrator, Frank G. Zarb, who was formerly responsible for energy matters at the Office of Management and Budget, and two of his aides from the FEA's policy division. Numerous executive departments eagerly proposed energy policies which reflected their particular agency's priorities. The Pentagon and State Departments were most concerned with the impact of an

9. Office of the White House Press Secretary, "Gerald R. Ford - National Television Address," Press Release, 13 January 1975.

10. Office of the White House Press Secretary, "State of the Union Message Including Economy and Energy," 15 January 1975, pp. 10-11. See also "Ford and Democrats Offer Differing Solutions," CQ, 18 January 1975, pp. 131-139.

11. U.S., Congress, Senate, Committee on Interior and Insular Affairs, "Executive Energy Messages," 94th Cong., lst sess., 1975, Serial 94-22, p. 251.

energy policy on national security and international relations. Treasury's primary concern was the impact of a policy on the economy. With these different concerns, the policies each proposed clashed with the others; as a result, a struggle for control of the policy between the Departments of State, Treasury, and Defense emerged, over and over again. The tension between Treasury and State Departments was so great that, at one point, Secretary of State Henry Kissinger ordered his aides not to discuss the Department's plan with anyone from Treasury.[12] At this formative stage of the policy, it was up to the FEA to mediate these battles, to synthesize the various proposals advocated and to incorporate them into several policy options for the President's review. It was not in a very good position to do so. A weak new agency only recently created out of the White House Energy Office, it lacked established contacts either with members of Congress or interest groups, and also lacked a defined role in relation to the President.

From the very beginning the FEA's decision-making process was truncated. Zarb did not seriously worry about the interests of other departments. He already had definite ideas that guided his in formulating a policy - - his own as well as the President's. This was so even though the President gave few specific instructions to his team. As Deputy Administrator John Hill explained: "Ford's only specific directions to Zarb were to make his energy policy consistent with his overall economic goals (decrease unemployment increase real income and production, and restrain government spending), and to

12. "A Floor Price For Oil," CQ, 1 March 1975, p. 427; see also Elizabeth Drew, "Reporter At Large: The Energy Bazaar," The New Yorker, 21 July 1975, p. 36.

rely on the private sector as much as possible."[13] These directives, combined with other influences, limited the acceptable policy options even before the review began. First of all, President Ford inherited the controlling objective of his energy plan - - energy independence - - from his predecessor Richard Nixon. This alone fixed the framework for the Administration's policy. Second, it was Zarb's task to ascertain how to achieve this objective in a way consistent with Ford's previous public positions on energy and his political and ideological views. This was a job for which Zarb was well-suited. Selected by the President because he shared the same political beliefs, Zarb's own views very much determined the FEA's process. As an observer later explained, one of the first clues to what the Administration's policy would be was the FEA team's own political outlook: they "believed government controls inevitably do more harm than good to the economy."[14]

In mid-December, after only a month, (a very brief period in which to conduct what the President claimed was "the most comprehensive review") Zarb presented his proposals to the President. His report listed only three options, all of which were designed to bring supply and demand into closer balance in the domestic market: (1) a gasoline tax to discourage use of fuel (2) import quotas and rationing to impose mandatory conservation, and (3) an end to price controls on oil. By limiting the President's options in this way, Zarb made Ford's decision easy. Ford had already rejected gasoline taxes when he fired Zarb's predecessor

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13. Interview conducted by author. Quotations in this Chapter without citation have been taken from interviews conducted by the author, from February 1976 through July 1976. In some instances, remarks were made "off the record" and thus, are not attributable. In alphabetical order those interviewed on the role of the executive included: Rep. Clarence (Bud) Brown (R. Ohio); William Burhop, Lobbyist, Congress Watch; Raymond Connelly, Government Analyst, American Petroleum Institute; Charles Curtis, General Counsel, Interstate and Foreign Commerce; William Demerest, Energy and Power Subcommittee; Rep. John Dingell (D. Mich.); Bruce Heinke, Legislative Assistant to Rep. Brown; John Hill, Deputy Administrator, FEA; David Staing, Minority Counsel, Interior and Insular Affairs Committee; William Van Ness, General Counsel, Interior and Insular Affairs Committee; Charles Wilson, Counsel, FEA; Perry Woofter, Lobbyist, American Petroleum Institute.

14. R. Evans, Jr., and R. D. Novak, "Mr. Ford's Energy Program," Washington Post, 18 October 1975.

(John Sawhill) for even considering it. And mandatory import quotas and the necessary accompanying rationing policy required increased government intervention in the market on a massive scale - - action that was contradictory to Ford's strongly-held commitment to limiting government intervention in the marketplace. Thus, even though Zarb presented three options to Ford, he did not present them all as viable choices. Only one choice - - that of decontrolling oil prices - - was acceptable to Ford as the centrepiece of his energy plan. In consequence, Ford's claim that his policy resulted from "the most comprehensive review" was not true. He was boxed into a position from the beginning without ever really exploring all the policy alternatives.

The Plan

The President's energy plan sought to achieve the objective of energy independence by cutting imports, encouraging conservation, and increasing domestic fuel supply. These goals were to be accomplished primarily through reliance on the price mechanism in an oil market freed from government controls. Ford argued that once price controls were ended petroleum prices would increase to reflect market conditions. By raising domestic oil prices consumers would be given painful economic incentives to use less oil, which in turn would result in conservation, and eventually a decrease in imports. Simultaneously, higher prices would encourage oil producers to expand their exploration and drilling operations, which would increase domestic energy supply. At the same time, alternative sources of fuel, such as shale oil and nuclear power, would become more profitable and their increased production would result in even greater increases in domestic supply. The plan also included other complementary government incentives to further its stated objectives.[15]

15. U.S. Congress, House, Interstate and Foreign Commerce Committee, Subcommittee on Energy and Power, "The Implications of the President's Proposals in the Energy Independence Act of 1975," 94th Cong., lst sess., 1975, Serial 94-20, pp. 177-211; Senate, Committee on Interior and Insular Affairs, "Executive," Serial 94-22, pp. 188-215; 251-252.

The plan included both administrative and legislative proposals. The President already had authority to advance his administrative proposals. Under the EPAA the President had the power to decontrol oil prices, subject to congressional review under the legislative veto procedures written into the Act. Either the House or Senate alone could reject the proposal, so long as it acted within five working days. (See Chapter Two, p. 90.) Ford announced on 13 January 1975 that he would take this action on 1 April so that the country could begin to realize the benefits of his plan. In addition to decontrol, Ford announced a second administrative measure for which he also already had authority under the 1950 Defense Production Act: an import fee of $1 per barrel effective 1 February, with further increases of equal amounts on 1 March, and 1 April. This he claimed would have the immediate effect of discouraging consumption and so cut oil imports during the first year of his programme by one million barrels, and after two years (in 1977) by an additional one million barrels.[16] Congress had no right to review this proposal as it did the oil-pricing measure. These two administrative proposals - - but particularly the oil-pricing decontrol measure - - were the most controversial aspects of the President's plan.

The plan's complementary legislative measures were much less controversial. They included proposals to:

* tax all domestic oil to recapture the windfall profits that were expected to accrue to the oil companies as a result of the sudden decontrol of oil, and then to recycle the monies collected from this tax back into the economy through tax rebates;

* place an excise tax on both oil and natural gas, to raise their prices further and further to encourage conservation;

* deregulate interstate natural gas prices to encourage production and discourage wasteful use;

* increase production at the Elk Hills (California) Naval Petroleum reserves to stock a strategic petroleum reserve to guard against future embargos;

* ease environmental restrictions mandated by the Clear Air Act against buring coal;

16. Ibid., p. 215.

* and, allow exemptions for plants required by the Clear Air Act to change from coal to oil.

Although these proposals, in general, were less controversial than Ford's administrative proposals, they were no less complex. This was particularly true of the tax provisions. However, in spite of this fact, Ford asked Congress to enact his bill within ninety days.

Although the speculative advantages Ford claimed for his plan were less than convincing, they conveyed an important message. Gerald Ford was acting in a very presidential way - - that is, he proposed a policy and intended to persuade the country to support it. He wholeheartedly embraced the role of "chief legislator." The President desperately needed a success after the failure of his "Whip Inflation Now" (WIN) campaign the previous October (1974).[17] As Washington Post columnists Evans and Novak concluded:

> Demands to do something were pervasive last November following the Democratic election landslide and Mr. Ford's WIN Fiasco. .... The difference between the expert and the politician was evident. While the technicians saw no need for the President to rush into an energy program Mr. Ford's lieutenants felt it imperative to put some program - - any program - - before the public." 18

Thus, with energy, he was trying to assure some success by taking the initiative from Congress, imposing his priorities on the policy and, hopefully, forcing Congress to accept his decontrol policy. The road to this end was, however, strewn with many obstacles.

## Brinksmanship: A Series of Confrontations

Quick passage was most unlikely. The President's general approach to solving the nation's energy problems, and his specific legislative and administrative proposals, stood in sharp contrast to the policies Speaker Albert presented in the name of the congressional majority. Thus Congress and the President had a great deal of work ahead of them if they were to mold their divergent views into a coherent policy. President Ford, apparently undaunted by

17. "The Economy Wary of Tax Plan," CQ, 12 October 1974, pp. 2819-2824.

18. R. Evans, Jr. and R. D. Novak, "Mr. Ford's Energy Program."

these differences, publicly renewed a promise he had made to Congress upon taking office--to pursue "a policy of communication, consideration, compromise, and cooperation."[19] He added that he hoped the legislative and executive branches would not only have a happy honeymoon but a long and happy marriage. However, with his ninety-day deadline, the President sounded to congressional Democrats rather like a domineering husband seeking to embarrass his spouse in public. After several confrontations over the oil-pricing policy, veteran presidential observer James MacGregor Burns remarked: "Holy wedlock soon turned into unholy deadlock."[20]

President Ford's public promises to be conciliatory and cooperative with Congress contrasted, almost from the outset, with his aggressive response to congressional policy-making. In fact, Congress and the President shared neither a sense of political priorities nor of common institutional interests. Deadlock thus threatened the decision-making process. It was no doubt unrealistic and perhaps even naive of congressmen to expect any President easily to accept subordination to the legislature. From the beginning, Albert's press conference therefore risked a collision course between Capitol Hill and the White House. But Ford's behaviour assured it. By pretending to be ready to compromise while, at the same time, rejecting congressional concerns and setting unrealistic deadlines for Congress either to enact his energy bill or to develop one of its own, Ford made confrontation unavoidable. He tried to pressure and cajole Congress to accept his policy in spite of the serious questions it raised. In so doing, he ignored the concerns of a large majority of Democrats and of some Republicans too, because he was so concerned with building a record to use against his Democratic opponent in 1976. Congressmen responded to the President's political games by playing one of their own. If the President was unwilling to cooperate and compromise, the Democrats would not simply give way but face him with the consequences of his threats--immediate decontrol

19. "State of the Union Message," pp. 8-9.

20. James MacGregor Burns, "Ford and the President," Washington Post, 3 August 1975.

and the "depression syndrome." As a result, policy-making became a series of confrontations and brinksmanship a dangerously attractive tactic.

Late February: The Import Fee Question

The first confrontation between Congress and the President occurred over the imposition of the import fee, the second most controversial element of the President's energy plan after oil-pricing. Ford imposed the first $1 fee in spite of its contentious character and lack of supporters. It had, in fact, even fewer supporters than his decontrol proposal. Economist Maurice Adleman, a recognized expert on oil and the petroleum industry and an avid supporter of decontrol, denounced the tariff as "an expensive irrelevance."[21] Members of Congress as well as others criticized it because the import fee raised the price of oil even higher than the prices set by OPEC, and because Ford was using it as a tactic to pressure them to act quickly and approve the oil decontrol policy he recommended. As Consumer Federation spokesman, Lee C. White, complained:

> The President, in effect, seemed to be holding a gun at the head of Congress, saying 'you are compelled to act because if you don't, the months will tick by and pretty soon it will be March 2 and yet another dollar will go up and on April 2 we will have the grand $3 bump on top of everything. 22

Ford confirmed this view when he explained:

> First, it is an immediate step toward energy conservation, the only step taken so far to slow the inflow of foreign oil and the outflow of American dollars; and secondly, to prompt the Congress to act on energy independence. 23

The President's acknowledgement that he was using the fee as a pressure tactic did not lessen or deflect congressional anger at him for so doing.

Believing in the efficacy both of his policy and of his political strategies, Ford launched an offensive strategy to garner support from the general public. Presidential aide Robert T. Hartman explained his reasoning:

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21. House, Subcommittee on Energy and Power, "The Implications of the President's Proposals," Serial 94-20, p. 351.

22. Ibid., p. 770.

23. Senate, Interior and Insular Affairs Committee, "Executive Energy Messages," Serial 94-22, p. 255.

> The mistake we made when we laid out the first program (WIN [Wip Inflation Now] 8 October) was that we let it sink or swim for itself. We didn't have the follow through and we didn't continue to press the point of view we had arrived at. 24

This time Ford intended to press his view on the energy issue. In the second week of February, the President took to the hustings in a cross-country, campaign style trip. Throughout he held press conferences, delivered speeches and met with state and local politicians, as well as members of interest groups. He attacked all other energy policy alternatives, such as gasoline rationing and price controls, and he harshly chided Congress for failing either to approve his plan or to offer one of its own. The attacks were relentless. During a press conference in Topeka, Kansas, he defended his programme, admitting "there are some gray areas," he challenged Congress to remedy the situation. "At least it is a program," he argued. "If there is a better program, the Congress should come up with it. I will not tolerate delay. I will not tolerate inaction."[25] These public challenges seemed totally unrealistic to Congress which had had his omnibus energy bill for less than three weeks. Members of Congress dismissed the President's rhetoric and as they began scrutinizing the President's energy proposals more closely their response was overwhelmingly negative.[26]

Congress also took action to block the President's proposals. With an overwhelming majority of votes in both chambers, Congress passed the Oil Import Fee Suspension Act which revoked the President's authority to impose the remaining successive import fees he had scheduled for 1 March and 1 April.[27] Ford threatened Congress that he would veto the bill - - regardless of members' strong support for it.

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24. "Ford Pushes For Energy and Tax Proposals," CQ, 15 February 1975, p. 326; See also "Ford Challenges Congress on Energy," Business Week, 3 February 1975, p. 16.

25. CQ, p. 326.

26. See Library of Congress, Congressional Research Service, "Economic Impact of President Ford's Energy Package," Report prepared by Lawrence Kumins, 17 January 1975; and, House, Subcommittee on Energy and Power, "The Implications of The President's Proposals," Serial 94-20.

27. "Senate Action: Oil Import Fee Suspended," CQ, 22 February 1975, pp. 356-358.

The tension between Congress and the President - - which had been growing over this issue since January - - reached a peak in late February. Congress waited to see if the President would make good on his threat, and President Ford worried about how Congress would respond. As Richard Corrigan observed:

> The first showdown over energy policy this year will come when Congress seeks to override President Ford's veto of the resolution to delay imposition of the higher fees on imported oil . . . Once that is settled, the Democratic Congress and the Republican President can be expected to work out the compromise they both say they are willing to make. Until that vote, however, neither can be expected to yield an inch on their differing approaches to the energy dilemma. 28

But the override vote never occurred because the President averted it by yielding first.

President Ford had little choice but to yield. His political position was precarious. He had not chosen his ground very astutely, for the responsibility for raising petroleum prices could not be shifted so easily onto Congress. His import policy was under attack in the Courts as well as in Congress. On 19 February, the Temporary Emergency Court of Appeals ruled 2 to 1 that the FEA had acted improperly in exempting new oil from price ceilings.[29] This case raised serious doubts about whether the President's import fee would stand up to a legal challenge. Clearly, Ford and the executive agencies had not properly done their homework. Ford was surprised by the lack of support from interest groups and even members of his own party. This was most evident in February when forty-two House Republicans and ten Senate minority members voted against the President on the Import Fee Suspension Act.[30] Given these political realities, Ford predictably gave in to Congress - - but without looking as if he was bowing to members' pressure.

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28. Richard Corrigan, "Energy Report/Ford, Congress Struggle Over Petroleum Policy," National Journal, 1 March 1975, p. 318.

29. "Decontrol of Oil," CQ, 22 February 1975, p. 359.

30. Congressional Quarterly Almanac 1975 (Washington, D.C.: Congressional Quarterly, Inc., 1976), pp. 4S and 4H.

When Ford announced his veto of the Import Act, he also offered Congress a concession. He agreed to delay for two months his second scheduled import fee, and for one month his proposal to decontrol oil prices (from 1 April to 1 May). As a result, Ford appeared conciliatory and reasonable. Although he inadvertently acknowledged that his policy created some problems, he justified his apparent willingness to delay by seizing the Democrats' release of their Task Force Report as a sign of progress. "What we don't need," he said, "is a time-wasting test of strength between Congress and the President," the first round of which he had just lost.[31] The House apparently agreed because it responded by delaying a vote on Ford's veto. Since the Senate was unlikely to override the veto, Congress had as much incentive for avoiding this showdown as did the President.

The tension that had been building between the two branches now eased and both Congress and the President gained a reprieve. The President had been saved from what now appeared to be an unsound programme; Congress gained additional time to develop alternatives. Both parties seemed relieved and optimistic that a compromise could be developed. As Senator Robert Dole (R. Kansas) explained: "Congress can now move forward... It only seems regretable that we must have a confrontation before we reach a compromise."[32] Unfortunately, it would not be the last confrontation between Congress and the President before they could reach an agreement. The President's conciliatory gesture was not accompanied by a genuine change in tactics; his revised timetable only set the deadline for the next test of wills.

## The May Deadline: Ford Proposes a Modified Decontrol Plan

The reprieve offered Congress by the President was short-lived. Ford not only continued his pressure campaign against Congress, but he intensified it. In

31. Senate, Interior and Insular Affairs Committee, "Executive," Serial 94-22, pp. 257-258.

32. U.S. Congress, Senate, Congressional Record (hereafter CR), 94th Cong., lst sess., 5 March 1975, p. S. 3127.

so doing, he discounted warnings of some advisors that this approach might alienate legislators, for (according to one of Ford's aides) he believed: "They have a tough skin and they know when to sit down and compromise."[33] Again his approach backfired. Instead of bringing congressmen to the negotiating table, it pushed them away; as a result, another confrontation loomed ahead.

This time it arose over the President's decision to go ahead with a modified plan to decontrol oil prices. On 30 April - - the day before the deadline Ford established as a concesson over the import fee - - FEA Administrator Zarb announced that President Ford intended to send to Congress a modified proposal to decontrol prices under procedures established by the EPAA. These procedures gave legislators five days to review the proposal which either chamber could reject. The proposal would decontrol oil prices over twenty-five months, beginning 1 June 1975. Zarb defended the Administration's apparent change of position as merely a compromise gesture:

> We preferred to raise the price in a closer period of time and deliver the money back to the economy [through a windfall profits tax]. I still think that was a better program. The Congress felt very strongly first that there should be no decontrol and then a price roll back. Then, as we went forward, they began to talk about decontrol and finally came to the position they could accept it if we could consider some form of phase-out, and that is what, after all, compromise is all about. 34

By casting the proposal in this light, the Administrator tried to make the President appear decisive, Congress indecisive, and to show that members of Congress had seen the wisdom of Ford's position and moved further from their initial policy position than he had. But legislators and members of interest groups were not convinced of this. They had a very different perspective. The changes in position that Zarb attributed to legislators were not progressive shifts but different points of view represented in Congress, for which no clear consensus there had yet emerged. Ford's tactics made the emergence of that consensus more not less difficult. Thus members of Congress and the President

33. Cited in CQ, p. 326.

34. Richard Corrigan, "Energy Report/Ford, Congress Move Toward Oil Price Decontrol Proposal," National Journal, 10 May 1975, p. 704.

still had a great deal of work ahead of them even after four months' of debate and negotiation on a policy.

This task was made more complicated because the relationship between Congress and the President was not good. Ford had intensified his attacks on Congress in March and April, criticizing members for not acting quickly enough on the energy issue either by adopting his bill or developing one of their own. Moreover, Ford did not limit his criticisms to the energy issue. He vetoed numerous bills not related to energy policy and Congress failed to override them.[35] As Deputy Energy Administrator Hill admitted,

> Ford intended his increased attacks on Congress and his veto politics to show legislators he had the final say in matters, to try to beat them down so that they would adopt his policies and to deflect criticism from his own plan that could not stand up to Congress' scrutiny.

In one sense the President appeared to be succeeding. The same Democrats who in January sanguinely spoke of a reassertion of congressional government, by the end of April were decrying the ills of "government by veto."[36]

Throughout the month of May relations grew worse as President and Congress attacked and counterattacked. On 8 May 1975, the FEA released its analysis of the cost and economic impact of the President's proposal.[37] Although this analysis acknowledged that steep price rises would affect the entire economy when oil price controls were ended, it asserted that the President's proposed windfall profits tax would offset this impact. Several days later on 13 and 14 May, the FEA (as required by the EPAA) held public hearings to survey reactions to its plan. These hearings stirred a great deal of controversy and made clear that the plan had very few supporters.[38] They confirmed what one critic had said earlier:

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35. Donald Smith, "Democrats Worry About Minority Rule," CQ, 28 June 1975, pp. 1333-1342.

36. Clayton Fritchy, "Government by Veto," Washington Post, 16 September 1975.

37. Federal Energy Administration, "The Energy Consumption and Consumer Cost Effects of Phased Decontrol of Old Oil," 7 May 1975. Unpublished: Document in author's possession.

38. Federal Energy Administration, Hearings, 13-14 May 1975. Unpublished: Copy of transcripts in author's possession.

> Strikingly enough, he has done one thing which I thought was impossible. He has gotten consumer groups and the petroleum producers together, both saying his is a lousy program. They say it for different reasons, . . . . and we all hope it sinks, . . . . 39

Studies conducted within Congress and by outside interest groups hotly disputed the FEA's findings[40] and forced the FEA to conduct a second and more thorough analysis, which was not released until 9 June. This second study concluded that the cost of the President's plan was much higher than the first study indicated. For example, the FEA's first analysis estimated that the cost of refined petroleum products would increase nineteen per cent compared to thirty-two per cent in the second study.[41] This incompetent bit of slight of hand did nothing to improve the President's public standing and did even less for his agency's reputation on Capitol Hill. In spite of this, the President and his supporters continued to argue that the tax proposals would offset the higher costs of removing controls. But members of Congress and interest groups used the discrepancy in the Administration's own figures to attack the President's plan. In response, Ford intensified his attacks on Congress.

The President's most vigorous attack came on 27 May. Taking advantage of the Congress' Memorial Day recess, a time when members were in their districts, Ford appeared on national television to deliver his "Calendar Speech."

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39. House, Subcommittee on Energy and Power, "The Implications of the President's Proposals," Serial 94-20, p. 770.

40. Library of Congress, Congressional Research Service, "The Economic Impact of an Additional $3 Crude Oil Import Surcharge and Old Oil Decontrol," Report prepared by Lawrence Kumins, 29 May 1975; Michael D. Ware, "Monday Morning Letter," 30 May 1975, Charles Owen Associates. The Owen study was included in its weekly newsletter, a service to keep its clients abreast of relevant legislative matters. On this occasion they also sent it to all members of Congress. This study showed Ford's April oil-pricing plan, which decontrolled prices over twenty-five months, would give a competitive advantage to integrated refiners and create a disincentive for old oil production during the phase-out period; Edward Cowan, "Experts Analyze an Oil Price Rise," New York Times, 16 June 1975.

41. Federal Energy Administration, "The Energy Consumption and Consumer Cost Effects of the $2 Crude Petroleum Import Fee, and the $.60 Refined Products Import Fee, and Phased Decontrol of Old Oil", 9 June 1975; "Analysis of the Effects of the Congressional Research Estimate of the $2 Import Fee and Phased Decontrol," 9 June 1975. Unpublished: Document in author's possession.

Tearing off pages from a calendar to dramatize the months of alleged congressional inaction he said:

> February, March, April, May - - as of now, the Congress has done nothing positive to end our energy dependence. On the contrary, it has taken two negative actions . . . . Still the Congress does nothing about energy. We are today worse off than we were in January . . . Four months are already lost. The Congress has acted only negatively. I must now do what I can as President . . . .
>
> The Congress cannot drift, dawdle and debate forever with America's future. 42

Ford outlined his plan to decontrol oil prices over twenty-five months and he asked the American people for their support:

> I need your help to energize this Congress into comprehensive action. I will continue to press for my January program, which is still the only total energy program there is . . . 43

Voters responded to their President's request. Some flocked to their representatives' district offices to voice complaints and criticism, others sent letters and telegrams to Washington demanding action.[44] The President expected this increased pressure to force legislators to accept his pricing plan when they returned from their congressional recess. But Ford discovered - - as other Presidents had before him - - that it was not always easy to turn diffuse public support into concerted congressional action.

Legislators responded angrily to Ford's attack. They had a very different view of what had transpired since the energy debate began in January. They thought the President's attacks totally unjustified. His plan had so few supporters in Congress, not because legislators had "dawdled," but because of Ford's own mistaken tactics and unsound policies. Members of Congress had been working in earnest to review the President's proposals, and this review had resulted in his plans being totally discredited. Moreover, the House had been

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42. U.S. Department of State, "President Ford Urges Action on Energy Program: Address by President Ford," Bulletin, 30 June 1975, pp. 918-919.

43. Ibid., p. 919.

44. Elder Witt, "Ford Orders Import Fee Rise, Oil Decontrol," CQ, 31 May 1975, p. 1123.

working diligently to develop its own oil-pricing policy. The President's failure to acknowledge this seemed to make good-faith negotiations impossible. Members of Congress made perfectly clear that when the President sent them his twenty-five month plan, they would summarily reject it. Ford heeded legislators' warnings; he decided not even to send his decontrol bill to Congress.[45] President Ford's strategy to have Congress adopt his modified oil-pricing plan had failed.

