

Congress Reconsidered

edited by

Lawrence C. Dodd
University of Texas at Austin

and

Bruce I. Oppenheimer
Brandeis University



PRAEGER PUBLISHERS · New York

COPYRIGHT ACKNOWLEDGMENTS

"The Conservative Coalition in Congress," by John F. Manley, is reprinted from *American Behavioral Scientist*, Vol. 17, no. 2 (Nov./Dec. 1973), pp. 223-247, by permission of the Publisher, Sage Publications, Inc.

"Congress and the President: Enemies or Partners?," by James L. Sundquist, has been condensed, with minor modifications, from the author's chapter #13 in *Setting National Priorities: The Next Ten Years*, edited by Henry Owen and Charles L. Schultze. © 1976 by The Brookings Institution. Used by permission of The Brookings Institution.

"Will Reform Change Congress?," by Charles O. Jones, was originally prepared for a seminar on "The Role of Congress II, A Study of the Legislative Branch." © 1975 by Time Inc. and Charles O. Jones. Reprinted by permission.

"Strengthening a Congressional Strength," by Richard F. Fenno, Jr., was originally prepared for a seminar on "The Role of Congress II, A Study of the Legislative Branch," © 1975 by Time Inc. and Richard F. Fenno, Jr. Reprinted by permission.

Published in the United States of America in 1977
by Praeger Publishers,
200 Park Avenue, New York, N.Y. 10017

© 1977 by Praeger Publishers,
A Division of Holt, Rinehart and Winston, Publishers
All rights reserved

Library of Congress Cataloging in Publication Data
Main entry under title:

Congress reconsidered.

Bibliography: p. 308

1. United States. Congress—Addresses, essays, lectures. I. Dodd, Lawrence C. II. Oppenheimer, Bruce Ian.

JK1061.C587 328.73 76-17249

ISBN 0-275-23410-X

ISBN 0-275-64640-8 pbk.

789 074 987654321

Printed in the United States of America

6. *Committee Reform and the Revenue Process*

Catherine E. Rudder

The Old Ways and Means Committee and Its Transformation

The 94th Congress will be recorded as a “reform Congress,” one that altered rules, procedures, and, consequently, power relationships in the House.¹ A major target of House reform was the Ways and Means Committee and its former chairman, Wilbur Mills (D-Ark.), who had often been cited as the single most powerful person in the House. Constitutionally empowered to originate tax legislation, the House delegated that duty to the Committee on Ways and Means, whose jurisdictional vortex has drawn into itself numerous matters of national concern: trade, social security, unemployment compensation, national health insurance, and public assistance. Mills could prevent congressional action in these areas. For example, with the support of his committee, which he assiduously maintained, it was Mills who set the terms for medicare, the 1968 tax surcharge, the 1969 tax reform act, and revenue sharing in 1972.² Mills was an expert substantively in Ways and Means legislation and politically in maintaining his preeminent position in his committee and in the Congress.³

Under Mills, the Ways and Means Committee was structured to

facilitate committee autonomy and independence from the House and, at the same time, to press upon the House committee decisions without alterations from the floor. The committee was small relative to other House committees; it had 25 members with a constant 3-to-2 party ratio. Those recruited to the committee were "reasonable" and "responsible" lawmakers who, upon first joining the committee, experienced an apprenticeship period of learning the subject matter and practicing deference to more senior members. There was a spirit of group identification and fraternity that led members to practice norms of reciprocity and restrained partisanship and to defend committee decisions outside the committee.

Decision making was highly centralized around Chairman Mills. Having abolished subcommittees a short time after he became chairman in 1958, Mills became the keystone of the committee arch, the central conduit for interest group and member demands. His technique in dealing with his committee was to discuss thoroughly an issue, in meetings closed to the public and the press, and to devise a compromise that could create consensus in the committee and that could pass on the floor of the House. Mills's power stemmed from his ability to forge consensus, his sense of timing, his eventual willingness to change his own position, his reputation of being the knowledgeable tax expert in Congress, his past performance in the committee, House, and conference, and, of course, his position as chairman of a committee whose substantive importance and political autonomy were considerable.