As a result of this confrontation, Ford lost an important edge. He had backed legislators into a corner, forcing them either to surrender their position or to fight for it. He had pushed too far and members decided to fight. He thus undermined the position of congressmen like Dingell, whose own credibility depended on Ford's apparent willingness to negotiate. As one executive branch staff person explained: "instead of laying down and playing dead, as Ford hoped, congressmen reared up and growled." The controversy surrounding Ford's plan; the obvious and gross miscalculations of the Administration's projections, which could not stand up to congressional scrutiny; and the President's misrepresentations of the Democrats' position - - all eroded Ford's credibility in Congress. Ford, in other words, was doing Eckhardt's work for him. Congressional Democrats became convinced that the President was wrong - - both in the substance of his policy and in his tactics. Moreover, after this confrontation the terms of the debate shifted. The President and Congress were no longer debating the pros and cons of controls versus immediate decontrol, as they had been between January and April, but who was going to call the shots on a pricing policy. The President had succeeded in discrediting his own preferred policy of immediate decontrol. Now, during the debate from May to December, it was assumed that controls should be continued. At issue were the duration of controls, the categories of petroleum which would be controlled, and the rate at which such controls would be phased out for different types of oil. But the most important consequence was that Ford and Congress had lost yet another opportunity to move towards a compromise.

45. CQ, "Energy Standoff," 28 June 1975, p. 1336.

In June 1975, 6 months after the President and the Speaker had outlined their alternative approaches to the energy crisis, the White House clearly appeared to have lost yet another time-wasting test of wills, but Congress still seemed incapable of producing a coherent policy - - or, if it could develop one, of forcing it upon a recalcitrant President. However, the issue would not rest. The EPAA, the Act that controlled oil-prices, was still due to expire 31 August 1975. Either the President and Congress had to agree to extend this deadline and reach a compromise on an alternative policy, or end up with immediate decontrol by default.

The August Confrontation: Prices Controls Officially End

By the end of August, President Ford and the Democraticly-controlled Congress still had not agreed on an oil-pricing policy. The Democrats in Congress wanted a short-term extension of controls which would give them the leeway to complete work on their own policy, and then to negotiate with the President. But Ford opposed any extension which would allow this. Although the President had altered his position on oil-prices from immediate to gradual decontrol, he still wanted to have his policy adopted and, if he could not, to exert as much influence as possible over the final outlines of the policy that was adopted. At this stage of the debate, Congress and the President struggled not so much over the substance of policy but over the political gains to be reaped from having their respective policies adopted. Thus Ford threatened to veto any extension bills and tried to persuade Congress to adopt one of his plans. But when the President's efforts failed in July, Ford and Congress once gain faced a showdown as the end of August approached and controls were scheduled to expire. Several weeks after controls expired, Ford and the Democratic majority finally reached a compromise.

President Ford launched his new campaign to persuade Congress to adopt one of his oil-pricing plans on 22 July when he vetoed a bill that would have

extended price controls for four months.[46] Since the bill had passed both houses on slim majorities there was clearly not sufficient support in Congress to override the President's veto. Thus, Ford and his advisors saw this as an opportune time to offer another compromise oil-price decontrol plan.

The same day Ford vetoed Congress' extension bill, and just as the House debate on H.R. 7014 got under way, the Administration sent Congress a revised plan of its own.[47] This plan gradually decontrolled oil prices, this time over thirty months. FEA Administrator Zarb testified before the House Energy and Power Subcommittee: "I am at the point where I am holding my hat out."[48] The plan bowed to some legislators' concerns. It gradually decontrolled old oil at a rate of 3.38 per cent of production per month compared to 4 per cent in the twenty-five month plan, and did so over a slightly longer period of time -- thirty compared to twenty-five months. Thus the overall cost and economic impact of the plan was much lower.[49] More important, the proposal included a price ceiling of $13.50 per barrel on all oil; this ceiling would remain in effect for the duration of controls. Zarb testified:

> The point to the ceiling is to set that ceiling at a point where we will get the necessary conservation impact and at the same time not allow new and released oil to climb to different levels in view of the possibility of the OPEC nations taking price action of their own. 50

This was the first time the Administration even acknowledged OPEC prices had a significance influence on domestic oil prices. It was a major concession, which

46. U.S. Congress, House, "Message from the President of the United States: Veto of the Petroleum Pricing Review Act," 94th Cong., lst sess., 22 July 1975.

47. Senate, Interior and Insular Affairs Committee, "Executive," p. 321; Joel D. Weisman, "Oil Curbs Phase Out Offered," Washington Post, 13 July 1975; Carroll Kilpatrick and Peter Milius, "Ford Offers Decontrol Compromise," Washington Post, 15 July 1975.

48. U.S. Congress, House, Interstate and Foreign Commerce Committee, Subcommittee on Energy and Power, "The President's Decontrol Proposals: The Potential Economic and Social Implications of the Sudden Decontrol of Domestic 'Old Oil'," 94th Cong., lst sess., 1975, Serial 94-49, 11, 14, 28 July, 8, 9 September 1975, p. 220.

49. Senate, Interior and Insular Affairs Committee, "Executive," Serial 94-22, p. 321; Federal Energy Administration, "Economic Impact of the President's Proposed Program on Phased Decontrol," 17 July 1975, p. 7.

50. House, Subcommittee on Energy and Power, "The President's Decontrol Proposals," Serial 94-49, p. 228.

contradicted previous positions they had taken even as late as the month before. For example, in June Ford had denied any relationship existed between OPEC and domestic prices.[51] Although the plan did not address all members' concerns, it did indicate a significant departure from Ford's prior positions. Moreover, as an added inducement for Congress, the plan included an extension of the current controls for three months, thus delaying the date when the thirty month decontrol plan would begin.

As a result of these concessions, a seasoned observer thought it was a compromise too attractive for Congress to reject. As Joseph Kraft said:

> With that soft decontrol proposal Mr. Ford practically invites the Democrats to compromise. Virtually every feature of the proposal - - including the length of the decontrol period, the ceiling price on old oil, not to mention devices for conservation and sopping up windfall profits - - are subject to negotiations. 52

As attractive as the proposal was, the Democrats did not adopt it. They had their own reasons for continuing to attack the President's new plan.

Democrats had numerous reasons for wanting to reject the President's proposed compromise. First, substantive differences remained. Even though the President's new proposal appeared less costly than his prior policy, the Democrats continued to question its economic impact, particularly its effect on the country's inflation and unemployment rates.[53] But substantive disagreements were minor compared to the complex set of political motivations that influenced the Democrats. They mistrusted Ford so thoroughly now that they were unwilling even to negotiate with him, for they feared that if they now gave way he would take all of the political credit for the energy policy. They also feared that if they accepted Ford's thirty-month decontrol plan they would undermine their bargaining power on other matters in the energy bill where more was at stake than just the oil-pricing issue. Moreover, the Democrats now

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51. Cowan, "Experts Analyze an Oil Price Rise."

52. Joseph Kraft, "Old Oil, New Oil," Washington Post, 17 July 1975.

53. House, Subcommittee on Energy and Power, "The President's Decontrol Proposals," Serial 94-49, pp. 217-480.

resisted the President's compromise simply as a matter of principle. They viewed the President's threat to veto any extension of controls which he made at the time of his compromise proposal, as more of his pressure and blustering tactics. John Dingell (D. Mich.), the important chairman of the House Energy and Power Subcommittee, angry at previous rebuffs from Zarb and the White House, warned, as much in sorrow as in anger:

> .... I regret that the President has chosen to couch his decontrol plan as an alternative to total decontrol by threatening to veto a short-term extension of the Allocation Act [EPAA]. This Hobson's choice which is presented to Congress is indeed unfortunate . . . Any argument that this position has been abandoned by the Administration is refuted by the threat to veto extension of the Allocation Act if the decontrol plan is not accepted by the Congress. I would regretfully like to observe that that is playing a most dangerous brand of poker with the public interest. 54

A large number of Democrats shared Dingell's resentment that Ford was bullying them. But even some Republican members shared this view and thought Ford was in the wrong. Congressman H. John Heinz III (R. Pa.) maintained: " . . . the House should complete working its will on H.R. 7014 before the President or Federal Energy Administrator forces such a decontrol amendment on the Congress."[55]

At this stage the Democrats thought they could afford to resist these tactics because they had the better hand in this game of poker. They also were optimistic that they would soon adopt their own policy because debate on the House bill (H.R. 7014) was finally under way. Moreover, they did not seriously believe the President would veto a short-term extension bill for, in changing his position from immediate to gradual decontrol, Ford had in effect admitted his initial policy was unsound. Thus, on 23 July, congressmen passed House Resolution 605 rejecting Ford's thirty-month decontrol plan. (See Chapter Three, p. 148.)

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54. House, Energy and Power Subcommittee, "The President's Decontrol Proposals," Serial 94-49, p. 217.

55. CR, 22 July 1975, p. H. 7219.

The Democrats judged Ford's intentions correctly; he appeared to have been bluffing, for he still was very much interested in a compromise. Undaunted by Congress' rejection of his thirty-month plan, the President announced his third revised plan the same day, on 23 July. He sweetened the proposal with further concessions which Treasury Secretary William Simon said resulted in the Administration offering a significant compromise: "We've moved more than halfway."[56] And the outline of this plan seemed to support Simon's assessment.

This newest plan gradually removed oil-price controls over thirty-nine months (as compared to thirty), lowered the ceiling price for all oil to $11.50 (as compared to $13.50), and as before, delayed the starting date by extending the current controls for three months. The FEA's analysis claimed that as a result of the additional months and the lower price ceiling, the increased costs of the plan were only $30 per year for a family of four.[57] And in fact, this proposal was very similar to the two (Staggers-Eckhardt and Krueger) which the House Democrats were already debating. It appeared that the President was finally listening to Congress. Zarb testified: "the President's plan is a good faith attempt to meet these concerns."[58] However, although it appeared that Ford had finally made a good-faith offer, Democrats were no longer interested. On 30 July the House passed House Resolution 643 disapproving the President's thirty-nine month decontrol plan. Although a few of the more conciliatory-minded members, like Timothy Wirth (D. Col.), believed this plan was "very close"[59] to an acceptable compromise and thus voted for it in hopes of resolving the issue, more voted against it. Some members continued to be troubled by its economic impact, while others did not believe Ford had moved close enough to their own positions.

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56. Cited in Carroll Kilpatrick, "President Offers Hill Second Oil Decontrol Plan," 26 July 1975.

57. Federal Energy Administration, "The Economic Impact of the President's 39-Month Decontrol Proposal," 28 July 1975, p. 11. Unpublished: Document in author's possession.

58. House, Subcommittee on Energy and Power, "The President's Decontrol Proposals," Serial 94-49, p. 483.

59. Cited in Kilpatrick, "President Offers."

Although the FEA claimed the costs were significantly less than in its prior proposal and very close to those the House was considering, the FEA had consistently under-estimated the cost of previous presidential proposals and was no longer credible. Indeed, its new projections displayed the same bias as previous ones and the House Energy and Power Subcommittee's analysis confirmed that the FEA had once again underestimated the cost of the plan.[60] This finding further eroded the Administration's already shaky credibility and thus its ability to sell the plan. But an even larger group of members was more concerned with the political ramifications of Ford's plan. These legislators charged the President with devising a plan only to enhance his election prospects. The plan delayed the impact of removing oil price controls until after the 1976 election, with the greatest impact not occuring until 1977 and beyond - - that is after Ford's 1976 election, but before the 1978 mid-terms. Moreover, if the House adopted the President's plan, in the forthcoming election year he would claim credit for the energy policy and they would open themselves to the same criticism that Ford had repeated throughout 1975: that they had dawdled and played politics with the vital energy issue, without ever being able to produce a coherent alternative to his policy. Since the House appeared very close to adopting its own proposal, a large number of legislators thought that this was an unnecessary risk to take. Indeed, after the House rejected the President's plan, it went on to adopt its own oil-pricing provision in the Staggers-Eckhardt Amendment. (See Chapter Three, p. 149.)

That, however, did not resolve the problem facing Congress and the President. The House still had to complete its work on the energy bill. It then needed to hold a conference with the Senate. And finally the President himself needed to sign the bill into law. But with Congress' pending August recess, and

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60. House, Subcommittee on Energy and Power, "The President's Decontrol Proposals," Serial 94-49, pp. 482 and 491; House, Interstate and Foreign Commerce Committee, "Analysis of the President's July 17, 1975 Program to Decontrol Domestic Oil," July, 1975. Unpublished: Document in author's possession.

the expiration of controls at the end of that month, the President and Congress had run out of time. They now faced an even more serious showdown, with even greater political and economic stakes than before.[61]

In spite of the heightened political and economic risks, President Ford continued to threaten Congress that he would veto any short-term extensions of price controls. When the House rejected Ford's thirty-nine month proposal, an FEA spokesman announced: "That's it - - we're going for total decontrol come August 31st."[62] However, Congress ignored Ford's threats as it readied another short-term extension bill (Emergency Petroleum Allocation Act Extension - S.1849) for the President's signature. Then 3 August Congress adjourned for the rest of the month. In order to avoid an easy "pocket veto," majority leaders did not send the bill to Ford until 28 August, three days short of the decontrol deadline.[63] Unless Ford signed the extension or Congress reconsidered and accepted a White House plan, all controls would end abruptly on 31 August - - a policy that neither Ford (any longer) nor Congress supported. In this dangerous game of poker politics, one would be forced to show his hand.

Thus, throughout the month of August, President Ford tried to sway legislators from their commitment to developing their own oil-pricing policy before they would negotiate with him, even though Congress was very close to realizing this goal. Ford set out to accomplish this through several channels. To show legislators that his threat to veto their extension bills was serious, and to mollify some opponents of abrupt decontrol, Ford directed the FEA to prepare legislative and administrative measures, including price subsidies to airlines and fuel allocation to farmers, which were designed to ease the sudden impact of

61. See U.S. Congress, House, Interstate and Foreign Commerce Committee, "A Summary of Economic Analysis of Sudden Decontrol," 94th Cong., lst sess., 1975.

62. News Dispatch Column, "House Kills Ford Plan on Oil Decontrol," Washington Post, 31 July 1975.

63. When Congress is in session and sends a President a bill, he has 10 days either to sign or veto it. If he vetoes it, Congress has the opportunity to try and override him. If the President takes no action within that time, the bill automatically becomes law. However, if Congress adjourns before the 10 day period ends, the President can take no action and a bill automatically is killed without legislators having the option even to attempt to override the President.

immediate decontrol on some segments of the economy, and thus limit the potential political repercussions anticipated from higher prices. As the Administration's own spokesman explained:

> This program would be designed in part . . . to soften opposition among farm belt Members of Congress to the expiration of the oil allocation program and thus increase the chances that Ford's veto could be sustained when it came up for a vote. 64

Ford reasoned that if Congress did not override his veto - - and given the margin by which it passed the President was fairly sure they could not - - then members would be put in the uncomfortable position either of adopting his emergency measures to cushion the impact of sudden decontrol, or of playing Russian roulette with the economy for their own partisan advantage. Thus, Ford would succeed in transferring the political responsibility of decontrol to Congress - - Dingell and Jackson's nightmare. From the Administration's perspective, these measures succeeded in conveying their intended impression. As FEA Deputy Administrator Hill gloated: "We really scared them."

In addition to preparing proposals to offset the effects of sudden decontrol, the Administration set out to limit its impact. The President even tried to enlist the oil industry's help to keep prices down if controls ended. He scheduled a meeting with industry representatives to warn them that if the oil companies increased their oil prices too much too quickly, then Congress might respond in anger and in haste with punitive measures. However, after setting up the meeting, the Justice Department cautioned the President that such a meeting might violate the antitrust laws "if it resulted in any specific agreement among oil companies to limit their price increases."[65] Ford then delegated this task to a group of conservative Senators - - John McClellan (D. Ark.), Paul J. Fannin (R. Ariz.), Carl Curtis (R. Neb.), and, Clifford Hansen (R. Wyo.). These Senators became Ford's messengers. In a letter to oil company executives, they

64. Richard Corrigan, "Energy Report/Ford, Congress Continue on Collision Course Over Oil Prices," National Journal, 9 August 1975, p. 1146.

[illegible], "President, Oil Firms May Meet," Washington Post, 9

urged them "to exercise every possible pricing restraint during the very critical days that will come after August 31."[66] They assured executives that steps were being taken to exempt them from antitrust laws.[67] And some of the oil companies certainly took the Senators' requests seriously.[68]

Finally, Ford met with House Speaker Carl Albert (D. Okla.) and Senate Majority Leader Mike Mansfield (D. Mont.) to offer, once again, his thirty-nine month decontrol plan. If Congress accepted Ford's plan as the oil-pricing provision in its energy bill, he would agree to extend controls for an additional forty-five days, which would give Congress extra time to develop other aspects of the energy bill. Albert and Mansfield tentatively agreed to this offer.

However, before the two houses were officially given the opportunity to review the compromise proposal, some members rejected it out of hand. Energy and Power Subcommittee chairman, John Dingell, angry that he was not included in these negotiations, protested:

> It's clear there is no compromise yet, despite some news stories that spoke of compromise after President Ford met with Congressional Democratic leaders. 69

Democrats were torn between their distrust of Ford for trying to steal the political credit for their policy unless they could enact their own bill, and their fear of a presidential veto. However, even though the Administration's package of emergency measures increased the risks for members in "playing chicken" with the President, Ford's very decision to advance these proposals seemed to confirm that he too was now alert to the damage that sudden decontrol would have on the country's economy. Congress still expected the President to behave responsibly.

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66. Paul J. Fannin, John L. McClellan, Clifford P. Hansen, and Carl T. Curtis, Letter to Orin E. Atkins, Ashland Oil, Inc., Ashland, Kentucky, 4 August 1975. Unpublished: Document in author's possession.

67. Joseph Kraft, "The Energy Mess," Washington Post, 14 August 1975.

68. Robert E. Yancy, Ashland Oil, Inc., Ashland, Kentucky Letter to Fannin, McClellan, Hansen, and Curtis, United States Senate, 11 August 1975. Unpublished: Document in author's possession.

69. Richard L. Lyons and Spencer Rich, "Hill Finds Economy People's Top Concern," Washington Post, 4 September 1975.

The general impression of a large number of legislators was, according to House general counsel Curtis, that "Ford just couldn't be that stupid to veto the bill."

On 9 September, however, the President did veto the extension bill (S. 1849) and refuted allegations that immediate decontrol would have a serious impact on the economy. The President's energy spokesman, Administrator Zarb, predicted Congress would sustain the veto, and that the impact of decontrol would not be as harmful as feared: "we don't agree with those estimates, not the way they are derived."[70] Apparently unaware of the contradiction, Zarb also announced the Administration's package of emergency legislation and standby authorities.

The reaction to the President's veto was mixed. A few supporters applauded his efforts for "displaying a lot of political courage in levelling with the American people on oil prices and the energy crisis," but many more criticized his action as the "worst political drubbing of his presidency."[71] "It is astonishing," wrote Clayton Fritchy, "to see a President on the eve of an election year kill controls the electorate has consistently favoured."[72] Although most Democrats were incensed, their ability to muster the two-thirds majority vote needed to override the veto was not at all assured. On 10 September the Senate failed to override the veto - - by only five votes.

As a result Ford felt confident that Congress now had no choice but to accept his thirty-nine month decontrol proposal. Zarb conveyed the Administration's confidence when he explained:

> I feel more positive than I did before the recess with respect to the opportunities for compromise . . . it is time for the government to govern on this issue and not be separated and polarized from each other. 73

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70. Office of the White House Press Secretary, Transcript of FEA Administrator Zarb's Press Conference, 9 September 1975, p. 5; White House Press Files: "The Effects of Decontrol," Federal Energy Administration, No. E75-005, 18 August 1975.

71. R. Evans, Jr. and R. D. Novak, "Bumbling Oil Decontrol," Washington Post, 6 September 1975.

72. Fritchy, "Government by Veto."

73. Richard Corrigan, "Energy Report/Opposing Forces Battle for Votes on Oil Price Issues," National Journal, 23 August 1975, p. 1208.

And both Congress and the President agreed with Zarb that now was the time to act. The oil industry was in a terrible state of uncertainty, as one editorial explained:

> Price controls on oil officially died on September 1, but their fingernails continue to grow . . . The industry is still menaced by the prospect of a retroactive resumption of controls . . . .
>
> Cowering under the threat, the refineries are paying for their domestic crude oil with what amounts to a blank check. If Congress next week overrides President Ford's prospective veto of the bill extending price controls on oil for six months, the refineries will fill in the blanks at the controlled price of $5.25 a bll. for old oil. If the veto is sustained, the blanks will be filled in at the going market price, with those refineries who have not raised retail prices stuck with the difference. 74

Once again the President planned to resubmit to Congress his thirty-nine month decontrol proposal in hopes they would now accept it.

In spite of these political and economic pressures, legislators rejected it out of hand. As a result, the two branches faced an apparent stalemate because neither the President nor the Democraticly-controlled Congress would yield. Further deadlock appeared inevitable until counsel for the House Commerce Committee, Curtis, seized upon the President's own proposal to extend price controls for forty-five days which he had offered Congress if they accepted his thirty-nine month plan. The House quickly passed its own bill (H.R. 9524) which extended controls for the same period of time as in Ford's proposal, forty-five days. They argued that the President should be willing to accept an extension he himself had proposed in order to allow them to complete their deliberations on the congressional energy bill. As legislators hoped, Ford found it difficult not to accept the force of this argument. In consequence, a resolution of the views finally seemed imminent - - until the Senate proposed amendments which Ford found objectionable.

The Senate adopted two amendments to the forty-five day extension bill. First, senators lengthened the time from forty-five to sixty days, and, second, surprising the President and his advisors, they revoked the President's power

74. Editorial, "Energy Bill Politics," Wall Street Journal, 5 December 1975.

under the EPAA to submit further decontrol plans to Congress. This would mean that decontrol could then be achieved only by legislation, or by the expiration of previous legislative authority. Senators demanded these changes for practical, as well as political reasons. Given the legislation already scheduled for their consideration, they argued forty-five days was simply not enough time.[75] Moreover, some feared Ford would try to undermine their efforts to complete their work by proposing additional plans simply to interrupt their process. As Senator Henry M. Jackson (D. Wash.) explained:

> All of this would be for nought if while we are completing it the President comes in with another program, another policy, which Congress will have to wrestle with in the midst of our own legislative effort. Certainly that is inconsistent with the whole concept of a period of time here for the House and Senate to work its will. 76

Initially, the Republicans did not agree. Instead, they advocated quick passage of the bill as the House had adopted it and criticized Senate Democrats for the delay that these changes would cause. Ford even threatened to veto the short-term extension if the Senate made these changes. But Democrats did not take his threats seriously. They blamed Ford and the Republicans for the current deadlock and admonished them for being unreasonable. They argued that, after all, Ford had already suspended his own authority when he vetoed the last extension bill. And it was now clear that Ford no longer wanted the immediate decontrol which he had initially proposed. Thus, on 23 September he seized on the passage in the House of its energy bill, H.R. 7014, as evidence that Congress was making progress and as an excuse for acceeding to the Senate's changes. He conceded without losing face, and could hope to fight again at the conference stage.

Thus, after nine months of debate, the Democraticly-controlled Congress and Republican executive had finally moved towards a compromise agreement, whose terms could have been agreed to at any point earlier in the process. They could now begin their serious negotiations over the substance of the oil-pricing

75. CR, 11 September 1975, p. S.15892.

76. Ibid., p. S.15909.

# CHAPTER SIX

## Interest Groups Respond to the Changing Oil-Pricing Issue and to the Altered Political Environment

Interest groups played an integral part in the formulation and passage of the 1975 oil-pricing legislation. They collaborated closely with legislators as consultants, strategists, and lobbyists in order to educate the public as well as legislators, and to persuade--both directly and indirectly--members of Congress to support their positions. Their role too was shaped by the substantially changed political environment, resulting from the reforms within Congress and from the changes in the nature of the energy issue itself. No study using the oil-pricing policy to analyze congressional change would be complete if it neglected interest group activities.

Congressional reform had a dual effect on interest groups. (See Chapter One, pp. 18-20.) First, as power shifted within Congress from committee barons to rank and file members, it understandably influenced groups' relationship with legislators. As jurisdiction ceased to be exclusive, and the committee system became even more decentralized, there were more committees and subcommittees involved, and thus more points of access. As the legislative process became more democratic, the long-established groups (like business and oil) lost some of the privileged opportunities they once had to influence a committee's internal processes. The days of interest groups working with the leadership to assure that members supportive of their interest were appointed to relevant committees, of the seniority system assuring both members' steady advancement and a chairman who could deliver the necessary votes in committee, of interest groups courting members (particularly the chairman) with campaign contributions and social entertaining to curry their favour, and of secrecy shielding their dealings, were not altogether over; but these practices were no longer quite the whole story. Now selection of committee members, as

well as of the chairman, was a more open and democratic process and a less predictable one. The seniority system still mattered, but it was no longer the automatic route of advancement; members were more independent of their chairmen, and open committee meetings and recorded votes introduced accountability - - to the public as well as to interest groups - - at this important stage of the system. Thus the very foundation upon which groups had built long-standing friendships with powerful committee members had eroded. Moreover, with the large turnover in Congress' membership, the number of long-term friends that oil groups, for example, could count on had been greatly diminished. In sum, the entire political process was, as congressional observer Norman J. Ornstein explained, "more open, democratic and responsive to the variegated social and political forces in the country."[1] As a result, more and different interest groups were involved in a greater number of issues and played a changed role than they had before reforms.

Second, congressional reform also affected interest groups' relations with one another. By opening up the decision-making process, groups that previously had been closed out of the system now had opportunities to try to exert their influence. This introduced competition among groups as a larger number now vied for the attention of a greater number of members. In the past, before reforms, lack of opposition had bolstered particular interests' powers. The oil depletion issue - - long a symbol of the oil interests' power - - illustrates this point. In 1950, President Harry Truman called for lowering the depletion allowance from 27.5 to 15 per cent. Although the House Ways and Means Committee responded to these presidential proposals by holding hearings, virtually no supporters, except the executive's own spokesmen from the Treasury Department, even appeared. Of the ninety-eight witnesses who testified at the 1950 hearings, all but two (from Treasury) favoured maintaining the then current

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1. Norman J. Ornstein, "The House and the Senate in a New Congress," in Thomas E. Mann and Norman J. Ornstein, eds., The New Congress (Washington: American Enterprise Institute for Public Policy Research, 1981), p. 382.

27.5 per cent.[2] Hearings were almost equally imbalanced when the issue arose again in 1963. Thus, the industry's ability to maintain its position on the issue was due in large part to lack of recognized organized opposition, which would have given that issue greater visibility and created cross pressure on members.[3] In 1975, this aspect of the political environment changed on the oil-pricing issue; competition, in turn, brought changes in the groups' internal organizations and their methods of trying to influence legislators.

The energy issue, of which oil-pricing was the centrepiece, also shaped the political environment influencing interest group activities. It had so recently and so dramatically been transformed from a narrow specialized issue to a broader national one that it guaranteed a high level of interest group involvement. The transformation of any issue can change the level of interest group activity if a group is, or perceives that it will be, affected by the changed issue; the broader the scope of a policy, the greater the political conflict and competition among groups.[4] Such was now the case with energy. Powerful groups opposed one another, generating an intense level of lobbying activity. Before 1970, energy policy was primarily an issue of tax and science policies, seemingly affecting only small segments of the population directly. After 1970 (because of domestic shortages and events in the international market, including the OPEC price increases and the OAPEC embargo), energy policy became an issue that dominated almost all others - - from economic and foreign affairs to welfare and science matters. Energy policy now affected very broad segments of the population, and in response, the number of interest groups concerned with energy increased correspondingly. These interest groups, representative of broad segments of opinion, had a vested stake in the outcome of the debate which

2. Bruce Ian Oppenheimer, Oil & The Congressional Process: The Limits of Symbolic Politics (Lexington, Mass.: Lexington Books, 1974), p. 101.

3. See Stanley Surrey, "The Congress and The Tax Lobbyists - - How Special Tax Provisions Get Enacted," Harvard Law Review, vol. LXX, (May 1957), pp. 1145-1182.

4. See Theodore Lowi, "American Business, Public Policy, Case Studies and Political Theory," World Politics, vol. 16, No. 4, (July 1964), pp. 677-715.

would establish the future course of the country's energy policy for some time to come.

Energy as a policy question was clearly at a crossroads, and the issues being debated challenged long-held views and assumptions. In consequence, the list of groups involved in this debate was lengthy. It included: the oil industry, comprising the major companies, smaller independents and various unaffiliated components from refiners to jobbers to service station operators; consumers, from large industries to individual users; environmentalists; transportation industries, such as automobile manufacturers, airlines, and truckers; labour; manufacturers; and producers of alternative sources of fuel. Although all of these interest groups were affected by the oil-pricing issue, four - - labour, public interest, business, and oil - - played the major role and are relied upon in this study to show how important a part interest groups played in shaping and guiding the development of the 1975 oil-pricing policy.

While it was likely that such a controversial issue as oil-pricing would generate a high level of interest group activity, it was <u>not</u> predictable that the issue would divide groups as it did. Two principal factions emerged: oil and business interests (referred to as the alliance), labour and public interest groups (referred to as the coalition). However, in neither faction was membership static or easily categorized. Oil-pricing affected groups within the same category - - varied business interests, for instance - - differently. As a result, interest groups that were not usually affiliated shared a common position and finally joined together with groups routinely opposed to each other. For example, the Air Transportation Association (ATA), a business group but one which represented substantial consumers of petroleum products, aligned with the labour-public interest groups in favour of controls. They opposed the position of the Chamber of Commerce, a broad-based business group of which they were a member. The Chamber was aligned, as were most other business interests, with the majority oil position to remove all price controls. Environmental groups

policy during the next and final stage of the legislative process - - the conference committee, with its wide discretion and privileged position on the chamber floors. Eckhardt had achieved his bargaining position for the conference; Ford had by no means lost his. The President and FEA had started out by ignoring other interested parties, only crudely to seek to court some of them in August. The interest groups active in the House and Senate also concentrated their energies on the conference committee and its staff. This study now turns to the role of these interest groups, before proceeding to the conference committee deliberations.

provide another example. Categorized as public interest groups, they found the pro-controls stand such groups took to be incompatible with their strong pro-conservation position. They opposed price controls because they believed that higher prices would provide the powerful economic incentives for consumers to curb wasteful consumption. Thus, they found themselves aligned with the oil industry supporting higher prices - - a rare meeting of minds indeed.

This disunity within the various groups was evident from the beginning of the debates in January and February; as the debate progressed and the issues became more complex, the divisiveness grew worse. Whereas the policy issue had divided one public or private group from another of its like groups, now it split members of the same interest group. For example, disagreement among ATA members in late July finally resulted in one of the major carriers, United Airlines, breaking from the Association's position of support for controls. The same thing happened among the oil companies. Mobil Oil Corporation broke away from its industry association - - the American Petroleum Institute (API), which supported decontrol - - to support the continuation of oil-price controls, at about the same time United Airlines defected from the ATA. United's decision showed the importance of ideology; free market arguments swayed its executives from supporting a position that was in their industry's best economic interests. Mobil also made a similar decision to support a position that was apparently also against its best financial interest. But with Mobil politics, not ideology, swayed its executives. They had worked hardest of the oil companies in promoting a public service image and were fearful of the political backlash resulting from high oil prices, and the potential long-term economic consequences.

As will become evident in this study, the issue's divisiveness among members of particular interest groups, as well as between categories of groups, had an important influence on the development of the oil-pricing policy in the changing congressional environment. First, the divisive pressure on members within a particular group influenced legislators and lobbyists in selecting the oil-

pricing policy strategy they adopted at the committee stage in the House. The "bargaining strategy" enabled groups to support the very general position of continuing oil-price controls without having to work out the specifics of the policy (at least not until the conference committee) which most likely would have led to infighting and, thus, to an ending of their coalition. Second, the division among some types of groups allowed the labour, public-interest and airline groups to form such an unusual association. In general, a coalition of interest groups, now commonplace in congressional politics, enhances individual groups' power because the various groups pool their resources. In this particular coalition, the advantages were even more important. When these groups allied, they broadened the ideological base of those supporting oil-price controls; this helped to make their position more appealing to a wider range of legislators. In consequence, when the groups opposing the oil interests won their victory against immediate decontrol, it challenged long-held beliefs about interest group power. "Private" interest groups were thought the most powerful in Washington, "public" interest groups the least influential. (See Chapter One, p. 18.) But the public interest and labour groups showed unexpected strength, and thus revealed relative weakness in the oil-business groups once thought so powerful. Moreover, within the hierarchy of "private" interest groups, the power of the oil lobby was reputed to be unrivaled.[5] Given this reputation, its defeat was all the more striking, so that it raised serious questions as to whether power among interest groups was now undergoing a very substantial realignment.

Interest group involvement in the oil-pricing issue apparently showed that power had shifted among interest groups. The changing nature of the oil-pricing issue, and the reforms which had transformed the legislature, as well as the broader political environment, appeared to explain why. This became more understandable in the context of the factors which had made it possible, in the

5. Robert Engler, The Politics of Oil (Chicago, Illinois: University of Chicago, 1961).

past, for oil consistently to win - - the power of the oil interests had been built in a very different political climate. It now had to be rebuilt to match changing circumstances.

This chapter traces the active role interest groups played in the development of the oil-pricing policy which emerged as the centrepiece of the Energy Policy and Conservation Act. The two sections that follow will focus on the main groups, first the public-interest labour coalition, then the oil-business alliance. After identifying the groups and explaining their positions, each section will look at the specifics of their activities. They planned stategy with legislators, helped to frame the issues in the debate, provided information, surveyed votes, and generated pressures on members. Their roles show that interest groups are far from static - - they respond to the changing political issues and institutions they seek to influence. When the issues or institutions change, so to do the interest groups - - or at least they try. This in turn influences not only their relationship with Congress, but with each other as well.

## The Labour-Public Interest-Airlines Coalition Emerges

One of the Washington Star's experienced congressional correspondents, Roberta Horning, aptly characterized the pro-control coalition of interest groups (which has predominately been made up of public interests and labour, but included some business as well) as the "unholy alliance."[6] These groups - - usually opponents - - found they were suddenly friends in the fight to block decontrol of oil prices. Such a meeting of minds occurred initially by accident rather than by design, and resulted from very different motivations within the various groups. The coalition had its beginnings in interest groups' realization of their shared position. For example, representatives for two interest groups - - the International Brotherhood of Teamsters and the Air Transport Association - - first learned of their unlikely agreement while downing

6. Roberta Horning "The Unholy Alliance," The Washington Star, 17 July 1975.

cocktails together at the Democrats' mid-term convention in December 1974.[7] Initially, when Congress first began its work on the issue, lobbyists from various other interest groups, according to William Burhop, lobbyist for Congress Watch, "simply kept running into each other," and in the process discovered their common purpose.

However, it was more than a simple meeting of minds that allowed these groups to emerge as such a potent force in the legislative battle. While passing conversations or chance meetings provided the basis for a beginning, the coalition soon became formal and highly organized because of a tacit recognition on each group's part that together they would have much more "clout." Member groups of the coalition coordinated their lobbying efforts among themselves, in close association with congressmen and their staffs. In large measure they succeeded in working together because of their commitment to the issue at hand, despite their differences on other matters, and their realization that their diverse contributions to the legislative fight made the whole of their resources greater than the sum of its parts.

The foundation for cooperative work among labour and public interest groups in 1975 had been laid earlier. In the years immediately preceeding 1975, these groups had both supported and worked separately for government reforms. Their efforts then were limited to sharing information; they did not work together as closely as they would in 1975, and they did not always agree on which

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7. Interview conducted by author. All further quotations not footnoted in this chapter are from material collected from interviews focusing on interest groups' role. These interviews, conducted from February through July 1976, in alphabetical order, include: Rep. Clarence (Bud) Brown (R. Ohio); William (Bill) Burhop, Lobbyist, Congress Watch; Raymond Connelly, Government Analyst, American Petroleum Institute; William (Bill) Demerest, Energy and Power Subcommittee; Charles DiBona, Vice-President, American Petroleum Institute; Rep. Robert (Bob) Eckhardt (D. Tex.); Carolyn Emight, House Interstate and Foreign Commerce Committee; John Hill, Deputy Administrator, FEA; Elgie Holstein, Legislative Assistant to Rep. Andrew Mcguire (D. N.J.); Peter Kirby, Lobbyist, Air Transport Association; Kenneth Levine, Legislative Assistant to Rep. Bob Eckhardt; Bart O'Hare, Lobbyist, Teamsters; Burton Rein, lawyer, Kirkland, Ellis & Rowe; David Staing, Minority Counsel, Interior & Insular Affairs Committee; Andrew (Andy) Vitally, Lobbyist, American Petroleum Institute; Perry Woofter, Lobbyist, American Petroleum Institute; and Rep. James (Jim) Wright (D. Tex.).

changes were desirable. Some of the public interest groups welcomed joint efforts with labour as a means to enhance their own influence within legislative politics. Joan Claybrook, director of the Nader group, Congress Watch, was one person in the public interest sector who had been working to foster these relationships. She had to overcome initial prejudices, as a former Congress Watch lobbyist, David Ignatius, explained:

> Claybrook recognised that she faced a subtle challenge 'as new kid on the block' especially when it came to building bridges to the labor movement, whose lobbyists had tended to think of Naderites as elitist amateurs. This bridge-building wasn't easy. I recall standing outside the Senate chamber during the first month I worked for Congress Watch. A burly labor lobbyist approached and asked whom I worked for. When I said Ralph Nader, his lips began to curl downward. He was willing to shake hands only after I told him my salary was actually paid by over 100,000 members of the Public Citizen, Inc., the umbrella organization for the Nader groups. 'That's a grass-roots organization,' he said approvingly. 8

But by 1975, with old associations shaken, groups seemed more willing to put aside these prejudices. This was evident from even a partial list of the interest groups which joined the coalition in its early stages, a list which included over

8. David Ignatius, "Stages of Nader," The New York Times Magazine, 18 January 1976, p. 51.

twenty-six diverse groups.[9] Moreover, as the development of the policy progressed, the number of groups increased. Three of these interest groups -- the International Brotherhood of Teamsters, Congress Watch and the Air Transport Association (ATA) -- are representative of the coalition's most important factions: labour, public interest, and business. The profiles which follow show that these representative groups made important but different contributions to the fight.

The International Brotherhood of Teamsters

The International Brotherhood of Teamsters (hereafter the Teamsters) is the second largest labour organization in the United States. (The AFL-CIO is the first.) The Teamsters' membership approaches two million and is broad-based.[10] It is one of the few American general unions and it includes truck drivers, law enforcement officers, warehousemen, teachers, mechanics, and plant and mill

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9. Groups That Opposed President Ford's Decontrol Policy:
   Air Transport Association
   American Association of Retired Persons
   American Federation of Farmers, AFL-CIO
   American Public Power Association
   Energy Policy Task Force, Consumer Federation of America
   Environmental Policy Center
   Independent Gasoline Marketer's Council
   Industrial Union Department of AFL-CIO
   International Brotherhood of Teamster's
   Marine Engineers Beneficial Association
   National Congress of Hispanic American Citizens
   National Congress of Petroleum Retailers
   National Council of Senior Citizens
   National Farmers Organization
   National Farmers Union
   National Retired Teachers Association
   National Rural Electric Cooperative Association
   Public Citizen's Congress Watch
   Retail Clerks International Association, AFL-CIO
   Society of Independent Gasoline Marketers (SIGMA)
   Transport Workers of America, AFL-CIO
   United Auto Workers
   United Mine Workers
   U.S. Conference of Mayors
   United Steel Workers of America
   Oil Chemical and Atomic Workers (International) Union, AFL-CIO
SOURCE: Congress Watch Files

10. Graham K. Wilson, Unions in American Politics (New York: St. Martin's Press, 1978), p. 14.

workers in numerous industries. The Teamsters' extensive membership is organized throughout the country into statewide organization with local chapters. The Union's main objective is to improve the economic well-being of its members, primarily through collective bargaining but also through legislation. Thus, the group viewed the oil-pricing issue within the context of its overall economic effect. The Union was concerned with how higher prices affected its members: directly because of increased oil costs, and indirectly, because of higher costs to the businesses and industries which employed its members. The direct impact on the union's members, especially truckers, is obvious; the indirect effect was perceived to be more insidious. They believed the higher oil prices resulting from the 1972-1973 oil crisis had worsened the inflationary-recessionary cycle of the preceeding few years, lowered the real income of their members, and contracted the job market, resulting in worker lay-offs. Still higher oil prices through decontrol (seen as another inflationary pressure) they saw as threatening any economic expansion at all, as restricting new entry or reentry of workers into the market. Against the background of serious unemployment, the Teamsters could do little to improve the economic well-being of its members. As lobbyist for the group, Bart O'Hare, explained: "Our problem was not enough jobs. Energy was at the root of the problem, so we used that format to start to educate people." Since oil-pricing was the centrepiece of the energy policy debate, the Teamsters' commitment placed them at the forefront of this important legislative fight.

Congress Watch

Consumer advocate Ralph Nader established Congress Watch in 1973 to lobby for the public interest on a long list of subjects: consumer, health, science, regulatory and other government reform, energy and auto safety, and so on. These were some of the topics to which Nader's approximately fifteen other groups directed their attention. Congress Watch was the lobbying arm of this

extensive network. These other groups could not themselves lobby directly because as tax-exempt groups they were prohibited by the tax code from doing so. Interest groups typically organize as tax-exempt groups to avoid paying income taxes and to encourage contributions which are then deductible to the donor. They then have a separate branch that is not tax-exempt for political activity and lobbying.[11] Nader realized that for the groups to exert any real influence in government they had to be able actively and aggressively to pursue their position in the legislative arena, and thus also needed a separate branch. The first step he took was to launch the 1972 "Congress Project," a comprehensive study of Congress.[12] As an extension of this congressional study project, Nader appealed to consumers throughout the country for contributions in support of a permanent lobbying group to influence Congress. Over 100,000 responded, and he established Congress Watch.

Congress Watch supported continued price controls. In 1975, within the Nader organization, Nader himself, in consultation with his staff, made the decisions on policy positions. Oil-pricing was not a difficult one to decide. The pricing issue was perfectly tailored to Nader's liking. As "consumer advocate" he focused his efforts on issues where he believed corporate and/or government bodies had victimized the consumer. In Nader's view, the oil-pricing issue provided a simple case of corporations overcharging consumers and of the government failing to protect them through price constraints. But the issue also included an ideological, economic component - - the concentration of economic

11. See Jeffrey M. Berry, Lobbying for the People (Princeton, New Jersey: Princeton University Press, 1977) pp. 45-59.

12. The Ralph Nader Congress Project set out to provide a comprehensive study of Congress. The Project was divided into three main sections: (1) profiles of individual members, (2) committee studies, and (3) topics, such as seniority, franking, and constituent services. A group of students (of which the author of this study was one), political scientists and journalists conducted interviews and collected data during the 92nd and 93rd Congresses. The Project did not live up to its initial expectations - - either Nader's hopes or members' fears. But the studies that were published provide an extensive source of data. For example, see Mark J. Green, James M. Fallows, and David R. Zwick, Who Runs Congress: The President, Big Business, or You?, (New York: Bantam/Grossman, 1972); David E. Price, Director, The Commerce Committees (New York: Grossman Publishers, 1975).

power and corporate structure - - which was emerging as increasingly important for Nader. This shift was evident in one of his speeches: "it is time for the consumer movement to advance from ad-hoc reforms to structural economic change."[13] With the oil-pricing issue, there was an opportunity to focus critical political debate once again on the structure of the oil industry.

Air Transport Association

The Air Transport Association (ATA) represents the commercial airlines in Washington. It is an organization that pools technical information, shares related technical knowledge about the airline business, and lobbies on behalf of all its members, serving the standard purposes for the airlines of any trade association. Its members include the major airlines, such as: United, Braniff, Pan Am, Trans World, American and Delta. Although the ATA had long been concerned with government regulations that affected the airlines in any way, its interest in energy policy began only in 1972 when the industry experienced its first fuel shortages. The ATA became concerned with fuel supply and sought government-guaranteed petroleum supplies for its members. After the oil crisis in 1973-1974, the Association's interest shifted as the issue of fuel prices became as important to its members as the question of supply.

The airlines' concern over prices was understandable. The fourfold price increases during and following the Arab embargo had serious economic consequences for the airlines. The airlines passed the fuel cost on to their customers through higher air fares and freight rates. These higher charges decreased demand for air services, which in turn led to even higher air fares and freight charges because the cost of travel per unit increased. This led to an even further decline in demand and a serious erosion of profits, requiring cuts in services, and eventually, layoffs of employees. The airlines, more than any other of the transportation industries, are susceptible to increased fuel costs because their gas turbine jet engines require large amounts of costly and specially

13. Ignatius, p. 9.

distilled fuel. In contrast, buses and trucks use diesel fuel, one of the least expensive grades. As one airline official said in an off the record interview:

> For every penny the price of oil goes up, it costs the airlines 100 million dollars over one year's time. We use ten billion gallons of gasoline a year.

The airlines were also concerned about the broader economic, or "ripple effect" of decontrol on the nation's economy. (See Chapter Two, p. 93.) There was no way the airlines could insulate themselves from a downturn in the economy. As ATA lobbyist Peter Kirby explained:

> Our involvement was a business judgment. We had several options. We could have raised our rates, let the price increases happen and then seek subsides; or we could have tried to address the root of the problem. Generally, we would have said just correct our slice of the market by subsidies, but as we did it, it was a tough row to hoe.

Faced with these options, the Association feared that subsidies - - the only alternative to controls - - would be insufficient. With such compelling economic reasons the ATA had little choice but to support price controls.

However, in spite of these persuasive reasons, the Association's decision to support price controls - - made by its executive committee in late 1974 - - was still a very difficult one, with many political drawbacks. Price controls were a form of government interference in the market, an intrusion ideologically unacceptable to most of the business community. In consequence, the Association's position separated it from other business groups. Interest groups that had been natural allies were now ATA's foes.

## The Coalition Mobilizes

The coalition was mutually advantageous to all of its members because of the broad and complementary ideological bases of the groups and their differing organizational characteristics. Each faction within this coalition - - labour, public interest and the airlines - - enhanced the strength of the alignment in complementary ways. One group compensated for its limits by capitalizing on the assets of another. The specific contributions of the various factions are not

precisely measurable. However, general strengths and weaknesses of the groups can be identified, and their activities provide landmarks for the student to follow through the maze of lobbying activities. For example, Nader had greater access to the media than either the president of the ATA or the labour leaders. Many issues on which he was active became newsworthy simply due to his involvement. He was skilled at dramatizing issues, enjoyed the support of his public-interest constituency, and knew how to take advantage of this; he appeared on national news programmes and attracted the news media in press conferences. As Teamster Lobbyist O'Hare explained:

> Nader could hold the groups together in Washington by keeping it [the issue] in the public's mind. He had the networks dancing on the end of a string . . . We knew it wasn't representative of public opinion, but members thought it was.

Representatives of the ATA had access to congressmen from whom neither Nader nor the Teamsters could have secured a fair hearing. The Teamsters added its extensive and highly organized membership - - a group that could be mobilized in a forceful fashion to remind legislators of their constituents' positions, and influence a group of legislators relatively immune to Nader or the ATA. Congress Watch was a grassroots organization - - that is, it was funded by consumers throughout the country - - but its supporters were not organized into coherent blocs, and could not be easily mobilized on particular substantive issues (on which they might even be divided). Neither the ATA nor the public interest groups could wield the same electoral threat as labour. As ATA lobbyist Kirby explained: "Our expertise was given muscle with the Teamsters." The different contributions and strength and weaknesses of these groups becomes more evident in their attempts to educate and persuade legislators, either through direct contact or indirect pressure they generated from others.

The coalition launched an extensive educational campaign to provide information to legislators, beginning at the very first stages of subcommittee consideration in the House. As Congress Watch lobbyist Burhop explained: "In late March, we started an educational campaign with all members of the

subcommittee, most members on the full committee, and a network of the House members." They focused their attention almost exclusively on the House because they saw this as the real arena in which the oil-pricing issue would be decided. The purpose of the campaign was twofold: to convince legislators of the coalition's position and to provide them with the information they needed to defend this position. Information is one of an interest group's most important tools for influencing the development of a policy. But in this instance, the educational role of the predominantly public interest-labour coalition was even more important than usual because its opponents, the oil interest groups, had long been the sole source of data on energy available to politicians. Now these groups provided a challenge to the oil interests' facts. They relied on the usual methods. During the subcommittee, they distributed fact sheets on Eckhardt and Krueger's proposals, testified before the subcommittee during its hearings and generated media attention by holding press conferences and appearing on news programmes. As the subcommittee proceedings dragged on, lobbyists kept tabs on members' various particular concerns, which they then addressed in additional fact sheets.

The coalition's educational efforts went hand-in-hand with their attempts to persuade subcommittee members of their position. Burhop, lobbyist for Congress Watch, O'Hare, Teamster Lobbyist, and Kirby, lobbyist for the Air Transport Association, met in groups and individually with key staff, such as Ken Levine, Eckhardt's legislative assistant, as well as subcommittee members themselves. Although they discussed the substantive details of the policy as well as strategy for getting it adopted, at this early stage they were most concerned with blocking proposals like Krueger's before they decided the specifics of a controls policy. In the course of these meetings they established close working relationships with staff and members and so legitimized their role in the day-to-day development of oil-pricing policy.

To garner support for the policy that was emerging from their sessions, the lobbyists met with individual members. When a legislator either failed to commit himself, like Dingell, or once-committed began to waver, like Wirth, the lobbyists tried to change his mind. Kirby had countless sessions with Dingell but to no avail. When these individual meetings failed, lobbyists and members turned to others outside of Washington to enlist their support. One of the best examples was the coalition's attempt to bring an errant Wirth into line. As described briefly above, legislative assistant Elgie Holstein and lobbyist Burhop contacted constituents in his district - - a local union and a large campaign contributor - - to "lean" on him. In response Wirth briefly joined Eckhardt. (See Chapter Three, p. 128.)

However, in spite of what were clearly impressive efforts, the oil-pricing position that the coalition supported in the subcommittee (Eckhardt's) was defeated. As they plotted to try again in the full committee, the subcommittee deliberations taught them several lessons. They could not assume, as they had, that a liberal majority would result in a consensus position; unpredictable voting blocks had emerged. Also, they learned that in spite of their ability to generate intense pressure, as with the Wirth incident, it had failed to produce the desired results. These lessons were heeded as they turned their attention to the full committee.

As the debate progressed to the full Interstate and Foreign Commerce Committee, those groups in favour of oil-price controls expanded and formalized their efforts both to educate and persuade members. They had regular strategy sessions to set objectives and plan their attack. Their job in the full committee was much harder than in the subcommittee because they had failed to block Krueger there. Now they had to reverse a subcommittee's position. This meant providing a viable attractive alternative. Although interest groups in the coalition had been able to commit themselves during the subcommittee to a general policy opposing decontrol, they had not had to agree to or compromise on

the specifics of a policy. They had believed at the subcommittee that if they could get members to accept continuation of controls, they could worry about the specifics at the full committee stage. Now it appeared they had to do both, a task that placed potentially divisive pressure on coalition groups if they could not agree. Individual groups had not worked out where they stood on the issue, other than their general positions for controls. For example, the Nader groups themselves were divided over the specifics of oil-price controls - - how long they should be continued, for what categories of oil, and at what levels. No one really knew where their own or anyone else's compromise points were. To some it appeared that just as the coalition had begun to realize its potential, it was now threatened with breaking apart.