It was claimed by Ways and Means members that the complexity of the committee's subject matter and its national significance required insulation from short-term electoral forces and particularistic district concerns. The committee needed to be free to forge bills that could take into account various philosophies and interests. This delicate balance could not withstand floor amendments, any one of which could undo the compromise or could cost the Treasury millions of dollars. Thus, the freedom of movement was bestowed upon the committee because it did what the House wanted it to do: produce tax bills that were widely acceptable to House members. Political scientists John Manley and Richard Fenno both maintain that these bills were widely accepted because members of the House approved of the committee's decisions rather than because individual members lacked the expertise, time, energy, procedural ability, organization, or willingness to risk reprisals.⁴

Several procedural reforms established in the 93rd Congress set the stage for frontal challenges to Ways and Means in the 94th Congress. First, the caucus mandated that all committee mark-ups thenceforth would be held in public unless a majority of commit-

tee members with a quorum present publicly agreed in a roll call vote to close the meeting. Only those hearings covering matters such as national security issues or personnel concerns could be closed to the public. This change was directed especially at Ways and Means. As a spokesman for Common Cause commented after the vote, "We're going to try very hard to keep Ways and Means open. They're perhaps the worst offender, except possibly for Armed Services."⁵

A second change in 1973 was the establishment of a secret ballot vote to approve each nomination for committee chairman made by the newly formed Democratic Steering and Policy Committee. This change, in conjunction with a 1971 change that allowed committee chairmen to be approved individually rather than as a group, would give the caucus an opportunity to remove committee chairmen whose performance the majority of Democrats considered unacceptable.

The third relevant change was an alteration of the procedure by which major legislation would go to the floor under a closed rule. In the past Ways and Means bills had been granted a rule from the Rules Committee which prevented amendments on the floor of the House. This procedure meant that House members had been given the opportunity to vote only on an entire Ways and Means bill as an all-or-nothing proposition. In 1973 the caucus altered this procedure. Under the caucus change, 50 Democrats can propose to the caucus an amendment to the bill under question. If a majority of the caucus approves, then the Democratic members of the Rules Committee are instructed to report a rule to allow that specific amendment to be voted upon by the entire House. Although this modification of the use of the closed rule was apparently "aimed at the Ways and Means Committee and its chairman, Wilbur D. Mills," Mills was not present during the vote on the change and "made no apparent attempt to fight" this resolution.

Despite these changes, the caucus was unwilling to alter drastically the power relationships in Ways and Means at this time, and in fact was thrown in the unlikely role of protecting the committee from attempted encroachments into its jurisdiction. Although the Bolling Committee reported to the caucus in March 1974 a plan for committee reorganization including significant jurisdictional changes for Ways and Means and other committees, the Democratic caucus decided to send the Bolling plan to a study committee chaired by Julia Butler Hansen (D-Wash.), which in turn reported out a much less radical plan. After six days of floor debate, a modified Hansen plan was passed on October 8, much to the relief of the Ways and Means Committee.

However, although Ways and Means was permitted to retain most of its old jurisdiction, the committee was dealt an important blow: the

Hansen plan required that all committees with twenty or more members must have at least four subcommittees. This reform was aimed specifically at Ways and Means, for Mills had abolished subcommittees after he assumed the chairmanship and had refused to set up subcommittees despite an increasingly heavy work load that the committee could handle less and less well.

The Hansen plan provided for an early organization of the House in December. The Democratic caucus of the 94th Congress met from December 2 to December 5, 1974, immediately after Chairman Mills had been widely publicized for engaging in erratic personal behavior involving a striptease dancer. After a year of frequent absences from the committee by Mills, of Mills's defiance of the caucus, and of little legislative productivity in the areas of tax revision and health insurance, the caucus, which now included 75 new freshmen Democrats to provide the margin of votes, was now prepared to dismantle the power of Chairman Mills and the Committee on Ways and Means. First, the caucus stripped the power of the Democratic members of Ways and Means to make the Democratic committee appointments, a duty they had been performing since 1911 when the committee-on-committees function was originally given to the Democratic members of Ways and Means in a reform movement at that time.

Not only did the Ways and Means Committee lose the assignment function, but the committee was enlarged, not by three members, as the Rules Committee had been in an effort to liberalize it in 1961, but by almost 50 percent, from 25 members to 37 members.⁶ Moreover, the previously permanent party ratio of 3 to 2 was altered to reflect the overwhelmingly Democratic Congress of 2 to 1. The large influx of new participants and the increase in the size of the committee was bound to affect the way the committee operated, but the method of recruitment to the Ways and Means Committee also changed, and this in turn affected what kind of person was likely to be a member of the committee. The composition of the committee was also affected by the fact that the freshman caucus had exacted a promise from the Steering and Policy Committee that at least two freshmen would be appointed to the Ways and Means Committee.

Strengthening the requirements of the Hansen resolution, the caucus required that five, rather than four, subcommittees be established. The caucus also dealt with the method that should be used in assigning members to subcommittees. Ways and Means members immediately formed subcommittees and selected assignments before the expiration of the 93rd Congress in order that they could claim two seats before the new members could claim any. They established six committees, five required by the caucus and an oversight committee, as set forth in the Hansen reforms.

Besides the establishment of subcommittees, an additional task had been added to the committee. The Budget and Impoundment Control Act of 1974 had created a House Budget Committee, five members of which were to be members of the Ways and Means Committee. Since representation on the Budget Committee was considered tantamount to chairing a subcommittee, those members who served on the Budget Committee could not also chair a subcommittee. This rule spread responsibility within the Ways and Means even further.

In the midst of the caucus-mandated changes, Chairman Mills was hospitalized on December 3, 1974, and later that month formally resigned as chairman of the committee. Mills was not well; the caucus was obviously in a "reform mood"; and Mills would have had to face nomination by the Steering and Policy Committee and secret ballot election by the restive caucus. Mills was replaced as chairman by Al Ullman of Oregon, the next most senior Democrat on the committee.

Reform: Purposes and Consequences

Although procedural reform of Congress and of the Ways and Means Committee has been advocated for a variety of reasons, at least three closely related but conceptually distinct purposes of reform can be identified. One purpose has been to democratize procedures and to remove the negative "veto points" in Congress. Given the *modus operandi* of the Ways and Means Committee under Chairman Mills, with closed mark-ups and closed rules, Ways and Means was a key target for those who wanted Congress to be run by more democratic procedures.

The argument in favor of democratizing procedures is that democratic institutions ought to employ rules and procedures that are fair, allow people to express their concerns, operate on the basis of majority rule, and permit public scrutiny—in other words, democratic rules of procedure without reference to any particular interest or ideology. The problem with this view is that, as Ralph Huitt is fond of pointing out, rules and procedures are not neutral: rules structure conflict to the advantage of some and the disadvantage of others, although it is not always possible to predict who or what interests are going to be advantaged.⁷ Moreover, it turns out that simple democratic concepts such as majority rule are not nearly as simple nor necessarily as democratic as they at first may seem.⁸ There is a need for some control mechanisms to aggregate interests and to provide for responsible governing.

A second purpose of procedural reform is to alter *who* makes the

decisions. It seems that those who are most eager for certain kinds of reform are those who stand, or at least think that they stand, to benefit from the changes. For example, freshmen and non-committee members who have been excluded from the decision process in the past may wish to become participants. However, in adding participants, no one may be better off in the long run if, as a result, coherent legislation cannot be produced.

A third purpose of procedural reform is to alter legislative outcomes. Many people complained about the Ways and Means Committee, for example, because of the particular bills it was producing and those, such as national health insurance, that it was not producing. But to attempt to control legislative outcomes by the indirect route of altering structures and procedures is a highly risky business. For instance, an expanded committee with presumably more "liberal," more "responsive" members might not concomitantly produce more "liberal" and more "responsive" legislation. Nor will open meetings necessarily ensure any particular legislative outcome, despite the expectation of some that more liberal legislation would result. The legislative consequences of reform may be quite different from anything that is anticipated by the reformers. In general, reforms often produce outcomes that are neither intended nor necessarily consistent with their original purposes.

Thus, the primary purposes of procedural reform of Congress have been to democratize its operations, to change who is making the decisions, and to modify the substance of legislation. In accomplishing one of these purposes, by necessity another one may be affected. For example, democratizing decision making entails changing who is making the decisions. However, accomplishing one purpose may interfere with one of the other purposes or may make one of them not worth accomplishing. For instance, the power of the chairman may be sufficiently diluted to make the second purpose of reform—changing personnel—meaningless. If the chairman has little power, who cares who is chairman? Reform, in short, is not the simple matter that it may at first appear.