However, the coalition avoided this situation by turning the President's opposition and bullying tactics to their own advantage. Instead of arguing over the details of the policy, they now argued - - as did Eckhardt - - for a bargaining position. (See Chapter Three, pp. 136-141.) This effectively prevented their division over details; it unified the groups and made the coalition even stronger. Even so, as the final close committee vote showed, they still had an extremely tough fight.

The coalition took on the battle by launching an educational campaign. They showered committee members with fact sheets and studies on all of the pricing proposals before the committee, and on President Ford's promised pricing proposal (See Chapters Three, pp. 117-134 and Five, pp. 197-213.) As committee members debated the pros and cons of these various proposals, the interest groups monitored their comments and questions, using them to identify further areas of concern.

The coalition's educational efforts were launched in conjunction with a highly coordinated plan to meet with members and discuss their concerns. Levine, legislative aide to Eckhardt, explained: "When we discovered there would be a problem we would get the most effective group to go after the

member." During their strategy session, they would jointly decide who would be the most effective group and the most likely colleague to persuade a particular member of their position. For example, Eckhardt and a representative from the Teamsters, O'Hare, together visited James Symington (D. Mo.) - - identified as a swing vote - - because of Eckhardt's friendship with him and labour's presence in his district. Labour's involvement in the coalition also made it possible for the coalition to seek support from unlikely granters. For example, even though Republican Matthew J. Rinaldo (N.J.) was likely to support the White House, representatives from the AFL-CIO - - one from the Washington office, the other from the union's local in the congressman's district - - sought his vote. They reminded him of the campaign contributions the Washington office controlled and of the votes the local organization could turn out for his forthcoming bid for his state's gubernatorial office. They secured his vote. But the coalition did not limit its lobbying to representatives from the interest groups or even legislators. Members' staffs and lobbyists were willing to try anything. At one point they turned to a legislator's former staffer, Carolyn Emight, to garner William (Bill) Stuckey's (D. Ga.) vote. Stuckey became an increasingly important swing vote on the pricing provision during the proceedings in the full Commerce Committee. Although inundated with studies from both sides of the issue, as well as with attempts to persuade him of one position or the other, he remained in a somewhat vulnerable position. His voting record was more in line with Krueger's pro-controls position, but as a Democrat he did not want to be left voting with the position that was primarily backed by Republicans, as Krueger's proposal was. Thus, Emight, familiar with Stuckey's decision-making process, was successfully deployed to secure his vote. (See Chapter Three, p. 144.)

The coalition's efforts to influence legislators through direct contact during the full committee stage were further backed by their efforts indirectly to generate constituent pressure on politicians. Their intent with this approach was to show legislators that the voters were informed and taking note of their

positions, which could help or hinder legislators' re-election prospects, depending on their position. As ATA lobbyist Kirby explained:

> Our efforts were directed to make the member fear the loss of his office. We had to make sure he wasn't supporting us for the good of the country argument, or friendship. It had to be the threat of his office and we made sure he felt the heat.

To accomplish this, the coalition largely relied on the labour unions' extensive membership, which was broadly scattered geographically and relatively easily mobilized through already-established organizations. The 100,000 contributors to Ralph Nader's Public Citizen, while grassroots supporters, offered no comparable resource base to the labour unions' existing locals. When Teamster lobbyist O'Hare was asked in an interview how labour mobilized its membership, he responded, "now you're getting into trade secrets. We have 1,000 local units who do the job for us." But another lobbyist, in an unattributable remark, spoke more candidly. He traced a "spiraling contact pattern" with the central office contacting the locals, which in turn, called on a group of people, each of whom were responsible for contacting a set number of local members. Some of those contacted wrote letters, others sent telegrams, while still others paid their congressman a visit when he was in the district. These efforts generated the impression that constituents had a position in the pricing issue and had an eye on their congressman's actions. For example, even before Eckhardt had formally presented his oil-pricing proposal to the House Interstate and Foreign Commerce Committee, the unions supporting it had already organized a letter-writing and telegram campaign. Members of the full committee, as well as select others from the chamber's larger membership, were flooded with telegrams in support of it. Kirby exclaimed, "no one knew what the Eckhardt proposal even was but Eckhardt loved it." The telegrams accomplished two things: they generated interest in the Eckhardt proposal and they created the impression that this policy had already garnered wide constituent support.

The coalition's efforts to contact members directly and indirectly, and to inundate them with information, paid off. In the full committee they succeeded

in reversing the subcommittee's position on oil-pricing even though it was only by a one-vote margin. This made them aware they were going to have to keep up the hard fight during the floor debate.

The floor proceedings presented the most difficult stage for the coalition because of the increase in the number of legislators now involved in the decision-making process. After seeing the fate of the Ways and Means Committee bill in June, considerably weakened by 160 amendments, coalition members were understandably apprehensive of what would happen to the bill during debate. They knew they were in for a tough battle, and their unity could not be taken for granted. During the debate, United Airlines announced its defection.

The coalition's educational efforts became even more important during the debate on the House floor. At this stage, the whole membership focused its attention on the bill, yet most of them had very little knowledge about the issue since they had not been privy to the weeks of hearings, mark-up, and cloakroom negotiations to which committee members had been subjected. To garner the necessary votes for their position, the coalition initiated an even broader campaign to reach these members. They tried to create an awareness of the bill by passing out lapel buttons with the bill's number - - H.R. 7014. The lobbyists worked with Eckhardt and his staff, as well as other sympathetic members who featured prominently in the debate, to prepare charts and graphs to be referred to during the heated floor debate. They disseminated studies and fact sheets specifically geared to answer individual members' questions, or political doubts. For example, the ATA prepared "The Businessman's Brief to H.R. 7014," to address the concern of members worrying that Nader and labour were supporting continued controls.[14] The coalition also tried to emulate the wider publicity campaigns of their opposition interest groups, but on a much smaller scale. For example, the Energy Action Committee, a public interest group, took out a full

14. Air Transport Association, "The Businessman's Brief to H.R. 7014," 14 July 1975. Unpublished: Document in author's possession.

page ad in the Washington Post, calling for support for continued controls.

Armed with the facts gathered from their educational campaign, member groups of the coalition set out to persuade legislators of their position. They succeeded in gaining access to a broad span of members. In part, their success was due to the ideological diversity of the coalition, and in part, to their having broken the accepted but unwritten rule of relying on friends and avoiding adversaries. They capitalized on these advantages by developing a highly coordinated and cooperative lobby, among the interest groups within the coalition as well as with members of Congress and their staffs. Together they decided which member and interest group should approach a particular member. They determined which other legislators they would visit and into which districts they would put the most effort to generate pressure, by evaluating members' position on a scale of one to five, ignoring those in categories one and five as either firm supporters or firm opponents, and concentrating on those in between. Moreover, as in the sub- and full committees, lobbyists backed up their attempt to persuade members by stirring up pressure in their districts. Teamster lobbyist O'Hare described their efforts to generate pressure in the districts of southern and border state members, the largest bloc of "swing" votes:

> We hit the docks, factories and barns. We hit rank and file members and had them sending letters to Zarb, and then copies of them to their congressmen telling them to oppose the Administration's plans.

Members of Congress received a deluge of mail and telegrams in response. These paid off.

Implementing these techniques - - education, direct and indirect pressure - - the coalition proved a potent challenger to the oil and business groups it opposed.

## The Oil-Business Interest Group Alliance

The oil-business alliance opposing price controls discovered, just as the predominant labour-public interest coalition had, that the oil-pricing issue

divided interest groups in such a way that groups not usually aligned found themselves supporting the same position. For oil and business lobbyists, the surprise was that some of the environmentalists (whom they had fought so aggresively over, among other things, pollution control laws) also opposed controls. However, while there was a meeting of minds between the environmentalists and oil-business groups, they did not join together in a common fight, as did the unusually aligned groups in the pro-control coalition. The environmental groups chose not to play an active role in the legislative fight. Andrew McFarland explains why this was so:

> . . . in view of their limited resources, they decided to let oil companies handle the matter . . . [for they] see public interest groups as having the function of opposing corporate interests that throw the weight of public policy in the direction of special interests. 15

Guided by this system of beliefs, environmentalists, after taking their initial public stand, choose not to work actively with the alliance to end controls. However, the environmentalists' opposition to controls was not without utility for the oil-business alliance. It provided important leverage in that it showed legislators that the oil-pricing issue was cross-cutting; it did not easily fit into the usual categories of conservative versus liberal, Democrat versus Republican, private versus public interests. It also made decontrol a more politically acceptable position. This in turn opened doors to some legislators who otherwise would have been hesitant to support a pro-oil position in the prevailing anti-oil climate. But their decision not to work hand-in-hand with the alliance deprived it of the comparable benefit of a broadened ideological base (a benefit which the coalition, with its mix of private and public constituents, clearly enjoyed).

In consequence, the active membership of the alliance consisted of like-minded private groups who usually banded together anyway. These included trade associations, large and small companies, and law firms hired by individual corporate clients. Oil and business groups were ideological allies in their support

15. Andrew S. McFarland, Public Interest Lobbies: Decision-Making on Energy (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1976), p. 39.

of the free market and opposition to governmental regulation of the marketplace. Because of this, the alliance too tried to broaden the issue to attract allies. Raymond Connelly, a government analyst with the American Petroleum Institute, explained their position:

> Our strategy is to show that it's not just our issue, an issue of oil, but one of the economy. We work with as many other business interests as we can.

In 1969 when the depletion allowance was under attack in Congress, oil interests worked with legislative allies to include the depletion allowance pertaining to other minerals in the legislation in order to broaden the groups affected.[16] In 1970, when they opposed pollution control, they succeeded in broadening the debate from simply an environmental issue to an economic as well as a federal versus state rights problem, thus enlarging the circle of groups fighting for their side.[17] In 1975, they succeeded in doing the same thing. They helped to define the oil-pricing debate in terms of government regulation versus the free market so that it would prod business groups into the legislative fight on their side of the issue.

Business interest groups added more to the coalition than at first glance might seem apparent, given that business and oil interests are like-minded private groups with similar organizational resources and membership bases. Business associations cast a positive image on the alliance that the oil interest very much needed.

The petroleum industry has long had a notorious public reputation. As Robert Engler, a critic of the oil interests, explained:

> Oilmen in politics has long been a familiar national image, thanks to periodic disclosures concerning the original Rockefeller empire, Teapot Dome, 'tidelands', and the Texas millionaires. The activities centering upon each has been the occasion for widespread indignation. 18

16. Oppenheimer, p. 36.

17. Ibid., p. 59.

18. Engler, p. 348.

This was true before the transformation of the country's energy problems in the early 1970's, after which the oil industry's image deteriorated even further. Anthony Sampson, in his study of the oil industry, cited opinion polls that "showed the American public blamed the oil companies more than the Arabs" for the country's energy problems.[19] Republican Brown explained: "Defending oil and gas is like defending typhoid Mary or swine flu." In response, the industry launched a campaign to improve its image, but with little evident success as of 1975. Juxtaposed to the ads explaining the Arab embargo, justifying record profits and the necessity for higher prices, were revelations of some oil companies making millions of dollars in illegal campaign contributions, of another company purchasing a department store chain, and yet another, a circus.[20] Thus, in 1975, as John Hill, Deputy Administrator of the FEA, explained: "we kept running into tremendous distrust in the House against the oil industry." Charles DiBona, Vice President of the American Petroleum Institute, agreed: "The biggest problem was our public image."

Although this undermined the oil interest groups' efforts to convince legislators of their position, business interest groups partly counteracted it with their more positive image. The reasons that business interests had a better reputation can primarily be traced to two factors. First, politicians seek out and defer to business groups' opinions because of their political importance for the country's economic well-being. Business groups' support for decontrol calmed politicians' fears regarding the impact of this policy on the economy. These politicians argued that if business supported the measure, it had to be good for the economy. Second, politicians attribute positive values to business groups.[21] These groups are seen as upholding the entreprenurial spirit, economic growth

19. Anthony Sampson, The Seven Sisters (London: Hodder and Stoughton, 1975), pp. 266-267.

20. Ibid.

21. Charles E. Lindblom, Politics and Markets (New York: Basic Books, 1977), p. 175; Norman J. Ornstein and Shirley Elder, Interest Groups, Lobbying and Policymaking (Washington, D.C.: Congressional Quarterly Press, 1978), pp. 78-79.

and the free market. This buttresses business groups' influence because it creates a more receptive climate and a favoured status for these groups compared to others. Holstein, legislative aide to liberal member Andrew Mcguire (D. N.J.), explained: "Even my boss, who is not pro-business, is very careful to listen to business interest groups."

However, in spite of business' involvement and attraction, the list of groups that made up the oil-business coalition was not as lengthy as its opposition, but their reputed power far overshadowed that of the labour-public interest groups. Moreover, the oil-business groups had very similar (with the exception of the Chamber of Commerce), and very substantial, organizational resources which will be evident in the interest groups' profiles that follow.

The American Petroleum Institute

The American Petroleum Institute (API), the most powerful of the oil industry's trade associations, represents all segments of the industry. Its membership comprises approximately eighty-five per cent of the industry with over 350 companies and 7,500 individuals. Typical of trade associations, it provides a forum for members to share and advance technical research, coordinate information and develop industry-wide technical standards. In addition, the Institute's principal objective has always been "to afford a means of cooperation with the Government in all matters of national concern."[22] In the early 1970's, prodded by what the API described as "the growing importance of public policy and the public's awareness on energy matters," it set out to take a more active and aggressive role in the public debate and development of all energy policy.[23]

Consistent with its broadened objectives, the API reorganized itself so that it was better equipped to accomplish them. In 1971 the API moved its headquarters from New York to Washington, expanded its policy and research

22. American Petroleum Institute, Introducing the API (Washington, D.C.: 1976), p. 6.

23. Ibid., p. 12.

division, and increased the number of its lobbyists. Its organization was typical of the business-oil interest groups. With a budget of $16 million, it maintained departments that dealt with every issue pertaining to the industry.[24] Five separate departments devoted themselves to government policy analysis and public relations. The staffs of these divisions served as support and back-up for the Institute's ten lobbyists. In addition, as part of the Association's reorganization, it had also established thirty state councils and commissions to broaden its base of support and to begin to build a grass roots base. However, in 1975, these organizations were still small.

The API's executive committee, made up largely of representatives from the major oil companies, decided the Institute's stand on policy issues. API analyst Connelly said of that stand: "we were opposed to anything that would control us. We wanted a competitive market place and the government out of it."

The Chamber of Commerce

The Chamber of Commerce is the largest trade association of business interests. Its total membership is close to five million companies, firms and individual entrepreneurs across the country.[25] Although its membership is comprised of both large and small entities, it has long been thought of as the champion of smaller business interests. One of the Chamber's long-standing objectives has been to provide a single voice for this large diverse interest. The Chamber's Board of Directors, comprised largely of high-ranking corporate executives, voted to support an end to oil-pricing controls. Swayed by ideological, rather than economic, arguments, their position was consistent with the Chamber's long-pursued efforts to oppose any government regulation.

24. Robert A. Diamond, ed., The Washington Lobby, 2d ed. (Washington, D.C.: Congressional Quarterly Press, 1974), p. 80.

25. Al Gordon, "U.S. Chamber: It Speaks Through Members," Congressional Quarterly Weekly Reports (hereafter CQ) 15 November 1975, p. 2457-2463.

## The Business Roundtable

Established in 1972, the Business Roundtable was comprised of approximately 190 major companies, which included iron and steel, the large banks, and many diversified multinationals. Discontented with the Chamber for not adequately representing the diversity of business interests, the Roundtable was established by a group of the largest companies. Immediately it became one of the most respected of the business interest groups in Washington and, because of its members' economic power, it was assured of receiving a receptive hearing from legislators.[26] The Roundtable opposed government interference in the market, and so opposed oil-price controls on ideological grounds. To convince legislators of their position they rely on a cadre of chairmen of boards, chief executive officers and other high-ranking officials of these companies.

## The Oil-Business Alliance Mobilizes

As the profiles show, the interest groups representative of the oil-business alliance made very similar contributions to the legislative battle. The pooling of their like resources provided substance to groups already financially well-endowed. The Chamber of Commerce, with its large geographically dispersed membership was the exception. It was the only one of the groups that could provide anything comparable to labour's grass roots organization. Moreover, unlike the public-interest-labour coalition, the groups that made up the oil-business alliance were ideologically similar. Because of this, even though the groups supported decontrol for different reasons - - economic versus ideological grounds - - there did not appear at the outset to be the same divisive tendencies that might split the alliance. However, ideological similarities did not provide strong enough glue to bind the groups together when they tried to work out the specifics of their policy positions. This was because once beyond the choice between immediate versus gradual decontrol, the issue affected the various segments of business and the oil industry differently.

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26. Barry M. Hager, "Business Roundtable: New Lobbying Force," CQ, 17 September 1977, pp. 1964-1968.

The tactics the oil-business groups employed to achieve their objectives were similar in most respects to those of the rival coalition. They mostly differed only in degree. Like the public interest-labour coalition, the oil-business groups conducted their own educational campaign. In this regard, the oil-business alliance had real advantages over the opposition. In part, this was because of oil's commitment to such efforts, as Frank Ikard, President of the API, explained:

> We're going to try everything we can in the public forums available to us to explain where we are on the critical energy questions . . . We do think it's essential for us to communicate with the public on what we think the problems and solutions are. 27

They were better equipped to provide information because of their large research staffs. They also had an advantage because for many years the oil interests had a monopoly on information about the industry--on everything from the country's oil reserves to the cost of production. This information had always been the privileged and closely held knowledge of the companies and their associations. In 1975, they still controlled this information. (In that year FEA set up its own information data gathering service so that government would no longer be entirely beholden to the API for data.) This made the information they did have all the more important, even though they were not always believed. They were the only ones who knew what it cost to produce a barrel of oil. During the subcommittee stage the oil-business groups relied on the same methods as their competition--fact sheets and studies, congressional testimony, and the media--only their efforts in all areas were much more extensive.

An important aspect of the coalition's educational efforts, although not solely directed at the subcommittee, was an advertising campaign. Oil and business groups far surpassed the opposition in this regard. Compared to the occasional ads sponsored by the public interest-labour coalition, the oil-business alliance launched a sophisticated, broad-ranging campaign intended to shape

27. Cited in CQ, 3 May 1975, p. 941.

public opinion favourable to the industry in general, and specifically for their position on oil-price controls - - a campaign which they continued throughout the 1975 oil-pricing debate in Congress. The public outcry against the oil industry during the 1973-1974 oil crisis had forced the industry to shift its advertising not simply to sell the industry's products but, also, to shape a new image as well. The oil industry's commitment was evident when in 1973, for the first time, the API and other industry associations launched such campaigns; before, this had always been left to the individual companies. In 1973, API spent $2.5 million for media coverage.[28]

In conjunction with their educational efforts directed at subcommittee members, the oil-business groups also contacted members and their staffs to present personally their arguments against controls. API lobbyist Andrew (Andy) Vitally explained that, "the task involved outlining members' local concerns, assessing which groups would be most influential, and recruiting that group to communicate with the member." Since oil-business groups have a history of working together, they already had a joint approach. As Connelly explained:

> API is at the center, not telling people what to do, but covering everything and trying to coordinate. We operate the same on each bill . . . . we meet on a weekly basis to plan strategy.

This strategy included identifying target members. On the subcommittee level, this included all the members. It was soon clear that they could not rely on Chairman Dingell to deliver the bill they wanted. At this stage some members got more attention than others. The oil groups wasted little time on Eckhardt, with whose opposing positions they were all too familiar, but eventually sought the attention of freshmen Wirth and Krueger. At this early stage, it was clear that the oil-business alliance, with its adamant opposition to any government interference in the market, would not support any position on oil-pricing short of total decontrol. This included the President's proposal which they lambasted because of its windfall profits tax, and Krueger's which, for the same reason,

28. Diamond, The Washington Lobby, p. 82.

they opposed at both the sub and full committee. In the long run this intransigence hampered their efforts.

The oil-business groups also called on individual oilmen to contact members - - for example, independent producers from Denver were sent to see Wirth. In 1975, this was part of their larger plan to generate increased indirect pressure for their position. They turned to this tactic after seeing how successful it had been for the public interest-labour groups. David Staing, minority counsel to the Senate Interior Committee, urged the oil interests to follow the public interest groups' example:

> There is a need for aggressive politicization on the part of the energy industry. This means identifying, recruiting, training, and motivating constituent groups to intervene in the governmental process in order to promote changes in law and politics . . . Your arguments to these groups must be sympathetic to and accommodating of their best interest. Simply asking them to help you because you are hurting will not strike a responsive chord . . . You should involve your friends, relatives and business associates in the same effort, because the controlling forces in American politics lie in the grassroots, not in Washington. 29

Many within the alliance agreed with Staing. But in trying to accomplish this the oil interests and larger business groups appeared to be somewhat at a disadvantage. They had always relied on independent producers and company executives to lobby; in 1975, they brought even more such producer executives to Washington and coached them with facts and counter arguments. Also, as had the public-interest-labour groups, they enlisted campaign contributors to use their persuasive ability with legislators. But at the subcommittee level it was not something they relied on very much.

The alliance also turned to their employees to generate indirect pressures during the 1975 oil-pricing debate. This approach, referred to as a "latent political force," was emerging in 1975 as an increasingly important trend within the American business community.[30] The Exxon Corporation provides one

29. David Staing, "Energy Legislation of the 93rd Congress - - Policy Trends and Implications for the Future," Reprint of Speech delivered to the Twenty-Sixth Annual Institute on Oil & Gas Law and Taxation, (Albany, Matthew Bender & Company, Inc., 1975).

30. Robert Lindsay, "Business Expands Grassroots Pressure With Employees," International Herald Tribune, 28 September 1976.

example. Exxon surveyed ten per cent of its employees finding they were "aware of the hostile environment in which we operate and feel quite strongly that Exxon should be more aggressive in answering its critics."[31] Management surmised that employees wanted it to "prepare simple logical arguments to give them [employees] the information they need to answer our critics."[32] The management held company-wide meetings to accomplish this. James Graham, Exxon's public affairs manager, restated the argument the company made to its employees:

> The legislators tell us they are pushing for anti-oil legislation in response to the demands of their constituents. Well, Exxon employees and annuitants [pensioners] are constituents too, and they have a right to let their representatives in Washington know how they feel on these issues. 33

Some employees were indeed eager to comply and let legislators know their positions. The large integrated multinational oil companies were also threatened by pending legislation that would have required them to divest themselves of particular holdings, and to split into separate operating companies.[34] Many employees believed divestiture (breaking up the production, refining, and distribution segments of one company) threatened their job security and opportunities for promotion; in addition, some employees very much identified with the companies which were being negatively portrayed. It is impossible to measure how extensive or effective these efforts were during 1975. They may have been a temporary source of support, called forth by the apparently punitive measures pending in Congress. Still, they do show that the oil companies were responding to their competitors - - the labour-public interest groups - - given the need to influence substantially more legislators than had been necessary in the era of the committee barons.

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31. Kathy McDermott, "What Exxon People Think," Profile Magazine (Houston, Texas: Exxon Company USA, April, 1976), p. 4.

32. Ibid., p. 5.

33. Ibid.

34. See U.S. Department of Treasury, "Implications of divestiture" (Washington, D.C.: Government Printing Office, 1976).

During the committee stage the oil-business alliance expanded its efforts to provide members with information, and to try and persuade them to support their position. At this stage, the Chamber of Commerce began mobilizing its membership in support of decontrol (and getting the government out of the market place) and in opposition to Krueger's windfall profits tax. These actions resulted, at times, in the alliance attacking the very proposal that offered it the best option in a clearly hostile political envoronment. Thus, while the oil-business alliance was clearly on the same side of the issue as Krueger they had different views of what was possible politically. They lacked a unifying position like Eckhardt's bargaining strategy, and apparently did not yet fully appreciate the nature of the changes in the House. Tempers flared as alliance members and sympathetic congressmen sometimes appeared to be working at cross-purposes. Disappointed at their failure to stop their opponents during the committee stage, the alliance launched an even more aggressive campaign for the floor fight.

During the floor deliberations the oil-business alliance greatly expanded the number of legislators it targeted. The transformation of both the issue and the Congress forced the alliance to seek out more members than it had before. As Connelly remarked: "It was no longer a question of who you know, who gave what and who's from Texas, but a complex economic issue. Our whole approach has changed." Oil-business groups - - like the public interest-labour coalition - - made a conscious choice not to rely solely on their friends to protect their interests but to base their fight on the issue. They, too, rated members' positions and then went after anyone they thought they had a chance of persuading. As Connelly explained, "If there are fifty members they will be divided between the companies who will zero in on these members, and bring in everything we have." In taking this new approach they also contacted freshmen members, whom previously they had ignored because in the pre-reform Congress these lowly legislators had no "clout." In 1975, they so extended and intensified their attention that James Wright, (D. Tex.) Majority Whip of the House,

remarked that some freshmen members were complaining that the oil-business lobbyists were too aggressive. Some congressmen, after numerous visits from oil lobbyists, refused further meetings. But after oil lobbyists appealed to Wright, he telephoned recalcitrant members and meetings were finally arranged. The oil-business groups thought their aggressiveness necessary in order to make up for lost time and missed opportunities, and to offset their opponents' broader ideological base, which gave them access to a larger number of legislators. Many within the alliance were now dismayed that for so long they had relied on so few. However, in spite of these efforts, the alliance continued to be divided on the pricing issue, with only some willing to accept the profits tax as a politically expedient way to end controls. Just before the Krueger Amendment came before the full House for the second time, some within the alliance were attacking it. As Brown explained: "I told them if they didn't support it they would have a lot worse. They were attacking the compromise. I gave them hell." But Brown's prodding could not overcome these divisions which limited their success on the floor. Although they put up a good fight on the oil-pricing issue, the alliance's response was insufficient - - for once - - to beat the competition.

Public interest groups in coalition with others succeeded in defeating the powerful oil-business groups on a major issue. In doing so, they proved organizational theorists wrong in their assertation that public, or diffuse, interest groups could not compete or defeat long-established, economic-based groups. (See Chapter One, p. 19.) However, as Norman J. Ornstein and Shirley Elder conclude, "to some extent the theory reflects the groups situation in America at that time."[35] It must be remembered that these theorists wrote before recent changes in the status of public interest groups, and discounted their capacity to ally with at least some economic-based groups on some issues.

As this study shows, the public interest groups' success can be attributed primarily to two main factors. First, the institutional changes in Congress

35. Ornstein and Elder, p. 19.

provided a more receptive environment for their claims to be heard. The changes resulted in greater decentralization of power, more points of access, and an erosion of the seniority system, enabling more members to participate. Second, by organizing in ad-hoc coalitions, these groups offset organizational handicaps and broadened their ideological power base. The public interest-labour coalition's efforts in the oil pricing debate illustrate both the strengths and weaknesses of ad-hoc coalitions. When public, or diffuse, interest groups enter into ad-hoc coalitions, the coalition can be even more successful than narrow specialized economic interests. This assertion is supported by Ann N. Costain's 1979 study. She argues that the more diverse the coalition, the more likely it will succeed even against strong, organized opposition.[36] However, great diversity - - while a strength in providing a broader base of support - - can also increase the likelihood for schism among the groups in a complex policy context. The points of compromise, determined by their ideological differences, will vary among the groups. In this case, the public interest-labour coalition avoided divisive pressures by developing a strategy and a policy that enabled them to avoid or at least postpone specific issues.

Some observers viewed the oil-business alliance's failure to have price controls ended as a startling development which signaled a shift of power from the oil lobby to the public interest groups. Typical of this view was John Hill's comment "it was the final blow, the last nail in the coffin, a severe psychological blow." This view was not based solely on this one defeat, but on (1) the oil groups' previous record of successes compared to their recent failures to maintain the depletion allowance and to block passage of some environmental controls (2) the institutional changes that appeared to favour public interest groups and the groups' rapid rise in numbers and successes (3) the punitive legislative measures, such as divestiture, that threatened the oil industry in the aftermath of the Arab embargo.

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36. Anne N. Costain, "Organized Lobbying by Diffuse Interests," Paper delivered at the 1979 Annual Meeting of the American Political Science Association, 31 August-3 September 1979, p. 16.

The view Hill typified, however, was erroneous. EPCA was not a watershed event signaling the oil lobby's demise. The lobby's failure on depletion and other issues in the early 1970's was not as serious or as total as portrayed. For example, on the oil depletion allowance the independents and majors were split, with the former acknowledging that they did not take advantage (as the majors did) of the higher percentage allowed. Also, depletion was considered within the larger context of tax reform. The depletion allowance had become a symbol of all reform efforts. As Oppenheimer concluded:

> . . . in 1969 it became impossible to produce a bill that would be accepted as a tax reform bill without a change in the tax treatment of natural resources . . . . depletion and the tax treatment of the oil industry became the symbol of tax inequity . . . . without it the tax reform measure would have lacked credibility. 37

Finally, views on the impact of lowering the allowance varied. In general, it was viewed as more "cosmetic than surgical."[38] This was Oppenheimer's view, in part, because the change had little effect on oil industry taxes; the Treasury collected only $185 million more in federal taxes after the depletion allowance was lowered, a figure much lower than had been predicted.[39]

Neither the changing reputation of the oil lobby, nor its past record of successes in contrast to its recent losses, was sufficient evidence to conclude there was a major shift in power among interest groups. Oil's previous successes were on issues of low visibility with no organized competition, and in a very different political climate. The industry had fewer issues to deal with and its efforts were directed towards influencing the recruitment patterns of the House and Senate tax committees where most of the issues with which it was concerned were considered. Before the early 1970's, the public had little or no awareness of the questions which concerned the industry. In contrast, the conflict in the early 1970's was over issues that were highly visible and a focus of public attention. Well organized opposition to the oil interest groups developed - - which, among

37. Oppenheimer, p. 105.

38. Ibid., p. 60.

39. Ibid., pp. 127-128.

other things, provided greater visibility for the issue and more pressure on members.

As this study shows, the large scale changes underway in Congress did not paralyze the oil industry. Quite the contrary - - the changes served as a warning that prodded it to make changes. As API analyst Connelly explained:

> In the 1960's we stuck to the senators and congressmen who were our friends. They were the key people, but then Congress changed and the oil industry didn't. We suffered a few defeats because of this lag.

During the 1975 oil-pricing debate, the oil groups were responding a little tardily to many changes. But rather than conclude they were in retreat, it is more accurate to say that they were in transition.

All the groups prepared themselves for the conference committee. Although this is a crucial stage for most legislation, it was even more important for this issue because it was here that the policy would be finally decided. The interest groups would play as important a role in this stage as they had in the earlier ones. It is the conference committee and final passage, the last stages in the decision-making process, that this study examines next.

# CHAPTER SEVEN

## Congress and the President Finally Agree to an Oil-Pricing Policy: The Conference Committee, House-Senate Approval, Presidential Signature

The final stages of the decision-making process - - the conference committee, the House and Senate votes, the President's approval - - were fraught with the tension, uncertainty and controversy which had characterized earlier points in the debate. But at this stage unlike the earlier ones, a compromise was finally reached; faced with the unacceptable prospect of continued stalemate, participants were forced to make decisions which they could no longer delay. The earlier apparent deadlock was broken by the conference committee. The House and Senate, with some reservations, supported the conference committee's decisions; the President, after receiving conflicting advice from his cabinet, decided to sign the bill into law. The long arduous process was complete. This chapter traces these final stages.

The most important point in the process was the conference committee. It faced the formidible task of fashioning an energy policy, including an oil-pricing provision, from dissimilar House and Senate bills. The conference was expected to achieve in days what the previous congressional process had failed to achieve in nine months. It succeeded because the decision-making process at this stage is altered to make the task easier. First, the number of participants is reduced, from 535 to, in this case, 32. Second, the rules are altered to vest the conferees with great discretionary power - - not only to make decisions within the conference, but, once made, to protect them from a challenge in either the House or Senate chambers. So great is the power of the conference committee that it has earned the reputation of being the "third house of Congress."[1] As one former congressman observed:

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1. David J. Volger, The Third House: Conference Committees in the United States Congress (Evanston: Northwestern University Press, 1971).

> Some grim amusement can be drawn from the loud hurly-burly which accompanies a bill through its initiating stages, the countless hours of haggling in committee, on the floor - - for a comma, or an adjective; and then to observe the whole business disappear, swallowed up in a Conference Report. 2

The oil-pricing provision that conferees adopted fit this description. It bore little resemblance to those included in either House or Senate bills. As David E. Rosenbaum concluded:

> ...a conference committee is the essence of the congressional process. It is where, after all the demogoguery and the political posturing that takes place on the floor of the House and Senate, the laws of the land are finally written. 3

This conference did indeed write Congress' energy bill.

Since the conferees voted to open the conference to the public, observers had a rare opportunity to view just how the laws at this crucial stage are written. While it was not the first one open to the public, it was the first open conference that dealt with a major piece of legislation. As Rosenbaum likened the opportunity: "It is as if a football enthusiast could go into the huddle and listen as a professional quarterback called its plays."[4] From such a vantage point, the power of a conference committee was confirmed. But the power of staff was also demonstrated. In these proceedings the staff defined the terms of the debate, controlled information, planned and then executed a strategy, conducted negotiations with the various players in the debate, including the executive branch, and then wrote the specific legislative language of the bill. They emerged, just as in earlier stages, as surrogate legislators. They did everything but actually vote. This conference also showed that the executive branch was so involved that the separation of powers between the two branches of government was blurred. But despite the conference being open, observers could see that

2. Cited in Ted Siff and Alan Weil, directors, Ruling Congress: A Study of How the House and Senate Rules Govern the Legislative Process (New York: Grossman Publishers, 1975), p. 188.

3. David E. Rosenbaum, "In the Third House of Congress, The Real Action," New York Times, 23 November 1975.

4. Ibid.

many of the decisions were still not made in public. Secrecy continued to be an important ingredient in the decision-making process.

## The Conference Committee Sets Out to Resolve the Difference Between the House and Senate Energy Bills

### The Conference Committee's Profile

The conference committee, an ad hoc committee, is established for the specific purpose of forging House and Senate bills into a single piece of legislation. The disparate elements of these bills establish the conference's jurisdictional scope. David J. Volger explains:

> Conferees must confine their discussion of a bill to those provisions which cause disagreement between the two houses. They may neither add new provisions unrelated to those under discussion, nor exclude or change provisions agreed upon by both chambers. 5

In practice, conferees have interpreted this framework as giving them "wide leeway."[6] In this instance, there were five bills which encompassed so many areas of disagreement that the conference's jurisdiction was extremely broad. These bills were: the Energy and Policy and Conservation Act (H.R. 7014); the Standby Energy Authorities Act (S. 622); the Strategic Energy Reserves Act (S. 677); the Energy Labeling and Disclosure Act (S. 349); and the Automobile Fuel Economy Act (S. 1883). Senator Henry Jackson (D. Wash.) added the last three bills to the conference, in part expressly to expand the conference's jurisdiction, the Senate's weight in the conference, and his influence within the Senate delegation. As a result, the conference had more issues to consider and thus, more issues to bargain over. Conferees had to decide the most important aspects of the energy policy, including its most controversial - - oil-pricing.

5. Volger, p. 6.

6. Lewis A. Froman, Jr. The Congressional Process: Strategies, Rules, and Procedures (Boston: Little Brown & Co., 1967), pp. 159-160; for a thorough discussion of the early conference committee rules, see Gilbert Y. Steiner, The Congressional Conference Committee: Seventieth to Eightieth Congress (Urbana: University of Illinois Press, 1950), pp. 7-13.

The important task of making these decisions fell to the conference committee's twenty-one Democrats and eleven Republicans, the membership of which is listed in the following Table 7-1.

Table 7-1

Membership of the Conference Committee

SENATE CONFEREES

Interior and Insular Affairs Committee

Henry M. Jackson (D. Wash.)
J. Bennett Johnston (D. La.)
James Abourezk (D. S.D.)
Floyd K. Haskell (D. Colo.)
John Glenn (D. Ohio)
Richard (Dick) Stone (D. Fla.)
Dale Bumpers (D. Ark.)
Paul J. Fannin (R. Ariz.)
Clifford P. Hansen (R. Wyo.)
James A. McClure (R. Ida.)
Dewey F. Bartlett (R. Okla.)

Commerce Committee

Warren Magnuson (D. Wash.)
John O. Pastore (D. S.C.)
Vance Hartke (D. Ind.)
Philip A. Hart (D. Mich.)
Howard W. Cannon (D. Nev.)
Ernest F. Hollings (D. S.C.)
Adlai E. Stevenson (D. Ill.)
Robert P. Griffin (R. Mich.)
Ted Stevens (R. Alaska)
J. Glenn Beall (R. Md.)
Lowell P. Weicker (R. Conn.)

Public Works Committee

Jennings Randolph (D. W.Va.)
Edmund S. Muskie (D. Maine)
Howard H. Baker, Jr. (R. Tenn.)

HOUSE CONFEREES

Interstate and Foreign Commerce Committee

Harley Staggers (D. W.Va.)
Torbert H. MacDonald (D. Mass.)
John E. Moss (D. Cal.)
Paul G. Rogers (D. Fla.)
Clarence J. Brown (R. Ohio)
James T. Broyhill (R. N.C.)

Members are listed in order of seniority by party.

The preponderance of Democrats reflected that party's majority in Congress. The discrepancy between the number of Senators and of Representatives - - twenty-five to seven - - resulted from Jackson's decision (which the less formal rules of the Senate allowed) to attach to the Senate's primary bill (S. 622) the three additional bills cited above, which originated in different committees. By so doing, additional conferees from the other two committees had to be included. As a result Jackson increased the number of Senate conferees on his own team. Since conferees vote en bloc - - House versus Senate - - Jackson did not seek additional Senate members to gain votes relative to the House, but votes to carry the Senate caucus. Jackson became aware of how important the addition of these members might be when he began to select conference members.

The authority to select conferees is formally vested in the leadership - - the Speaker of the House and the presiding officer of the Senate. But, by tradition, this power has been delegated to the chairman of the committee from which the legislation originates. In this case, Jackson, as chairman of the Interior and Insular Affairs Committee, and Harley Staggers (D. W.Va.), as chairman of the House Interstate and Foreign Commerce Committee, had the honour. In the past, conferee selection had been based almost solely on seniority, and this was still true in 1975 despite other challenges to the seniority system. Chairmen of committees may choose the most senior members, either of the full committee, or if a subcommittee has played a major role in the bill's development, of the subcommittee. A choice between subcommittee or full committee members is intended to provide the chairmen with flexibility so that they may choose the members most likely to support their chamber's position. However, as Jackson and Staggers learned, this selection process did not guarantee that the members picked would uphold the policy positions their respective chambers had agreed to.[7]

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7. Volger, pp. 5, 36-40; Walter J. Oleszek Congressional Procedures & the Policy Process (Washington: Congressional Quarterly Press, 1978), pp. 186-188.

In the Senate, Jackson did not have the choice of appointing members from either the full committee or a subcommittee because he had not initially delegated the bill to a subcommittee but rather had it considered by the full committee. Jackson had no colleagues amongst the Interior Committee's available members - - Johnston, Abourezk, Haskell, Glenn, Stone and Bumpers - - on whom he could count to back his strong pro-controls position. All of these members but Glenn represented states with either already-established, or increasingly important, ties to the oil interests. Jackson feared that Stone and Bumpers, if they did not themselves decide to vote for the pro-oil position, at the very least would apply pressure on him to accept a more pro-oil policy than he favoured. While Jackson viewed Glenn as likely to be much closer to his own position, the freshmen Senator from Ohio was not seen as a strong conferee - - capable either of withstanding pressure from the other side or of joining with Jackson as an advocate. It was this line-up of members that had concerned Jackson enough at the outset of the debate to convince him not to try to develop a new pricing policy but to continue the old; these same concerns now resurfaced. But by attaching bills considered by the Commerce and Public Works Committees, Jackson was able to add additional conferees from each of these Committees - - nine Democrats and five Republicans. Before taking that decision, Jackson met with Magnuson and Randolph, chairmen of the other committees, to work out a deal; if he attached their bills to his, they agreed to choose the additional members he needed. Of the pool of Democrats, Jackson gained strong supporters in Senators Magnuson, Hart and Muskie, and potential supporters in Senators Stevenson and Hartke. This in turn gave Jackson more leverage to pressure Senators Glenn, Stone and Bumpers.

Harley Staggers (D. W.Va.) had more options than Senator Jackson in choosing House conferees, but faced similar risks. Since the Energy and Power Subcommittee was so involved in the development of the Energy and Policy Conservation Act (H.R. 7014), Staggers had the logical choice of selecting

subcommittee members as conferees. But the selection of the subcommittee's most senior members - - Dingell, Wirth, Sharp and Brodhead - - would most likely have resulted in a voting line-up that undermined the policy approved by the House in H.R. 7014, particularly with respect to the oil-pricing provision. Staggers feared a four to three voting split with Dingell and Wirth voting with the two minority members, Broyhill and Brown, against himself, Sharp and Brodhead. Although selection of the most senior full committee members - - MacDonald, Moss, Rogers and Dingell - - offered no guarantees of support, Staggers thought it was less risky than selection from the subcommittee.

Chairmen occasionally deviate from the selection process that Jackson and Staggers relied upon, choosing instead from more junior members if they played a key role in the bill's passage.[8] But for most chairmen, and certainly for Staggers, who, according to Eckhardt, "always applies mechanical rules to conferences,"[9] this was not an option. Mechanical rules offer the appearance of impartiality that discretionary ones cannot. With controversial legislation in the heightened partisan atmosphere that had characterized the consideration of

8. Oleszek, p. 186.

9. Quotations without citation in this Chapter have been taken from interviews conducted by the author, from February through July 1976. In some instances, remarks were made "off the record," and thus are not attributed. In alphabetical order those interviewed on the role of the conference included: Ross D. Ain, Legislative Counsel's Office; Richard Arnold, Legislative Assistant to Sen. Bumpers; Rep. Clarence (Bud) J. Brown (R. Ohio); William Burhop, Lobbyist, Congress Watch; Benjamin Cooper, Interior & Insular Affairs Committee; Raymond Connelly, Government Analyst, American Petroleum Institute; Charles Curtis, General Counsel, Interstate & Foreign Commerce Committee; William Demerest, Energy & Power Subcommittee; Rep. John Dingell (D. Mich.); Rep. Robert (Bob) Eckhardt (D. Tex.); Carolyn Emight, Interstate & Foreign Commerce Committee; Thomas Green, Interstate & Foreign Commerce Committee; Richard Grundy, Interior & Insular Affairs Committee; Bruce Heinke, Legislative Assistant to Rep. Brown; John Hill, Deputy Administrator, FEA; Peter Kirby, Lobbyist, Air Transport Association; Kenneth Levine, Legislative Assistant to Rep. Eckhardt; Bart O'Hara, Lobbyist, Teamsters; Thomas Platt, Interior & Insular Affairs Committee; William (Bill) Pursley, Legislative Assistant to Sen. Stone; Rep. Harley Staggers (D. W.Va.); David Staing, Minority Counsel, Interior & Insular Affiairs Committee; James Stubert, Legislative Assistant to Rep. Rogers; William Van Ness, General Counsel, Interior & Insular Affairs Committee; Jan Vlcek, Minority Counsel, Interior & Insular Affairs Committee; Andrew (Andy) Vitally, Lobbyist, American Petroleum Institute; Charles Wilson, Counsel, FEA; Perry Woofter, Lobbyist, American Petroleum Institute.

these bills, deviation from the seniority criterion would most likely have led to charges that Staggers and Jackson were "packing" a conference. Such charges could have threatened the conference's ability to resolve legislative differences and to have their decisions accepted by the House and Senate. Thus, the two best-informed, most influential members in the development of the House's bill - - Robert (Bob) Eckhardt (D. Tex.) and Robert Krueger (D. Tex.) - - were excluded from the decision-making process at the most important stage.

## The Conference Committee Convenes

The conference convened on 7 October and laboured for five weeks, until 12 November, to develop Congress' energy bill. The lengthy proceedings were predictable given the arduous task the conferees faced. The two primary bills (H.R. 7014 and S. 622) alone were each over 200 pages in length. Moreover, the controversial nature of the energy issue - - particularly the oil-pricing provision and the failure of members of both chambers to develop a consensus on many of the issues before the conference - - generated the same tumultuous atmosphere that had characterised various stages of the decision-making process. The conference committee was unwieldy.[10] This was evident from the conference's beginning.

Harley Staggers brought the conference to order as the other thirty-one conferees, several dozen of their staff, House and Senate observers, interest group lobbyists and representatives from FEA milled around a room which was much too small for the crowds the committee had attracted. For lack of other space, the conference borrowed a room where the Joint Atomic Energy Committee met - - an arched, low-ceilinged room without windows in the centre of the Capitol. William Demerest, counsel to the Energy and Power Subcommittee, described it as the "bomb shelter", while other staff members

10. Richard L. Lyons, "The Making of a Compromise," Washington Post, 9 November 1975; Editorial, "Sunshine in the Senate," Washington Post, 29 October 1975.

called it the "war room"; these were appropriate names for it was in this room that the final battles over the issues were fought out during the committee's proceedings.

However, the first order of business for conferees was to select their chairman and vice-chairman and to decide whether the conference should be open or closed to the public. The first task was easy; the second decision gave rise to much more debate. In recognition of the role of the House in the energy policy debate (particularly on price controls), and of the specialization of the Interstate and Foreign Commerce Committee, Staggers was elected chairman of the conference and Jackson vice-chairman.

Reluctantly, conferees then voted to open the conference to the public.[11] Until Congress adopted sunshine laws in the early 1970's, conferences were always conducted in private, a custom dating from the 19th century. Secret negotiations were thought a necessary ingredient of the conference process. Ada C. McCown explained this reasoning: "conferees were diplomatic agents of the two houses and must be surrounded with the traditional secrecy attending diplomacy."[12] Secrecy was presumed necessary to provide conferees the freedom to compromise without fear of reprisal from special interests. Thus, even members who were ardent advocates of "sunshine reforms" for other stages of the decision-making process questioned whether it was appropriate at this point. As Carolyn Emight, economist for the House Interstate and Foreign Commerce Committee, recalled: "Everyone sat in terror. No one really knew what impact opening of the conference would have." Finally, freshman Senator Richard (Dick) Stone (D. Fla.) swayed the decision when he announced that if members voted to close the committee, he would refuse to serve. Colleagues who were uneasy about how it would look if they closed the proceedings complied.

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11. See "Reform Penetrates Conference Committees," Congressional Quarterly Weekly Report (hereafter CQ) 8 February 1975, pp. 290-294.

12. Ada C. McCown, The Congressional Conference Committee (New York: Columbia University Press, 1927), p. 57.

Open proceedings made the conference all the more unwieldy. "Now everyone would attend," said Thomas Platt, Senator Interior Committee staff, "the trade press, vest and fancy-suit lawyers and consumer crazies." And it seemed that just about everyone did. All of the pressure groups that had been active in the earlier stages showed up daily and set up their own camps. Often they were accompanied by economists or researchers from their organizations who could follow the substantive developments in the proceedings and leave them free to focus on the political ones. In addition to lawyers, law firms sent legal assistants to take notes for their clients. And more than one unofficial stenographer was in attendance. On days when conferees considered the most controversial issues, attendance was highest. For lack of space, these hordes of lobbyists, analysts, and observers lined the hallways outside the committee room, trying to overhear proceedings on the loudspeaker set up for the FEA, or by word of mouth as others passed out of the "war room."

It was in this atmosphere, with procedural matters aside, that conferees turned their attention to the substantive issues. There were so many issues, and conferees had such different levels of knowledge about them, that necessarily the first objective was to close this gap. Senate members had not debated the energy issues as had the House. This was particularly true of the oil-pricing issue. Conversely, House members lacked familiarity with many of the issues in the Senate Commerce and Public Works Committees' bills. It was primarily the staffs' job to inform these members. They made the vast amount of material comprehensible by preparing briefing books, dividing the issues into five categories: (1) Matters Related to Domestic Supply Availability, (2) Standby Emergency Powers, (3) Conservation Proposals, (4) Energy Pricing Issues (including amendments to the EPAA), and (5) General Provisions.[13] Under each category, as Table 7-2 shows of the oil-pricing provisions, the booklets detailed

13. Professional Staff, Committee on Interior & Insular Affairs, Conference Policy Issues Summary: S. 622 (H.R. 7014), Books I-V. Unpublished: Document in author's possession.

the issues conferees needed to address, and compared Senate and House provisions in the various bills on each issue.

Table 7-2

A Comparison of Petroleum Pricing Policy and Allocation Act Amendments in the Conference

Oil Pricing Policy

| | Subject | House | Senate |
|---|---|---|---|
| (a) | Old oil pricing | Statutory price ceiling of $5.25. The price may be modified administratively, subject to disapproval by either House. The $5.25 ceiling applies to "released oil" which is currently permitted to sell free from price ceiling under FEA regulations. Provision is made to allow old oil at an average price of $10.00 per barrel from certified fields which have applied tertiary recovery techniques and from "marginal well properties". | Old oil is required to be administratively controlled at current levels (i.e., $5.25). The President could permit a higher price subject to disapproval of either House. "Released oil" would continue to be excluded from the definition of old oil. |
| (b) | Production above 1972 levels | Statutory price ceiling of $7.50 plus an inflation factor, applies to oil production above 1972 levels from properties which produced oil in 1972. Provision is made to allow sales of such oil, at an average price of $10.00 per barrel, (i) from fields certified as having applied tertiary recovery techniques and (ii) from marginal well properties. [See new oil inflation factor under (c) below.] | President is directed to amend the pricing regulations to take into account field decline characteristics. Volumes produced in amounts in excess of the volumes produced in preceding calendar year but less than the volumes produced in 1973 may be permitted to be sold at the highest price allowed for "new oil". [It is understood that the reference to 1973 volumes is in error. Apparently the intention of the amendment was to reference a 1972 base-year volume, not 1973.] |

| | | | |
|---|---|---|---|
| (c) | New oil and stripper production pricing | A statutory ceiling price of $11.50, plus $0.05 for each month after enactment of the bill, applies to (i) *stripper well production by independent producers and (ii) the first 3,000 barrels per day of production by independent producers with respect to certain "qualifying properties". A statutory ceiling price of $7.50 applies to all new oil production and all stripper well production which does not qualify for "independent producer prices", except that the President may administratively permit a ceiling price averaging $10.00 per barrel for new oil produced from (i) Arctic Circle and Outer Continental Shelf, (ii) tertiary properties, and (iii) "high cost" properties, including marginal well properties. The $7.50 statutory price and the $10.00 per barrel price may be increased by an inflation adjustment factor equal to 2/3 of 1 per cent per month. In the case of the $7.50 price, the inflation adjustment factor begins to take effect in the 46th month after date of enactment. In the case of the $10.00 per barrel price, the inflation adjustment factor begins to take effect in the 89th month after date of enactment. [The same inflation adjustment factor applies to the price ceilings for production from 1972 producing properties above 1972 production levels. See (b) above.] | The new oil price is to be set by administrative regulation except that it may not exceed the prevailing price in the field of January 31, 1975, i.e., $11.28 per barrel. Stripper well production would also be subject to the new oil price ceiling. The administrative ceiling price applicable to new oil may be administratively modified (including a modification which establishes a price higher than $11.28 per barrel) subject to disapproval by either house. |

* A stripper well is one nearing natural depletion that produces less than ten barrels per day.

| | | | |
|---|---|---|---|
| (d) | Adjustments in price ceilings -- generally. | The $5.25 price applicable to old oil may be adjusted subject to Congressional review. No administrative adjustment is permitted with regard to the prices applicable to new oil and stripper well production in excess of the statutory limits. The President would continue to have authority to permit price increases without Congressional review for residual fuel oil or any refined petroleum product. | All prices applicable to either old oil or new oil may be adjusted administratively, subject to Congressional review. Unlike the House, the Senate bill also required Congressional review for any price increase applicable to residual fuel oil or refined petroleum products. |

Limitations on Pricing Policy

| | Subject | House | Senate |
|---|---|---|---|
| (a) | Minimum prices | The President shall have no authority under the Allocation Act (and any authority as it may exist under any other provision of law is withdrawn) to establish minimum prices for crude oil, residual fuel oil, oil, or any refined petroleum product. This prohibition would apply to both imports and domestic production. | No comparable provision. |
| (b) | Proportionate distribution of costs | Regulations under the Allocation Act applicable to residual fuel oil and refined petroleum products must require that prices of such oil and products reflect a proportionate distribution of costs. The President would have authority to exempt certain refiners to permit a deviation from a proportionate distribution of costs. | No comparable provision. |

| | | | |
|---|---|---|---|
| (c) | Limitations on passthroughs | Any net increase in acquisition costs incurred after date of enactment must be passed through within 60 days. | No comparable provision. |

Source: Senate Interior Committee, "Petroleum Pricing Policy and Allocation Act Amendments," The Conference Policy Issues Summary: S. 622 (H.R. 7014), Book IV, pp. 1-2. Unpublished: Document in authors possession.

The staff also provided a more succinct version of this information in memoranda form, which outlined members' policy options and guidelines they could follow to assess them. In addition, Charles Curtis, general counsel of the House Interstate and Foreign Commerce Committee, and his Senate counterpart, William Van Ness, held daily oral briefing sessions for conferees and their staffs.

Interest groups and Administration officials from the FEA played an equally important role in the education process. They circulated their own studies and memoranda, and met with conferees. Interest group lobbyists, legislators and staff members continued to coordinate their efforts. As the many issues came before the committee, they targeted conferees and decided who would be the most effective lobbyist and member to win a vote. The FEA's presence was more evident than at earlier stages. They set up camp in an adjoining room equipped with a loudspeaker that allowed them to hear the conference proceedings. With an arsenal of computers, technicians and lobbyists, they assessed proposals as the committee considered them, providing conferees with immediate information on the economic impact of such proposals, and with their own proposals.

Within this environment, conferees began considering each disputed issue. Staggers, as chairman of the conference, controlled the committee's agenda. The order of consideration was determined by the same strategy House Democrats had followed in the earlier stages of the decision-making process - - to deal with all issues other than oil-pricing first, and then to consider the pricing policy questions. Curtis, one of the authors of this strategy, explained its importance:

> It is essential to hold the oil-pricing section to the end because everything turned on it. You have to give members a perspective of what they have so they know what they are giving. They know what they had on appliances, fuel standards, etc. By taking the easiest issues first, you set the tone of agreement and conciliation.

Setting that tone by resolving even the least controversial issues was not easy. This was partly because the two major bills were so different: "When the

conference began, two turkeys do [did] not make an eagle," as Curtis remarked. But also, it was due to the conference's unwieldy composition which resulted from the large number of both official and unofficial participants. Demerest likened this environment to "a horror show at the circus . . . so many egos, so many competing factions, so little discipline or order."

However, the Democrats succeeded in setting the tone of agreement and conciliation, and resolving the less controversial issues through hours of discussions, lobbying efforts and cloakroom negotiations among all participants. They were able to control the committee by a tight control over the agenda. The staff devised the agenda which Jackson, Staggers, and Dingell then agreed to. Each day, as close as possible to the beginning of the scheduled meeting, the majority staff handed out a memo which outlined the day's agenda, including details of the issues and policy options to be discussed. As one member of the staff, Thomas Platt, explained: "We would give each conference member one copy of things that day but we would give them to the Republicans at the very last minute." The Republicans knew this was going on and they were not alone. Legislative Assistant to Congressman Paul Rogers (D. Fla.), James Stubert, also complained: "We were being left out." Curiously, the most important negotiations occurred not between factions of legislators, or even legislators and interest groups, but between staff and the administration. Demerest explained how the Democrats viewed the options: "You can either have a political bill or negotiate a compromise when you have a Republican Administration and a Democratic Congress." The Democrats' objective, as Curtis explained, was the latter:

> . . . . to get a signature but to try to put together a package to get them to accept as much as possible - - to walk the fine line between veto and signature.

To achieve this goal the staff initiated direct negotiations on behalf of Staggers and Jackson with the Administration. Charles Curtis, William Van Ness, and occasionally William Demerest, conducted these meetings. They held daily

breakfast meetings with FEA Administrator Frank Zarb, his deputy, John Hill, and a few key members of their staff. Although they kept Jackson and Staggers apprised of their developments, Curtis and Van Ness were basically on their own. Even though Jackson had strong ideas about what the final policy should entail (Staggers did not), both the chairman and vice-chairman were confident Curtis and Van Ness would negotiate the best policy for them.

In these meetings, Curtis and Van Ness hoped to negotiate each issue with the Administration even before they raised them in conference, and then to guide conferees in adopting this negotiated position. But this strategy did not always work out, and the staff turned to conferees for help. The staff prepared several proposals for conferees to present in public meetings, which then set the parameters for the staff's breakfast discussions with Zarb. Other conferees requested the staff to prepare proposals tailored to their own objectives. Thus, negotiations occurred on numerous levels - - both prior to and during the committee's deliberations - - between committee and personal staffs of different conferees; staffs and conferees; staffs and non-participating legislators, such as Texas Democrats Eckhardt and Krueger, who in turn then tried to persuade important conferees, staffs and lobbyists; and finally, lobbyists and conferees.

In response to these negotiations carried out by the Democrats, the Administration adopted its own strategy. It wanted to use these negotiating meetings to gauge how much they could demand from the Democrats without creating a deadlock. Thus Zarb tried to avoid committing himself to a position; his tactics apparently had not changed. He continued to threaten a veto, because as Congressman Brown's legislative assistant, Bruce Heinke, explained "It was the only thing we had." When Curtis pushed for this "bottom line," the FEA Administrator argued that while a particular proposal might be acceptable to the FEA, it most likely would not be to another group within the Administration. Curtis explained what he referred to as the "non-accepting principle":

> Everyone sought shelter behind it. For example, they would say, 'I think it's good, but OMB won't.' There was a lot of posturing.

Buying time with these excuses, the FEA then tried to enlist conferees' support for stronger positions closer to the Administration's in order to sway the negotiations with the staff more in its favour. The FEA also undertook negotiations as surrogates for Republican conferees with staffs, interest groups, and the Democrats, and developed proposals for sympathetic conferees of both parties to make. Initially, some minority members were angry that the FEA controlled and excluded them from these negotiations. The FEA had even agreed that Republican staff members be excluded from the important daily morning negotiations--a demand made by Curtis and Van Ness. They knew from experience that the minority staff would push the FEA's case much harder than would Zarb, who was new to the game. As a result, minority staff, like David Staing, were "incensed"; Charles Wilson, FEA's General Counsel, explained, "they thought we were selling out." But Republican conferees and their staffs who felt this way had little choice but to follow the FEA's lead and join in their efforts. Others, like Representative Brown, were not as alarmed. Minority legislative aid, Jan Vleck, explained: "Brown, to some extent, was acting as the Administration's spokesman, but deals really had to be cut with the Democrats." In an attempt to broaden support among conferees, the FEA did not limit its lobbying and negotiating efforts to Republicans. Deputy FEA Administrator Hill explained, they had a two-fold strategy:

> for the House members, we hit them with a lot of data and facts; for the Senate members, we tried to hit them with politics and to isolate several Democrats, Glenn and Johnston, for instance, to help us.

This strategy, at least at the early stage of the committee's proceedings, seemed to be working for the FEA. From Zarb and Hill's viewpoint, the FEA team was winning some very favourable points. But this would change when they got to the oil-pricing issue.

These machinations provided the backdrop to the public meetings underway. The official public sessions often began with Curtis and Van Ness

explaining the issues in proposals and answering conferees' questions. Most of the proposals under consideration were general ones, with specific legislative language to be written by the staff later in the committee's proceedings. After an explanation, each conference team would then consider and vote on the proposal - - the majority vote within a team prevailed. The proposals then passed to the other team for its consideration and approval.

By 23 October, in just over two weeks time, this approach appeared to be working. Progress was encouraging because agreement had been reached on many of the issues - - in fact, on almost every disputed issue except oil-pricing. Conferees were quick to congratulate themselves. Senator Henry Jackson sent colleagues a progress report stating: "I am very encouraged by the attitude the Administration has taken toward the provisions before the conference."[14] The staff concurred in Jackson's assessment when they also sent conferees a letter:

> To date, the cooperation, progress and agreement between the House, Senate and Administration at the staff level on the broad ranging non-pricing provisions at issue in the conference have been encouraging. 15

Few issues in the briefing books remained unresolved. But any confidence gleaned from this progress was overshadowed by the realization that the most difficult issue - - oil-pricing - - still remained. Or, as the staff warned conferees, "the price control issue, however, is in a league by itself."[16]

Oil-pricing presented such a difficult issue because of its complexity and its controversial nature. In making their decisions, conferees had to address the underlying question that had been evident since the outset of the debate, that is, "to what extent will Congress share with the Administration the responsibility

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14. Henry M. Jackson, Letter to Conferees, 23 October 1975. Unpublished: Document in author's possession.

15. Professional Staff, Committee on Interior & Insular Affairs, Letter to Conferees (draft), 28 October 1975. Unpublished: Document in author's possession.

16. Ibid.

for a deliberate increase in oil prices."[17] From the very beginning, Ford had attempted to force legislators to share his decision to increase oil prices. But at every stage of the decision-making process prior to the conference, members of Congress had vehemently resisted. During the conference the struggle continued. In an attempt to focus the debate and make the decisions easier for conferees, the staff prepared even more extensive memoranda and letters on this subject than they had on the others. This is evident in one such memorandum the staff prepared for conferees on the oil pricing issue. As Table 7-3 shows, the staff defined the questions, outlined the decisions conferees had to make and the policy options they had to choose from, and stated their view of what members' objectives should be in adopting a pricing policy.

17. Professional Staff, Committee on Interior & Insular Affairs, "Oil Prices -- Main Decisions to be Made by the Conference," Memorandum, 28 October 1975. Unpublished: Document in author's possession.

Table 7-3

Major Conference Decisions and Policy Options

1. The scope and duration of price controls: That is, what shall be the price "cap" on presently exempt domestic oil, and how long should that cap remain in effect?

Options:

Termination of Control Authority:

A. Never.

B. When the President finds that the prices of domestic petroleum would not thereby be determined monopolistically by a cartel of foreign nations.

C. When certain predetermined levels of unemployment and/or inflation are reached.

D. At Presidential discretion, subject to an opportunity for Congressional disapproval.

E. Automatically on ____(date)_____.

F. A time is not specified; coincident with expiration of Act with no presumption whether Act will be extended.

2. The initial rollback: That is, what will average oil prices be immediately after the effective date of this Act?

Options:

Roll back crude oil prices with an initial:

A. Upper tier ceiling of $_____ per barrel.

B. Average domestic price of $_____ per barrel.

C. Average price for all supply of $_____ per barrel.

3. The structure of controlled prices: How many price tiers shall there be, and how much discretion will Congress grant the President with respect to the details of the price regulations?

Options:

Details of price structure:

Option retaining maximum administrative discretion:

A. Continue the status quo, which allows unlimited administrative discretion (other than to decontrol specific categories of production) regarding classification and pricing of production.

Option fixing an initial average oil price, while retaining administrative discretion regarding internal details:

B. Allow administrative discretion regarding the number of tiers, the classification of production and the price level for each, subject to a maximum average price for all domestic production or all crude oil supply, of $_____ per barrel (with or without an inflation factor).

Options in which Congress specifies the internal details of price structure:

C. Fix old oil by statute at $5.25 (with or without an inflation factor), and fix cap on all other domestic production at $_____ (with or without an inflation factor).

D. Fix old oil by statute at $5.25 (with or without an inflation factor), and fix cap on all other domestic production at $_____ (with or without an inflation factor), but specify exceptions to either or both, for example:

(1) Allow production from new secondary recovery projects, in excess of 1975 production adjusted by a decline factor, to receive the upper tier price.

(2) Exempt production from new tertiary recovery projects, in excess of 1975 production adjusted by a decline factor.

(3) Exempt new production from more than 600 feet of water or from deeper than 16,000 feet.

E. Fix old oil by statute at $5.25 (with ot without an inflation factor) and fix cap on all other domestic production at $_____ (with or without an inflation factor), but permit Administration to exempt new production from specific categories subject to finding that a higher price is necessary to induce or maintain exploration, development or production.

F. Fix different price ceilings for several different categories of production and/or producers, as in H.R. 7014.

4. The rate of old oil phaseout: That is, at what rate should the average price of domestic crude oil move upward to the "cap" or upper price ceiling?

Options:

Date of old oil phaseout:

Option retaining maximum administrative discretion:

A. Retain status quo under Emergency Petroleum Allocation Act (requiring the Administration to take full responsibility for old oil phaseout or price increases).

Options regulating the phaseout of old oil in terms of an average price, leaving administrative discretion regarding internal details of the increase:

B. Allow the average price of crude oil to increase at the rate of general inflation plus ____ percent per month, up to a maximum of $_____ (plus an inflation factor).

C. Allow the average price of crude oil to increase at the rate of general inflation, and allow a further increase of ____ percent per month, up to a maximum of $_____ plus an inflation factor beginning only when economic conditions met specific standards.

D. Allow the average price of crude oil to increase at the rate of general inflation, and allow a further increase up to a maximum of $_____ plus an inflation factor, of ____ percent in any month in which economic conditions met specified standards.

Options in which Congress specifies the internal details of the old oil phaseout:

E. Fix present regulations into statute, resulting in a 2 percent per month rate of decline of old oil (but no date certain for the elimination of all old oil).

F. Phase out presently controlled oil at a straight line rate of ____ percent per month.

G. Begin the phaseout of presently controlled oil at a straight line rate of ____ percent per month only when economic conditions met specified standards.

H. Allow the phase out of presently controlled oil at a straight line rate of ____ percent of each month for which economic conditions met specified standards.

Source: Professional Staff, Senate Interior Committee, "Oil Prices - - Main Decisions to be Made by the Conference," Memorandum, 28 October 1975, Senate Interior and Insular Affairs Committee Files. Unpublished: Document in author's possession.

To help them make the difficult choices of filling in the blanks outlined in the memorandum, staff provided members with criteria to evaluate each option to determine whether it would create an oil-pricing policy able to

> achieve multiple goals of maximum domestic oil production and protection of the economy against fuel inflation . . . [and balance] the need for the Congress to take decisive action yet leave the Administration some discretion and flexibility to react to the changing circumstances. 18

In these memoranda and others, the staff narrowed conferees' focus and thus framed the committee's debate, much as Zarb had done for Ford with his policy options. (See Chapter Five, p. 189.)

However, even before the public debate began, a flurry of private negotiations was underway among all the various players. As a result of this bargaining, the most important of the four issues - - the structure of the oil price controls - - was decided even before conference sessions on the issue officially started. Only one policy option - - the composite or national weighted average price - - met legislators' most important criterion: Congress would appear to be taking decisive action, but at the same time leave sufficient discretion to the Administration. The composite price would establish a single average price for all oil. The Federal Energy Administration would have the authority, and thus the responsibility, of categorizing oil (old, new, etc.), and of setting price levels for these categories, so long as the price categories, when averaged, came to the single price level Congress set in its bill.

The composite price structure had numerous advantages. It made it possible for both Congress and the executive branch to exert significant influence over the oil-pricing policy. It allowed legislators to establish the overall framework of the policy, but let the bureaucracy set the specific details of it. For example, if Congress set the composite price for all oil - - domestic as well as imported crude - - at $9.00 per barrel, the Administration could decide to set imports at $13.00, old oil at $5.25, and new oil at $9.91. It made conferees'

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18. Committee on Interior & Insular Affairs. Letter, 28 October 1975.

decisions much easier because they could delegate to the Administration the more difficult and divisive questions which might have divided the pressure group factions and deadlocked the conference. The composite price was thus the analogue to the bargaining strategy in the full committee; it again showed how badly Congress needed the President. Conferees apparently accepted the wisdom of this approach because all of the proposals they debated in the public sessions took the composite price structure as a given.

However, once conferees chose the composite price, they still had difficult decisions to make over the remaining aspects of their oil-pricing policy. These included three other main issues which the staff had outlined - - the duration of controls, the initial rollback of new oil prices, and the rate of old oil phase-out. In addition, conferees also had to address less major but clearly important issues, such as adjustment mechanisms so controls could reflect changing economic conditions, and presidential reporting requirements. From 3 to 12 November, conferees debated and negotiated these issues in an attempt to work out a pricing formula that all could accept. The committee staff prepared proposals for conferees - - some of which reflected the staff's views and others which reflected an individual committee member's request. Over two dozen pricing proposals were considered with various constructs of the main issues.[19] Initially, a few of the proposals included foreign oil in the composite. However, it made no sense for conferees to include imported oil, over which they had no pricing control, and they quickly removed it. The same controversy which had surrounded the pricing issue throughout the 1975 debate now resurfaced. While conferee's choices were narrowed, the advocates and opponents of oil-price controls pulled the committee in opposite directions. Advocates of decontrol proposed the shortest decontrol period, the highest starting prices and the quickest rates of phasing out old oil, while opponents offered counter-measures for just the opposite. Moreover, conferees continued to play the same role as

19. The author gratefully acknowleges the cooporation of both House and Senate Committee staffs who provided copies of all of these proposals, which made the substantive and political developments of the oil-pricing policy comprehensible.

they had in their respective chambers. For example, Senator Ted Stevens from Alaska relentlessly fought to have Alaskan oil excluded from the composite even though the pricing structure was intended to eliminate the need for conferees to designate price levels for specific categories of oil. Stevens was not alone in his attempts. Louisiana Senator Bennett Johnston tried to have the first 3,000 barrels of oil produced per day by independent oilmen exempted from the composite and guaranteed an $11.00 price. (While Johnston failed, Stevens succeeded, in part, by having conferees review the matter in the President's 1977 mid-programme report.)

Congressman John Dingell (D. Mich.) provided yet another example. He continued to try and play the role of statesmen and compromiser. He repeatedly offered proposals tailored to the FEA's demands. In one measure, he set the composite price at $10.50 - - a level considered much too high by his Democratic colleagues, but a "gutsy move" by his Republican colleagues. He proposed that stripper and Alaskan oil be exempted from the composite, exclusions which Republican Brown had claimed were essential to the President's approval. He also proposed that Congress relinquish its right to review the President's increases in oil prices through legislative veto provisions. Understandably, Dingell's actions stirred the old acrimony and rivalries which had so deeply divided members at the sub and full committees. He and Moss were once again at odds. Republicans saw Dingell "was with us all the way"; Democrats believed, according to Thomas Green of the House Commerce Committee staff, "that Dingell was being taken." Democrats rejected his proposals and they resented his repeated attempts to undermine their efforts. As Nader lobbyist William Burhop commented, he was "a loathed man." Dingell confirmed this perception when one conferee overheard him say, he felt "like the bastard child at a family reunion."

The public discussions of the conferees' oil-pricing proposals were shaped and heavily influenced by the negotiations underway between the staff led by Curtis and Van Ness and Zarb's FEA team. For example, the FEA prepared

measures for conferees willing to propose them. They would have a conferee present a policy so that they would then be able to pursue it in their private negotiations in hopes of swaying the discussion closer to their final objectives. Curtis and Van Ness played the same game. Moreover, they reported their own version, both written and oral, of the progress being made in these negotiations to the conferees. For example, on 5 November, the staff sent conferees a memorandum which summarized discussions with the FEA team.[20] In addition, Curtis and Van Ness often delivered an oral report at the beginning of the conference meeting. They carefully used this information to garner votes for proposals they wanted adopted by announcing they thought it would be acceptable to the President.

In spite of the obvious importance of conferees having this information, these staff reports upset some conferees because of the way the FEA's involvement appeared to the press and public in the open meetings. Staggers and Jackson had showed their own sensitivity to the issue even before the conference began. President Ford requested a meeting with conferees to which they agreed only if the meeting took place prior to the date when the conference formally convened.[21] Eckhardt and Nader lobbyist Burhop observed that Republican and oil-state conferees wandered in and out of the FEA's anteroom with proposals in hand. The FEA's involvement was so blatant that at the conference table members presenting the FEA proposals took their cues from Zarb's staff standing at the back of the conference chamber. As Burhop explained, "Staggers was irate when this would happen." Staggers repeatedly launched into tirades on the subject -- some real, some feigned. For example, at the committee's proceedings on 5 November, when oil pricing was being discussed, Staggers reiterated what was by this point a familiar theme -- that the Constitution did

20. Bill Van Ness, General Counsel, Committee on Interior & Insular Affairs, "Discussions with Administration Representatives the Evening of November 4" Memorandum, 5 November 1975. Unpublished: Document in author's possession.

21. Harley O. Staggers and Henry M. Jackson, Letter to the President, 30 September 1975. Unpublished: Document in author's possession.

not condone these meetings, nor did he, and that unless the committee brought in the Supreme Court, he threatened to call a halt to them.[22] In fact, these statements were largely made for appearance's sake. As FEA counsel Charles Wilson explained, "Staggers was criticizing on the one hand, but telling Curtis to keep working with us on the other." The importance of the information Curtis and Van Ness were gathering far outweighed these concerns. Essentially, the FEA guidelines were those they would use to recommend a veto or a signature to the President when Congress sent the bill to the White House.[23]

With this information as their guide, conferees by Thursday 6 November had reached a decision on an oil-pricing policy which they thought was acceptable not only to them but also to the President.[24] The 6 November proposal established a composite price starting at $7.44. Prices were to be decontrolled over forty months. The FEA could propose price increases every three months, subject to legislative veto, if such increases were justified to provide additional economic incentives for production, or to offset the impact of inflation. These increases were subject to a ten per cent ceiling. The President could propose an increase in the ceiling in February 1977 when he presented his mid-programme review. After members cast their votes on this proposal, the committee adjourned for the weekend with conferees, if not jubilant, at least greatly relieved to have the pricing issue behind them. But conferees quickly learned that the FEA was not satisfied; they were overcome by confusion and anger when Zarb denounced the proposed provision.

On Friday, 7 November 1975, Zarb called a press conference to attack the conferees' 6 November oil-pricing decision.[25] His denunciation was all too

22. Lyons, "The Making of a Compromise."

23. See Editorial, "Oil, Gas, & Congress," Washington Post, 6 November 1975.

24. Richard L. Lyons, "Conferees Argue on Oil Formula," Washington Post, 7 November 1975; Elder Witt, "Conference Action: Omnibus Energy Policy Bill," CQ, 8 November 1975, pp. 2399-2400.

25. Federal Energy Administration, "Zarb says President will not accept current conference energy package," Press Release, Federal Energy News 7 November 1975.

familiar. It reminded conferees of the months of Zarb's hostile sparring tactics. As before, his attack was not accompanied by concrete remedies. He criticized the proposal in very general terms, arguing that it primarily failed to reduce oil imports substantially, without providing any specific details as to what changes would make the pricing provision acceptable. He threatened that unless conferees made changes in the pricing provision, he would recommend the President veto the bill. But he was careful to leave open the opportunity for further negotiation when he said: "I am hopeful that elements of the pricing formula as well as several other sections of the bill can be corrected."[26] With this statement, Zarb invited a response from the conference committee, which he received.

Curtis and Van Ness, on instructions from Staggers and Jackson, resumed negotiations with Zarb and his team. They met throughout the weekend of 7, 8, and 9 November in hopes of finding a solution to yet another threatened deadlock. In these meetings, the FEA laid out its proposal and Curtis and Van Ness theirs. By the end of the weekend, the FEA had listed four changes they wanted in the oil-pricing provision. These included: (1) a higher starting composite price ($7.96) (2) a higher ending price ($10.95) (3) an option for the President in his mandatory 15 February 1977 mid-programme report to propose that Alaskan oil be exempt from the composite price, if economic conditions warranted and (4) a shorter review period for proposing increases in the ten per cent ceiling on the economic incentives. The FEA modifications would substantially change the oil-pricing policy. The impact of a seemingly small increase in the price of a barrel of oil, such as $.36, would result in direct costs of over a billion dollars to U.S. consumers.[27] Figuring out <u>which</u> of these changes to make, and <u>how</u> to make them without making others which might provoke even further modifications, was no easy task.

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26. Ibid., p. 2.

27. Henry M. Jackson, Letter to Frank Zarb, 24 November 1975. Unpublished: Document in author's possession.

Staff, conferees, lobbyists, and the Administration knew that reconsidering the oil-pricing issue had many risks. It offered yet another opportunity for those who viewed the 6 November oil-pricing provision as not enough of a compromise, and for those who viewed it as a significant concession, to fight even harder for their positions. The same factions, issues, and battle lines would simply reemerge. This is exactly what occurred when Senator Howard Cannon (D. Nev.) floated a trial balloon to test conferees' reaction. On 11 November he "suggested" - - rather than officially proposed - - a vague motion to reopen the provision with the condition that conferees agree beforehand to consider his unspecified amendment only. He argued that his proposal would resolve the problems the FEA had with the 6 November decision. Opposition was immediate and vociferous. Other members claimed they also had proposals which the FEA demanded and endorsed - - a claim that by this stage of the proceedings most conferees had used at one time or another to bolster a proposal's credibility, but which almost always proved to be a smokescreen. Those same conferees who had fought throughout the conference to have special price categories of oil established, such as Johnston for independent producers and Stevens for Alaskan oil, now thought they had another chance. Cannon set things in motion even though he had not made his proposal official. Others quickly took up their own cause, proposed and seconded official motions to reopen the issue. Jackson (chairing the committee that day), dismayed by a committee out of control, quickly adjourned the conference.

After twenty-four hours of further cloakroom negotiations, conferees on 12 November amended the oil-pricing provision, not once but twice, in an attempt to avoid a stalemate with the Administration. Senator Cannon offered the first proposal. Although the Cannon proposal did not meet all of the Administration's demands, he believed it met the most important one - - an increase in the composite price from conferees' 6 November position of $7.44 to $7.55. As the committee debated this proposal and others, President Ford called Congressman

Rogers (D. Fla.) in the committee room and asked him to introduce an amendment to Cannon's proposal. Ford requested two further changes: (1) increase the composite starting price from $7.55 to $7.66, and (2) provide the FEA the opportunity to raise the ten per cent ceiling set on price increases, from once in February 1977 to every three months. Rogers agreed to the President's request. There was little doubt in Ford's mind that he would. The White House had lobbied hard to get the support of Rogers, who felt rather neglected by Jackson and Staggers. Although he was a Democrat, he was not one who held strong convictions on pricing. Moreover, although he was not perceived as an oil representative, as Johnston from Louisiana and Stevens from Alaska were, his state of Florida had a growing oil industry. But when Rogers announced the proposal he got confused.

The mix up occurred either from misunderstanding or oversight on Rogers' part; he took the call in the midst of the chaos of the conference session and might have misheard or failed to grasp Ford's request, since he did not fully comprehend the intricacies of the oil-pricing problem. When he announced the amendment, he mentioned only one of the President's demands. He proposed the price increase, and then added another provision, that the President be prohibited from collapsing the two-tier price system in order rapidly to increase prices on old oil. Rogers, like many others, claimed the Administration's support for the pricing provision if these two modifications were made. However, this time rumor quickly circulated throughout the committee that Rogers did indeed have Ford's support. Committee, as well as FEA, staff provided almost instant analyses of the price increase's impact on consumer prices and other economic indicators. While many members did not readily endorse the increase, most viewed it as a means to an end - - having the President sign their energy bill. At this point, that was an increasingly attractive prospect.

The Senate conferees voted on the amended Cannon proposal first, but not without adopting an additional change. Senator Glenn (D. Ohio) proposed that

the President be allowed to raise the ten per cent ceilings set on price increases, every six months, rather than only once, in February 1977 (as the 6 November proposal stipulated), if economic conditions warranted it. Glenn made this proposal without knowledge of Ford's demand, which Rogers had failed to report. He foresaw a situation where the President would not have enough discretion to increase prices, either if economic incentives proved inadequate to increase production as quickly as conferees had anticipated, or if inflation rose higher than predicted. Senate conferees then adopted the Cannon proposal as amended by the Rogers and Glenn Amendments, and sent the proposal to the House conferees for their approval.

Before the House conferees adopted the proposal, Dingell offered, and his colleagues accepted, a further change revoking the President's authority which the Glenn Amendment had just granted. As chairman of the House subcommittee that would have to consider the President's proposals, Dingell foresaw his subcommittee having to review a proposal to raise the ceiling every six months - - a time-consuming, labourious, and divisive task that would distract the subcommittee from its other legislative objectives. Dingell proposed instead that the President not be allowed to propose any increase in the ten per cent ceiling until the February 1977 report, and then after that every six months. House conferees adopted the proposal; Democratic Senate conferees concurred without objection. With these votes, an acceptable oil-pricing policy had apparently been adopted. But conferees, once again, soon learned differently. The Administration could not support the pricing provision because of the misunderstanding over the important question of more frequent opportunities for the President to propose that the ten per cent ceiling on price increases be raised.

The misunderstanding began with Rogers' failure to present both of Fords' demands. FEA deputy Administrator, John Hill, explained the mishap:

> At 4:30 I was in the President's office [with Zarb]. The President called him [Rogers] in the conference and said 'here's where you are and if you'll buy this, we've got a deal.' I immediately went to the Hill. Rogers gets up and says that if the conferees will do 'X' he'll [Ford] buy it. 'X' was two changes - - Rogers only said one of them. I started sending him notes that it wasn't right. He came out after the vote and said 'are you happy?' I told him it wasn't the deal. He said, 'young man you weren't on the phone, I just spoke with <u>your</u> President.'

Hill tried to explain to Rogers what had gone wrong, but events within the conference were moving too quickly for him to remedy the situation. Glenn and Dingell's amendments were proposed and accepted by House and Senate conferees, first separately, and then sitting together, even before either of them understood the significance of their actions. With the oil-pricing provision decided, only a few technical issues remained. Staggers pushed legislators to complete these quickly so that they could conclude the conference. Staggers, still unaware of the problem since he did not fully comprehend the issue, quashed any motions dealing with the pricing provision that Rogers - - soon joined by Dingell and Jackson, after Hill explained the problem - - sought to propose as a solution to the muddle. Instead, Staggers urged conferees to conclude their remarks so they could sign the conference committee report. He was urging the staff to run quickly around the conference room to get the necessary signatures of conferees. Finally, Curtis took Staggers aside to explain the situation. Other conferees learned that the FEA was threatening to recommend a veto of the bill if the pricing policy was not changed. Conferees, once again, had to try to find a solution.

Dingell - - at last - - provided the solution. He and Jackson, upon learning of the problem, adjourned to the men's room and worked out a deal away from public scrutiny. Staff stood outside barring lobbyists and other legislators from entering. Jackson and Dingell agreed that the only possible way out of the problem was to propose an amendment which modified the review period for the ceiling in order to save the bill from a veto. But doing so was even more difficult this time than before. Fearful of upsetting other aspects of the pricing

provision, they wished to propose an amendment which made this one change only - - giving the President the authority, every three months, to raise the ten per cent ceiling placed on price increases if the change was justified by a set of findings and approved by Congress, under the legislative veto procedures. But this kind of a proposal was almost impossible to get other legislators to agree to, and it required their unanimous consent. They decided the only appeal with any hope of success was a personal one from Dingell who had the necessary status, no constituency axe to grind, and who few doubted really wanted a compromise solution. Dingell lobbied each member personally before he announced his proposal in public session. While he lobbied, Curtis, to buy time, explained in the conference committee room that an ambiguous legislative situation had resulted. Conferees had failed to state what the President should do if the economic incentives exceeded the ten per cent ceiling before the February 1977 date when the bill allowed him to seek an adjustment.

Dingell then publicly apologized to his colleagues for "gumming up" the conference's proceedings by unknowingly having amended Glenn's proposal, which provided important power to the President, and upon which the FEA was now conditioning its acceptance of the pricing provision. In contrast to their attitude to earlier proposals, the FEA finally agreed publicly that if this change were made, they would recommend that the President sign the bill. Conferees agreed to Dingell's request and adopted his proposal. Dingell's public admission of blame, as Curtis explained, made it possible: "It was a lovely touch by saying he made a mistake. It's very hard for members to object to another member admitting a mistake - - it happens so rarely." With this proposal Dingell finally succeeded in playing his chosen role as compromiser and peacemaker - - the part he had tried to play since the subcommittee proceedings. [28]

With the oil-pricing provision decided - - for the third time - - Staggers directed the staff to circulate the committee's report for conferees' signatures.

28. Richard L. Lyons, "Oil Price Formula Backed," Washington Post, 13 November 1975; "Oil Pricing Agreement," CQ, 15 November 1975, p. 2450.

He thanked his colleagues for working on what he described as "the most onerous bill ever before the Congress," and then, fearful that someone might try to propose yet another motion, he hastily adjourned the conference. The public session came to an end, but the work on the energy bill was far from complete. With many of the provisions, conferees had merely adopted proposals which outlined their position, but did not include the specific legislative language. Now the legislation had actually to be drafted before it could be sent to the floor for consideration and adoption by Congress.

From 12 November to 9 December, Curtis, Van Ness, and a few other staff from the House legislative counsel's office actually sat down and wrote the energy bill. They had to rely upon the proposals approved by conferees, which were cast in general and sometimes contradictory form, and upon the transcripts of the conference's confused public sessions, as their guides. During this period, negotiations between the staff and the FEA continued over their differing views of what conferees' intentions really were. A few select legislators were kept apprised of developments, including Jackson, Dingell, Moss and Eckhardt (who had not even been a conferee).

Secrecy thus surrounded the mark-up process and negotiations. Legislators were almost totally absent. That provoked a battle for information between those excluded and those excluding. As Senate Interior Committee staff Thomas Platt admitted: "We tried to control documents. We were a bit nasty about that." Only the most senior Democratic conferees were even fully briefed on the progress of this task. Moreover, just before the Thanksgiving recess the staff released a draft bill; it excluded the oil-pricing provision because they did not want anyone to see it until just before the official conference report was filed in both chambers, at which point it would be too late to make any further changes. Even at that final point, information was still being guarded. As Senate legislative assistant Richard Arnold explained:

> I expected to get a copy of the conference report before it was filed. The House legislative counsel had it but he said he wasn't cleared to give it to me. I finally got a copy from Bill [Van Ness], but when I finally got a copy I had to sign in blood that I wouldn't give it to anyone. That's a hell of a way to run the public's business.

Other members and staff felt as Arnold did but none succeeded in loosening the staff's tight grip on information.

Many explanations surfaced as to why there was so much secrecy. Some charged the staff with bias. Arnold explained that he thought Curtis and Van Ness took this approach to favour the pro-control forces at the expense of the decontrol advocates. He claimed that when he sought information Curtis told him that "they wanted to keep the information from the oil representatives." Others argued that this secrecy was an attempt to conceal the ambiguities and discrepancies between the final legislative language and the proposals adopted by conferees in their public discussions. Feeding these fears was the majority staff's decision not to allow outsiders--or even conferees--to review the conference transcripts.[29] They could prohibit access to the record because although the conference was open to the public, the transcripts were not public documents. Curtis and Van Ness defended this approach, saying that secrecy was an essential part of the process. When information or documents did get out, they then were subjected to a barrage from lawyers, lobbyists, and members (both conferees and others) who argued for, and demanded, further changes. In such a politically charged environment, Curtis explained, he and Van Ness feared they would never be able to finalize the bill. This was what in their minds made secrecy necessary. The mark-up was completed in secrecy, and the bill was finally written and ready for the two chambers to approve. But the staff continued to guard the transcripts even after the conference report was filed. When conferees or other interested parties requested to see them, they were

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29. Thanks to Congressman Dingell (D. Mich.), Charles Curtis and William Demerest, the author was given access to the conference committee transcripts, on the condition that the transcripts not be quoted directly.

denied access.[30] Jackson, Staggers, and the key staff apparently feared ambiguities or discrepancies would be used to try and block the bill's final passage. Shortly after the final passage of H.R. 7014, those who requested access were told the transcripts had mysteriously disappeared. Now, apparently, key members and staff feared battles with the oil companies challenging the bill in the courts.

The House and Senate Adopt the Conference Committee's Report

On 9 December, the conference committee filed its report in the House (H. Rept. 94-700), and in the Senate (S. Rept. 94-516).[31] Consideration of conference reports by the House and Senate is usually a pro forma, or at best, a cursory, review. The power of the conference committee is largely based on this privileged treatment granted conferees' decisions. The rules of the House and Senate do not allow its members to challenge a conference committee's report unless conferees have clearly and blatantly gone beyond their terms of reference.[32] But this was not exactly what happened on this bill.

In the House, the conference report generated an immediate outcry. The primary opposition emerged over a provision which concerned scientific and technical research on energy. This measure had not been in the House's energy bill, but was added when Senator Jackson decided to include the bills from the other Senate committees. Congressman Olin Teague (D. Tex.), chairman of the House Science and Technology Committee, complained that these authorized programmes fell under his committee's jurisdiction - - but that the House had not considered them, nor the conference even bothered to include him in the

30. The author's experience supports this. William Demerest accompanied her to the Senate Interior Committee to request the transcripts from general counsel Bill Van Ness. Initially he refused to let them have the transcripts even though Demerest assured him they had permission. Only after several telephone calls, first to Curtis, and then to Dingell, was access finally given.

31. Elder Witt, "Final Energy Policy Bill Faces Uncertain Fate," CQ, 13 December 1975, p. 2689.

32. Oleszek, pp. 192-193.

proceedings to develop them. He argued that the provision be deleted; conferees had gone beyond their jurisdiction. Others joined in opposition to the bill, with the oil-pricing provision stirring by far the most controversy. Some members (among them Dingell and Eckhardt) and staff grew anxious that demands for change in the oil-pricing provision would soon follow. Joe D. Waggoner (D. La.) confirmed their fears when he proposed a motion to allow amendments to other aspects of the bill, including a provision to increase the composite price. Here the sanctity of conference rule was crucial. Waggoner's motion was thus defeated while Teague's was accepted, for he had a legitimate procedural complaint.[33] The House voted 236 to 160 to adopt the conference committee's report, as Table 7-4 shows.

Table 7-4

House Final Vote on Conference Report

15 December 1975

| | Ayes | Nays |
|---|---|---|
| Democrats | 202 | 59 |
| (ND | 161) | (ND 16) |
| (SD | 41) | (SD 43) |
| Republicans | 34 | 101 |
| Total | 236 | 160 |

Source: Congressional Quarterly Almanac 1975, House Vote #584 (Washington, D.C.: Congressional Quarterly, Inc. 1976), p. 176H.

33. Elder Witt, "Congress Sends Ford Energy Policy Bill," CQ, 20 December 1975, pp. 2766-2767.

House members voted on the Conference Report as they did on the final passage of H.R. 7014 before it was sent to the Conference Committee. (See Chapter Three, pp. 154-155.) The same influences guided members' decisions, and party affiliation emerged as the overriding factor that influenced a member's behavior. Those who defected from their party's identified position - - whether Democrat or Republican - - did so largely for constituency reasons. Democrats who voted contrary to their party were almost all from oil-producing states, such as Long of Louisiana. In contrast, Republicans who voted contrary to their party were mostly from oil-consuming states, such as Hyde of Illinois. The similarity of members' behavior on these two votes is predictable given that members were making a decision on the bill as a whole, not on particular provision. At this stage, unless an overriding constituency interest was contrary, members' cast their votes with their party.

In the Senate, members threatened to filibuster the bill because of the Teague Amendment. Few were satisfied with the bill and this seemed like as good an excuse as any to stop it. But after intense lobbying behind the scenes, these threats of filibuster were quieted. The Senate then voted fifty-eight to forty to adopt the conference report with Teague's Amendment, as table 7-5 shows.

Table 7-5

Senate Final Vote on Conference Report

17 December 1975

| | Ayes | | Nays |
|---|---|---|---|
| Democrats | 50 | | 10 |
| (ND | 39) | (ND | 4) |
| (SD | 11) | (SD | 6) |
| Republicans | 8 | | 30 |
| Total | 58 | | 40 |

Source: Congressional Quarterly Almanac 1975, Senate Vote #595 (Washington, D.C.: Congressional Quarterly, Inc., 1976), p. 90S.

Senators made more of an effort to vote on the Conference Report than they did on the final vote of S. 622; this was reflected in the additional number of Senators who voted. However, the addition of these members did not alter the voting pattern which emerged on the final vote of S. 622. (See Chapter Four, pp. 178-179.) Just as in the House, voting behavior on the Conference Report was consistent with this earlier vote. Party was by far again the most important determinant of a senator's vote, unless a strong constituency interest overrode it. With the Senate's vote, Congress had now completed its work on the energy bill. Only the President's signature was needed for H.R. 7014 to become law.

## The President Signs the Bill

The President had given no indication of his position on the bill to legislators. Although Zarb, in a discussion paper to the President, characterized the oil-pricing policy as questionable or objectionable, he had finally made a public commitment that he would recommend that the President sign the bill.[34] However, it was only a recommendation, and nothing more. Even after Ford had requested certain changes in the final public session, once these modifications were made, he did not then promise to sign the bill. Initially, conferees had not viewed the President's failure to commit himself with alarm. His silence, as minority legislative assistant Bruce Heinke explained:

> gave the FEA a larger role in drafting and helped the minority staff. If the Democrats knew he would sign it there would be no reason for them to try to trade-off anything else.

Republican Congressman Brown provided similar justification in a report to constituents: "His course of action made sense when one realizes the conference committee staff had considerable latitude in drafting the language which is supposed to carry out the intentions of the conferees."[35] But once the staff and

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34. Frank Zarb, Discussion Paper for meeting with President at the conclusion of the conference, undated. Unpublished: Document in author's possession.

35. Clarence J. Brown, "Report from Washington," 18 November 1975, Congressman Brown's files.

FEA completed their drafting sessions, Ford's continued silence made legislators worry.

Mixed signals from the executive branch fueled legislators' concerns over just what the President was going to do. The factions of opinion within Ford's cabinet, evident at the formative stages of his policy, reemerged. On the campaign trail, Vice-President Nelson Rockefeller critized the conference committee's version. Secretary of Treasury William Simon and Economic Advisor Alan Greenspan argued that the President should veto the bill, and they organized a lobbying effort, presumably in conjunction with the oil-business lobby, in support of their position. A confidential Treasury Department memorandum, from Simon to the President (a memorandum advocating a veto) was leaked to the press, probably from someone in Treasury. The leak was intended to encourage even more pressure on the White House from proponents of decontrol because it raised hopes that an opportunity remained to influence the President's decision.

FEA Administrator Zarb and Secretary of Commerce Thurston B. Morton, surprised by this opposition, tried to fight back. The Washington Post's story on the leaked Treasury memorandum shared the front page with a story Zarb generated by holding a press conference to defend the bill.[36] Zarb, still in a weak position in the Administration, thought Simon was trying to force his resignation; he therefore announced that he had no intention of resigning, even if the President did not follow his recommendation to sign the bill. He and Morton also tried to organize a pressure campaign for the bill, but their efforts were minimal compared to the opposition. Hill lamented that, "in a telegram and phone campaign to the White House, with over 11,000 telegrams or phone calls against signing the bill, only 95 were in favour." He also said each day the President failed to announce a decision, the pressure grew even more intense because his

36. Spencer Rich, "Zarb Won't Quit Over Veto," Washington Post, 8 December 1975.

silence, in Hill's judgment, "encouraged mounting political pressures in the oil states."

In part, the faction within the Administration that supported the bill did not organize an effort sooner because they had not realized that such a campaign would be necessary. Moreover, once they perceived the need to organize, they had a hard time convincing others and then of mobilizing their support. They understood that their role in conference was to negotiate in good faith with conferees on behalf of the President, and they thought that they had brought Congress into reasonable agreement with the Administration's objectives. The FEA had kept Ford apprised of every development; it had understood that if conferees accepted his request, he would sign the bill. This was also the general understanding of the other participants as well.

The President's silence seriously challenged this presumption. So shaken was Zarb and Hill's confidence that, by 19 December, they feared the battle had already been lost. That day, in a cabinet meeting during which the energy bill was discussed, the President still gave no hint as to whether he would sign it. Incensed by his delay, Hill explained: "Frank and I really felt vulnerable. We were really out on a limb." They feared that Ford was going to saw off that limb. Press reports contributed further to their fears.[37]

The longer the President stalled, the worse the situation grew. Evans and Novak observed:

> By angering liberals with hard line promises on oil decontrol and then infuriating conservatives by reneging on them, Mr. Ford, once again, has secured the worst of two worlds. 38

Ford was criticized by all for his delay and indecisiveness, until finally, on 22 December, he ended the suspense with an announcement that he would sign the bill.[39] He emphasized the differences which remained between his view and

37. See A.P., "Exxon Head Predicts Veto of Energy Bill," Washington Post, 17 November 1975.

38. Evans and Novak, "Mr. Ford: The Gap Between Rhetoric and Reality," Washington Post, 18 November 1975.

39. Evans and Novak, "Procrastination Ends: Ford Signs Bill," Washington Post, 27 December 1975.

those of the congressional majority, especially on the controversial oil-pricing issue. But he tried to save face by carefully characterizing continued controls as a means to end controls. He claimed he could achieve this with "proper" implementation of the Act:

> I fully intend to use the flexibility which is granted to me by this legislation to expedite the decontrol of crude oil in order to increase domestic production. I do not expect the Congress to stand in the way of such action. 40

Remarks like these did nothing to engender cooperation or to smooth over the partisan tensions which had erupted during the long battle over energy. But in spite of this, almost everyone who participated in the bill's development was relieved to have a policy, if only for the reasons cited in one editorial:

> . . although the country will pay a considerable price for this unhappy bill, it would have paid a worse price for a veto. . . . The new rules may not be good ones, but at least everyone knows what they are going to be. There comes a point at which almost any decision is better than none. 41

Congress and the President, after the months of controversy, had finally reached that point. Exhaustion rather than agreement was the basis of the final policy.

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40. Office of the White House Press Secretary, "The Energy Policy and Conservation Act," Press Release, 22 December 1975.

41. Editorial, "Signing the Oil Bill," Washington Post, 26 December 1975.

# CONCLUSION

Without question, the reforms of 1968-1975 changed Congress. Power within Congress was more widely shared; individual legislators had more opportunities to exert influence both within the legislature and over the executive bureaucracy. Yet the concrete changes had far different ramifications from those that members and other reformers had sought or expected. The primary political relationship between the President and Congress was certainly not shifted fundamentally to the legislature's advantage. Instead of a new and more democratic order which encouraged and facilitated policy development independent of the President, the actual changes (although clearly democratic in some senses) brought with them a greater fractionalization of power, and thus disorder; and this made policy-making all the more difficult. Even so, the reasons for the failure of reform are instructive and suggest the importance of studying the impact of reform itself.

However, assessing the impact of reform on congressional decision-making is not an easy task. One first has to establish what members sought or expected from reforms, and this presents difficulties of its own. First and foremost, reformers seldom clearly articulated their expectations or objectives. Legislators settled for vaguely worded generalizations which engendered broad support and assured the largest possible number of votes. But, as a result, two members might support the same reform measure for very different reasons, and to accomplish two very different ends. Reformers cultivated this ambiguous approach because they were not a group of like-minded legislators. Even within each chamber, reformers were a diverse group. Like academics and other outside observers, they did not all agree on what Congress' primary problems were, much less on how to resolve them. Their diversity was reflected in the fact that they did not have one, comprehensive plan designed to achieve a set of well-defined objectives. Instead, reformers formulated numerous proposals

which were shaped by their perspectives on the legislature's role and by their own personal objectives within that body. These proposals were neither consistent nor, much of the time, even compatible. But in spite of this, many of them were adopted. This was most evident in the two main reform plans in the House. Referred to as the Hansen and Bolling plans, they sought contradictory objectives; the former decentralized power while the latter was intended to centralize it. Instead of members choosing one of these plans or approaches to solving the chamber's problems, members adopted aspects of both proposals. As a result, reforms themselves were contradictory. Yet in this contradictory character, they reflected the character of the legislative body as a whole.

Second, reforms took place in the two chambers of Congress at different times and in very different ways; they therefore reflected the institutional dissimilarities distinguishing the House from the Senate. By the time members in the House began to adopt reforms, senators had already instituted major changes. Also, in the House, reforms were adopted through more formal channels - - the party caucus and legislation - - and over a much shorter period of time than in the Senate. In contrast, Senate reforms were accomplished much more slowly and informally. Substantively speaking, changes in its norms were more widespread and important than changes in its formal rules.

For these two reasons, establishing precisely what members expected or sought from reforms is difficult. One can at best generalize. And the most generally shared expectation among members, broadly stated, was that reforms would somehow redress the imbalance of power between Congress and the President, by altering the internal imbalance of power within Congress itself.

The balance of power has always shifted between the legislative and executive branches of government. This is evident in the varying roles that Presidents have historically played in drafting and proposing legislative measures. Throughout the country's history some executives have taken a more prominent part in legislating than have others. However, before the 1930's, the role Presidents played was determined by various transitory factors such as a

President's personality, party politics at the time, or the particular issue being addressed. After the 1930's, a President's role has increasingly been determined by Congress' need for executive leadership, and members' institutionalization of a legislative role for the President. As long as President and Congress were of the same political party and more or less ideologically aligned, the system worked. The President himself provided the leadership which members of Congress lacked; his executive departments provided the needed expertise, draft legislation and analysis. But as shifting electoral trends increasingly resulted in a President of one party and a congressional majority of another (or even of the same party, but with one branch still having a very different ideological outlook) the pitfalls of this division of power became too blatant. (See Chapter One, pp. 6-29.)

Members of Congress had grown more and more dependent on the executive, so much so that by the late 1960's Congress had almost completely delegated its legislative initiatives to the President. Congress no longer appeared capable of performing the role for itself. In general, members of Congress were simply not prepared to propose wholesale legislative alternatives to a President's proposals, even if he were of the opposition party; they were not prepared to perform their own constitutional functions. Thus in the period just prior to these reforms, the imbalance had become so obvious and problematic that it could no longer be ignored. Members and students of Congress had grown seriously alarmed at the legislature's decline. As a result, decline itself emerged as a central issue in the reform debate. (See Chapter One, pp. 23-24.)

The expectation that reforms would redress this imbalance - - and thus reverse the decline - - assumed a life of its own. It moved Speaker Carl Albert's (D. Okla.) bold actions at the outset of the 94th Congress when he announced a Democratic Party energy and economic policy and established an ad-hoc committee to develop it. Moreover, this expectation further fueled members', observers', and the press's general optimism that Congress could develop its own

legislative policy independent of the executive. It raised hope that Congress could do for itself what it had often in the past prevailed on Presidents to do for it.

The development and passage of the oil-pricing provision of the Energy Policy and Conservation Act (EPCA) tests this expectation. Its legislative history provides a dramatic contrast to the way policy decisions were made by committee barons prior to reform. It shows how reforms brought about changes in Congress' decision-making process. In general, this was accomplished in both the House and Senate by reducing the role and power of committee chairmen, breaking the rigid hierarchy of the seniority system, and making the decision-making process more open and more democratic. However, this study does not offer the same vantage point from which to view the impact of reforms in both houses. There are several reasons for this. As already noted above, most of the Senate reforms not only predated those adopted in the House but occurred over a longer period of time -- which meant they were gradually incorporated into the Senate's structure, and thus less dramatic. In addition, it offered less of an opportunity to view reforms in action because the Senate sidestepped dealing with the development of a new oil-pricing policy altogether until the conference committee stage. Thus, although the impact of reforms can be seen in both chambers, it is much more evident in the House, where the majority of reforms during this period (both committee and party) were actually adopted and where the primary policy decisions were addressed.

In the House, party reforms centralized power to the extent that they gave official leaders more opportunities to lead and members more opportunities to follow. Speaker Albert's new position as chairman of the then reactivated Steering and Policy Committee allowed him to announce a party policy and to establish a committee to develop it. No Speaker in recent memory had had the position or authority to do this. Moreover, with the Speaker and his leadership team's newly acquired powers of appointment, members were now more accountable to them. This was especially true of Rules Committee members, all

of whom were now appointed by the Speaker. The Rules Committee, long a foe of the leadership, now showed it could be a friend. But new powers could not give Speaker Albert the political authority that comes from political "clout." (See Chapter Three, pp. 95-158.)

Moreover, committee reforms decentralized power in order to provide all members with (1) greater opportunities to play a more equal role in the decision-making process, and (2) expanded legislative staff and informational resources. No longer could a particular committee chairman decide a subcommittee's legislative agenda, or the fate of a particular bill. Now a much larger number of members were able to make policy proposals without concern that one member could block them. Nowhere in Congress were changes more evident than in the House Interstate and Foreign Commerce Committee, and particularly in its Energy and Power Subcommittee. Factions within the committee aggressively advocated different policy proposals. All members, even freshmen, were able to play key roles in the development and debate of these proposals. The committee members' activities left little doubt that the barons had been deposed or that the norm of apprenticeship was followed any longer. (See Chapter Three, pp. 110-144.)

The reforms thus failed to create a legislature capable of developing and passing a coherent oil-pricing policy in a timely manner independent of the President. This was because party and committee reforms shifted power in two opposite directions -- from committee chairmen upwards to the leadership and downwards to individual members. With these shifts came equally contradictory ramifications. Even though the authority of the leadership had been enhanced, it still lacked the power and authority to provide Congress with the strong, centralized leadership it required. Regardless of the newly acquired powers the Speaker had gained, he still did not have the capacity to develop a coherent oil-pricing policy or the power to impose discipline on rank-and-file members to ensure its adoption. This was evident almost from the outset of the 94th Congress in the ad-hoc energy committee established by him. Ironically,

creation of this committee was hailed as evidence of the Speaker's new powers that would allow him to play a strong leadership role. However, the committee had no authority to write legislation itself nor did it, or the Speaker, even have the power to force those that did to follow its recommendations. That power still rested in the standing committees (however much their governance had changed). Only now this concentration of authority was even more striking. The power of the individual members within the committees had been expanded; the leadership's power was insufficient to override it. The Speaker could not insist that the chairmen of the Interstate and Foreign Commerce Committee and of the Ways and Means Committee coordinate the development of their two bills - - even though provisions in each dealt with the oil-pricing issue from significantly different perspectives, and even though each committee's decision affected the work of the other. Nor was the Speaker even able to impose deadlines for the standing committees' completion of their tasks. While the leadership's powers of appointment made members more accountable to their leaders, it did not provide them with the effective power to bind members to a particular course of action. Members were not a cohesive group; they had diverse personal priorities and political interests. Moreover, party organization in the country mattered less and less; and in any case, it was not effectively linked, much less subordinated, to the House leadership. Speaker Albert was very far from the position of Speaker Cannon. Even though Speaker Albert had succeeded in temporarily delaying Ullman's bill by appealing to the Rules Committee, asking it not to grant a rule, he could not block action for long - - not long enough to enforce the gentlemen's agreement between Ullman and Dingell, and to ensure that the two bills be debated together. Ullman's own political interests and those of his committee won out over the larger national and international importance of the pricing issue itself. Members had transferred more power to themselves than they had given to their leaders. (See Chapter Three, pp. 95-158.)

With members' greatly expanded powers came a disappointing lesson: their newly-found authority did not make decision-making any easier. As members of the Interstate and Foreign Commerce Committee discovered, having individualistic legislators without leaders did not facilitate decision-making; in fact, it may have made arriving at agreement more difficult. With no one in charge, even at the committee level, power was up for grabs. In consequence, power struggles erupted as members competed for recognition as leaders through their advocacy of differing policies. This slowed the decision-making process and, at times, distracted members from the substance of an issue as they became embroiled instead in political warfare which surrounded it. This was true not only within the committees, but also between committees, as the conflict of Ways and Means with Interstate and Foreign Commerce showed. With members all trying to exert influence and gain recognition over a particular aspect of an issue, competition rather than cooperation was the prevailing motivator. This difficulty was generalized by the expanded number and power of subcommittees. Issues were carved up among increasing numbers of decision-making units at a time when the complexity and interdependence of issues was growing. Comprehensive and coherent policy decisions were made all the more difficult. As Roger H. Davidson and Walter J. Oleszek observed: "Congressional decision-making sometimes resembles a meat slicer, reducing large public problems to a series of discrete, unrelated and often contradictory tidbits of policy."[1]

Moreover, even though members had gained more power individually through committee reforms, they gave up a great deal of this to staff. Although better informed, and thus better able to make sound decisions, congressmen became so dependent on staff that in some instances these unelected officials took on the role of surrogate legislators. They not only framed the issues members dealt with and educated them on the facts, but also provided them with their opinions and recommendations on strategy and policy choices. Even more important, they conducted negotiations between congressmen and, on their

1. Roger H. Davidson and Walter J. Oleszek, Congress Against Itself (Bloomington: Indiana University Press, 1979), p. X.

behalf, with representatives of the executive branch. The role they played has been compared in importance to Merlin's relationship with King Arthur in ruling Camelot.[2] Particular staff, like Charles Curtis, had more actual power than some members of Congress. Few reformers envisioned or intended this effect even though the effect of too many staff in the executive branch provided resounding evidence of this.

Similar unexpected consequences accompanied the reforms which opened committee proceedings - - and, thus, members' activities - - to public scrutiny. This did not automatically achieve accountability, or make policy decisions any easier. At times, it made them much harder. Policymakers were forced into the cloakrooms and mens' rooms where the critical decisions were actually made. At other times open committee proceedings only made it more difficult for members to compromise; now, more than even, their actions were closely scrutinized by interest groups and the press. In some ways, members were thus made more rather than less vulnerable to pressure from private interests.

The impact of reforms in the Senate (although clearly less evident) had some parallels to those in the House. This was true not only in the growing influence of staff, who framed the issues of debate and guided members in the appropriate course of action, but also in the declining power of committee chairmen. Senator Jackson clearly carried weight with his colleagues, and was able to convince them to accept his approach of delaying development of an oil-pricing policy. However, his authority did not derive from his position as chairman of the Interior and Insular Affairs Committee (under whose jurisdiction the issue fell) but from two other factors. He was the chamber's recognized leader on energy as well as a leading contender for his party's presidential nomination. An emerging trend within the Senate, which developed simultaneously throughout the period of gradual reform, was the growing number of senators who became - - or fancied themselves as - - their party's presidential candidate. This had an increasing influence on colleagues' perceptions of the

2. Harrison W. Fox, Jr. and Susan Webb Hammond, Congressional Staffs (New York: The Free Press, 1977), p. vii.

leading contenders and sometimes resulted in a greater willingness to follow their lead on policy matters as other senators looked forward to future patronage. This was certainly true in Jackson's case. (See Chapter Four, pp. 159-181.)

As these ramifications of reform illustrate, the old balance of power within the chambers had been displaced; and this displacement had an impact on the balance of power between the legislative and executive branches as well. Members of Congress were less willing to acquiesce in presidential leadership - - especially when it came from the opposite ideological wing of the competing party. In part, this can be attributed to partisan politics and to the renewed confidence Congress gained during the Watergate investigation, with its consequent blow to the prestige of the presidency. However, there was another, more important, contributing factor. Many members who had formerly played the quiet role of back bencher or junior legislator, dutifully following their senior colleagues, were now given power in committees and subcommittees and asserted this power to participate actively in the policy-making process. Many of these often very junior legislators aggressively challenged the executive and their own chairman. They were now better equipped to do so. They were better informed and, because of this, able to challenge the President's claims and proposals on other than simply partisan grounds. They now had their staffs, experts and an informational system upon which to rely. The President, in contrast, was an accidental President, not always in full control of his own troops. In consequence, they repeatedly challenged the FEA's not always very accurate studies on the cost of President Ford's oil-pricing proposals. (See Chapter Five, pp. 199-200.)

However, the power struggle that ensued between Ford and the Democratic majority showed that while reforms had clearly strengthened congressmen's resources and capabilitities, they had not done so to such an extent that members were capable of developing policies on their own - - a fact even more obvious when the President was of the opposing minority party and of

a different ideological school than the congressional majority. Members of Congress, even after reforms, were still very dependent on the executive for having accepted too much of Hansen and too little of Bolling. This was most obvious at the conference committee where the public was given one of the first opportunities to view what had always been conducted in secret - - the development of a bill. What they saw was the close involvement of the President - - so close that the separation of power and divisions of functions between the two branches were blurred. (See Chapter Seven, pp. 253-291.)

Moreover, the shifts in Congress' internal power structure brought additional changes in the relationship between the legislative and executive branches. The President had to respond to the new, more decentralized power structure; old ways were no longer appropriate. This was most evident in the way the President dealt with individual members. Before reform, a chief executive had essentially to sell his bill or programme to a handful of members in the key positions of power - - the chairman of the particular committee dealing with the matter and the chairman of the Rules Committee, and of the finance committees, and to the Speaker. If he could sell his proposal to those in control, they in turn would then do a great deal of the rest of his work for him. After reform, the President had to cast his lobbying net much wider. There was no one like the committee barons to whom to turn; he had to lobby subcommittee chairmen and even rank-and-file members at every stage of the decision-making process. His work was much harder as a result. (See Chapter Five, pp. 192-215.)

The President was not the only outside participant in the legislative decision-making process who was touched by congressional reforms. Interest groups were also forced to react. Under the old power system of the committee barons, the lobbyists worked the same way the President did: they sold their positions to the chairman and he in turn secured their passage. Mutually beneficial relationships developed in the closed-door environment taken for granted by lobbyists and powerful legislators. As a consequence, access to the

legislative process was effectively limited to a small number of interests, and some types of groups - - the long-established, traditional, economically motivated interests - - were favoured.

Under the new system, this changed. Open meetings brought greater scrutiny of members' actions by all interest groups and greater pressure on members as they fought for their positions. No longer were the committee chairmen capable of delivering the votes in their committees. A significantly larger number of members now had power, and because of this dispersal access to the process was thrown wide open. The influence of the old established groups was shaken, at least initially. The reforms stimulated disparate interest groups to form coalitions - - often of unlikely partners - - on an issue-by-issue basis in order to broaden the number of members actually lobbied. Thus, when Congress changed its practices, so too did the interest groups that seek to influence the policy-making process.

As the development of the EPCA shows, reform undoubtedly brought changes, but not always for the better or in ways that members or observers had hoped. The reforms did not bring about the transformation some anticipated because they failed to address what James L. Sundquist has characterized as "endemic weaknesses" or "missing capabilities" within Congress.[3] These weaknesses included the institution's lack of leadership and, thus, of means to plan, develop, and coordinate policy. So far as leadership is concerned, there is not a single member or small group in Congress that can speak with one voice for one party, much less for the membership as a whole. No member of Congress commands power comparable to that of the President. Congressional leadership is divided between the Majority Leader in the Senate and the Speaker in the House. Then within each chamber, it is further divided along both party and committee lines. Although party leaders are given official roles, their powers to lead are limited. In part this is because they are not elected to do so; they have no national electoral mandate equivalent to a President's. But it is also because

3. James L. Sundquist, The Decline and Resurgence of Congress (Washington, D.C.: Brookings Institute, 1981), pp. 155-198; 417-439.

other members are unwilling to confer that power. Reforms did nothing to change this, and in some ways exacerbated the problem by further diffusing power within each chamber. Neither did the reforms create mechanisms to integrate or coordinate the institution's decentralized decision-making process, nor were the parties themselves sufficiently cohesive to do so through the revitalized caucus. On the whole, power was divided among subcommittees and committees within each chamber - - while being further divided between both chambers. In avoiding this problem, reforms failed to provide Congress with a substitute for the services the President had long come to furnish - - and which Congressmen had come to take for granted. Thus, while much was changed in the way the Congress made its decisions, the institutional weaknesses - - as is evident in the oil-pricing issue - - remained.

It is very much worth asking why - - especially since belief in the efficacy of piecemeal reform is a cental conviction of any reform movement.[4] Perhaps the inherent weaknesses in the legislature were not easily remedied by reforms because those weaknesses are an outgrowth of the Constitution. By dividing power and the functions of governing among three branches, while at the same time establishing each branch as equal, the Constitution created, in Corwin's classic characterization, "an invitation to struggle."[5] In addition, the Constitution encouraged other divisive pressures when it dictated staggered elections for senators, congressmen, and the President.[6] Staggered elections make a cohesive government all the more difficult because they easily result in opposing parties, or ideological factions within a party, controlling either one chamber or one branch (legislative and executive) in opposition to the other. More importantly, political parties, which once offered some unifying influence over these disparate bodies, no longer appeared to do so. Parties have declined

4. Charles Frankel, The Case For Modern Man (Boston: Beacon Press, 1959), p. 47.

5. Edward S. Corwin, The President: Office and Powers, 1787-1957, 4th rev. ed. (New York: New York University Press, 1957), p. 171.

6. Herman Finer, The Presidency: Crisis and Regeneration (Chicago: University of Chicago Press, 1960), p. 302.

at the local, state and national levels; in the mid-seventies, they lacked a central or national basis of power. Institutional reform was unlikely to tie together fragmented parties. Instead, fragmented parties created institutional reform in their own image, diffusing power to congressmen so that they might more easily reelect themselves in circumstances where they could no longer count on their local desiccated party organizations to help them. In consequence, the very framework of government - - with its many divisions of power - - encouraged further fragmentation and divisiveness. This mired government in confrontation within and between the branches. These weaknesses could not be rectified by inconsistent and contradictory reforms which dispersed power in opposite and competing directions. But this sort of reform was the most likely consequence of the state of the parties.

Broadly speaking, other studies of these reforms have come to the same conclusions. Indeed, because of these reforms' significance - - they were the most extensive since the 1910 revolution against Speaker Joseph Cannon (R. Ill.) - - students of Congress have understandably taken great interest in them. The studies on reform fall primarily into three categories: (1) those which focus on the need for reform itself[7] (2) those which focus on the development and politics of the reform measures' adoption,[8] and (3) those which begin to assess

7. For example see Richard Bolling, House Out of Order (New York: E. P. Dutton, 1965); Mary McInnis, ed., We Propose a Modern Congress (New York: McGraw-Hill, 1966); David B. Truman, ed., The Congress and America's Future (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1965); Roger H. Davidson, David M. Kovenock, and Michael O'Leary, Congress in Crisis: Politics and Congressional Reform (Belmont, Calif.: Wadsworth Publishing Co., 1966).

8. For example see Burton Sheppard, "Internal Reform and Power Relations in the United States House of Representatives 1968-1975," (D. Phil. diss., Oxford University, 1976); Arthur G. Stevens, Jr., Arthur H. Miller, and Thomas E. Mann, "Mobilization of Liberal Strength in the House, 1955-1970: The Democratic Study Group," in Robert L. Peabody and Nelson W. Polsby, eds., New Perspectives on the House of Representatives, 3d ed. (Chicago: Rand McNally & Co., 1977); Davidson and Oleszek, Congress Against Itself. Herbert B. Asher, "The Changing Status of the Freshman Representative," in Norman J. Ornstein, ed., Congress in Change: Evolution and Reform (New York: Praeger Publishers, 1975), pp. 216-239.

the effect of reforms.[9]

Two subgroups dominate the third category. Some researchers have emphasized the effect of reforms on different aspects of Congress' internal structure. Scholars in this group have, for example, explored and interpreted the demise of the seniority system, the growing influence of freshmen members, and the growth of subcommittees. Other researchers, in contrast, have isolated the reforms' impact on the policy-making process itself. The present study attempts to contribute to the latter group.

9. For example see Allen Schick, "The Battle of the Budget," in Harvey C. Mansfield, Sr., ed., Congress Against the President, Proceedings of the Academy of Political Science, vol. 32 (1975); Norman J. Ornstein, "Causes and Consequences of Congressional Change: Subcommittee Reforms in the House of Representative 1970-1973," in Norman J. Ornstein, ed., Congress in Change: Evolution and Reform (New York: Praeger Publishers, 1975), pp. 88-114; Norman J. Ornstein and David W. Rohde, "Seniority and Future Power in Congress," in Ornstein, pp. 77-87; John G. Stewart, "Central Policy Organs in Congress," Proceedings of the Academy of Political Science, vol. 32, No. 1. (1975), pp. 20-33; Norman J. Ornstein and David W. Rohde, "Political Parties and Congressional Reform," in Jeff Fishel, ed., Parties and Elections in an Anti-Party Age (Bloomington: Indiana University Press, 1978); Norman J. Ornstein and David W. Rohde, "Shifting Forces, Changing Rules, and Political Outcomes: The Impact of Congressional Change on Four House Committees," in Peabody and Polsby, eds., New Perspectives, pp. 186-269; John W. Ellwood and James A. Thurber, "The New Congressional Budget Process: The Hows and Whys of House-Senate Differences," in Lawrence C. Dodd and Bruce I. Oppenheimer, Congress Reconsidered (New York: Praeger Publishers, 1977), pp. 163-192; Bruce I. Oppenheimer, "The Rules Committee: New Arm of Leadership in a Decentralized House," in Dodd and Oppenheimer, pp. 96-116; Samuel C. Patterson, "On the Study of Legislative Reform," in Susan Welch and John G. Peters, Legislative Reform and Public Policy (New York: Praeger, 1977), pp. 114-122; Fox and Hammond, Congressional Staffs; John Berg, "The Effects of Seniority Reform on Three House Committees in the 94th Congress," in Leroy N. Rieselbach, ed., Legislative Reform (Lexington, Mass.: Lexington Books, 1978), pp. 49-60; Fred M. Kaiser, "Congressional Change and Foreign Policy: The House Committee on International Relations," in Rieselbach, ed., pp. 61-72; Catherine Rudder, "The Policy Impact of Reform of the Committee on Ways and Means," in Rieselbach, pp. 73-90; Charles S. Bullock, III, "Congress in the Sunshine," in Rieselbach, pp. 209-221; Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity To Resolve Energy Issues," Legislative Studies Quarterly, vol. 1 (February 1980), pp. 5-30; Roger H. Davidson, "Subcommittee Government: New Channels for Policy-Making," in Thomas E. Mann and Norman J. Ornstein, eds., The New Congress (Washington: American Enterprise Institute for Public Policy Research, 1981), pp. 99-133.

Thus, although there is not yet a large number of studies which examine the impact of reforms on policy-making, this inquiry certainly does not stand alone. Important parallel works include articles in Leroy N. Rieselbach's Legislative Reform[10] and in Lawrence C. Dodd and Bruce I. Oppenheimer's Congress Reconsidered.[11] In these particular studies, the impact of reforms on the policy-making process is analyzed almost solely within a narrow focus of interest - - interest in a single committee or in a specific element (such as staff).

However, Bruce I. Oppenheimer's "Policy Effects of U.S. House Reforms: Decentralization and the Capacity to Resolve the Energy Issues,"[12] is an important exception to this. Oppenheimer stands out because of his broader approach. His analysis of the impact of reforms is set in a more inclusive context. Oppenheimer looks at the way the House dealt with a particular policy issue and at the obstacles that issue encountered throughout most of the decision-making process. Thus, Oppenheimer's study is of special significance here, both for its "holistic" direction and for its attention to the same bill which is the focus of the present study - - the Energy Policy and Conservation Act (EPCA).

Oppenheimer concludes that during the 94th Congress, the unintended effects of reforms impeded the House of Representatives' ability to develop legislation. The present study agrees with several of Oppenheimer's conclusions regarding some of the unanticipated impacts of reforms. But in several important instances, Oppenheimer's evidence is inaccurate, and in others he misinterprets it. He argues, for instance, that new opportunities for delay were an unanticipated consequence of reform. These, though different from the dilatory tactics which the committee barons had employed, had the same effect. They obstructed the policy-making process. The very presence of more powerful subcommittees, Oppenheimer explains, presented an obstacle. They added

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10. For example see Berg, pp. 49-60; Rudder, pp. 73-90.

11. For example see Elwood and Thurber, pp. 163-192.

12. Oppenheimer, "Policy Effects," pp. 5-30.

another layer of decision-making which was counter-productive because subcommittees' deliberations were themselves time-consuming, and because their decisions were subject to lengthy review by the full committee. To support this interpretation of events, Oppenheimer relies upon his own version of the Energy and Power Subcommittee's handling of the oil-pricing issue. He also alleges that, with more members now able to participate in the legislative process, the greater participation in debate further slowed activity when decisions reached the floor. On this basis, Oppenheimer argues that the opponents of decontrol used these very changes both to further their own position, and to impede measures which would end price controls. In so doing, Oppenheimer simply assumes much of what he needs to prove. And he demonstrates that he misunderstands some of the issues in the oil-pricing debate, their substantive complexities and political context.

Throughout the 94th Congress, both advocates and opponents of decontrol used every procedural opportunity they saw to further their own positions. But this was nothing new. Procedures have never been neutral or without effect on policy, and members have always - - to a greater or lesser extent - - relied on them.[13] Yet Oppenheimer treats procedures' role in parliamentary maneuvering as though procedures were strictly a consequence of reforms - - and, too, as though they were exclusive property of one side in the decontrol debate. He talks as though only advocates of controls used the available strategies of delay. In fact it was Chairman John Dingell, largely aligned with advocates of decontrol, who delayed a subcommittee decision. He did so to buy time - - time in which he could seek a compromise with the President. Dingell's conduct had little to do with this impact of reform, and a great deal to do with long-established parliamentary practices. He was attempting to control the course and substance of legislation after the fashion of a Wilbur Mills. His conduct strikingly exemplifies the old, rather than the new, politics.

13. David B. Truman, Government Process, 2d ed. (New York: Alfred A. Knopf, 1951), p. 330; Lewis A. Froman, Jr., The Congressional Process: Strategies, Rules and Procedures (Boston: Little Brown & Co., Inc., 1967).

Oppenheimer further misunderstands the reasons for delay in the work of the Energy and Power Subcommittee. The delays cannot be explained simply by claiming that the subcommittees, developed in response to House reforms, "created an additional layer of decision making."[14] They did, but the subcommittees were not only internally committed to lengthy proceedings. They were, and are, subject to a variety of influences. Some were non-procedural. For example, Energy and Power was a newly-formed subcommittee; it lacked even the benefit of staff. Moreover, while Dingell was trying to organize hearings, he was simultaneously seeking to hire the needed staff. Also at the same time, he was trying to organize a subcommittee with seven bumptious - - certainly inexperienced - - freshmen.

Some influences were substantive and political. Substantively speaking, it is important to observe the complexity of the oil-pricing issue. This was enough to slow down even seasoned legislators, so one can imagine how it taxed the understanding of subcommittee members without prior experience. So far as political influences are concerned, the subcommittee was riddled by political factions. And it was things like this - - not just the supposedly self-subsistent internal complexity of the subcommittee's formal decision-making process - - which produced the delays. Given all this, it is hardly surprising that the subcommittee's final proposal (with only minority backing) received a lengthy, time-consuming review from the majority-dominated full committee? Yet Oppenheimer "explains" the review's length with nothing more than an assertion that committee review created "another layer" - - a layer whose presence he regards as having a pre-determined, self-evident meaning. (See Chapter Three, pp. 134-144.)

Though of considerable importance, the matters so far mentioned all concern particular difficulties in Oppenheimer's work. A general observation is in order as well. While Oppenheimer's approach is broader than that of most

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14. Oppenheimer, "Policy Effects," p. 16.

other students with parallel concern, it really is not broad enough. Thus the present study seeks both to consider matters and aspects of decision-making which Oppenheimer ruled out, and to consider them in an even broader context. The present study traces the EPCA through the entire legislative decision-making process - - not in the House alone, but in both chambers of Congress. As a result, this study treats the critical conference stage, neglected by Oppenheimer and most other researchers. And it actually analyzes the role of key external actors (interest groups and the President). Yet without an analysis of these, which Oppenheimer also excluded, one can only claim a very limited understanding of congressional decision-making after reform. When external actors, the conference stage, etc., are brought into the picture, everything changes. One is able to achieve a more comprehensive understanding of the issues - - and of the political machinations - - surrounding the development of the important and complex oil-pricing policy.

Further, one also gains a somewhat different understanding of the impact of congressional reform. This study contends that what Oppenheimer interpreted as causes of delay were, in part, manifestations of greater democracy, and in part, the result of deep divisions over an issue that posed new and complex problems. Moreover, while there were many unanticipated effects of reforms, it was not these that created such difficulties for Congress in developing and then adopting its own oil-pricing policy. Rather, it was the failure of reformers to make changes which addressed the institution's inherent weaknesses - - Congress' inability to plan and its lack of centralized leadership. In fact, reformers not only largely ignored this critical need, but the reforms they adopted, by further dispersing power, may make amelioration of these inherent problems even more difficult in the future - - at least so long as there is no majority in the country to return a Congress at one with the President.

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