The reformed Ways and Means Committee provides an intriguing arena in which to consider the results of procedural reform. Even though some of the effects of the changes in the committee may be temporary and some may not have yet emerged, it is worth examining Ways and Means in light of how well the changes may have accomplished the three purposes of procedural reform identified here and in light of what other impact the reforms may have had which were probably not anticipated.

In addition to secondary sources, the author used two sources of primary data in examining the impact of the reform. First, the author

was a participant observer of the meetings of the Ways and Means Committee and its subcommittees on trade and social security from April to August 1975. As a staff assistant of Representative Abner Mikva (D-Ill.), a new member of the committee, she was specifically assigned to cover the Committee on Ways and Means. This assignment provided contextual knowledge of and firsthand experience with the committee and two of its subcommittees. The second main source of original data derives from personal interviews that the author conducted with twenty-seven members of the committee in July 1975. A fair representation of old and new members, Republicans and Democrats, southerners and nonsoutherners, and conservatives and liberals were included among those interviewed.⁹ The length of the interviews ranged from thirteen to forty-five minutes each, and a common core of questions was asked each member.

Democratizing the Committee

Most of the changes in the Ways and Means Committee have had the effect of democratizing procedures. The committee operates more openly, more democratically than in the past, and members of the committee and of the House are better able to influence its legislative product. But this accomplishment has been achieved at the expense of the ability of the committee to operate efficiently and to enforce its legislative will in the House. Moreover, there are some unexpected changes. The beneficiaries of at least one of the democratizing reforms, for example, are the organized interest groups.

The Enlargement of the Committee and the Establishment of Subcommittees

Forming six subcommittees whose chairmen can hire their own staff has been a means, as one member expressed it, of "spreading the cookies around." The changes have given more House members an opportunity to participate in committee deliberations and to take leadership roles in the committee. On nontax legislation the establishment of subcommittees has actually allowed the committee to act more quickly, to work on more than one subject at a time, and to hold hearings on and report out legislation that they might not otherwise have had time to complete or to consider in detail.

At the same time, however, the demands on members' time have been considerable. It is not uncommon for meetings of the entire com-

mittee and its subcommittees to consume an entire day from 8:00 A.M. to 8:00 P.M. Moreover, the enlarged committee operates slowly and inefficiently, especially on tax matters for which there is no subcommittee. Thus, all 37 members were involved in 1975 in the most time-consuming efforts of the committee: tax reduction, energy taxes, and tax revision. Both old and new members complained that the enlarged committee was “unwieldy” and “bulky.” As one veteran Democrat observed in an interview, “The difference in trying to get a consensus of 35 members as opposed to 25 is tremendous, and it’s more than the numbers would indicate.”

Despite these difficulties, the expansion of the committee has lessened the ability of a small group in the committee to block legislation. For instance, it was noted by one prominent member of the committee that in a “big committee it is harder for one clique to be dominant. . . . On a small committee little factions or cliques develop. You used to have to cater to the Republicans and southern Democrats. That happened on taxes last year. We never got anywhere.”

Open Hearings and Mark-ups

Open hearings and mark-ups have also democratized the committee. In 1973, 30 percent of the meetings of the Ways and Means Committee remained closed to the public. By 1975 the public and press were excluded from only 2 percent of Ways and Means hearings and mark-ups. The ability of the chairman to form majorities in secret session with no roll call votes was correspondingly diminished, although committee Democrats have frequently caucused in secret.

Despite the apparent ideological neutrality of the rule to operate in the open, in practice this rule has worked more to the benefit of some people and groups than others. Specifically, it is interest group activity which has apparently been most profoundly affected by the open mark-ups, according to the Ways and Means members who were interviewed. Although no specific question on interest groups was asked in the interviews, 12 members volunteered comments on the effect of open mark-ups on the activities of lobbyists.

One veteran Democrat, for example, observed, “The open meeting is not as fruitful as I thought it would be. . . . The public’s not there, but the interests are. . . . Open meetings put special interests into the process and gave them an active input.” Several members mentioned the presence of lobbyists in the committee room during mark-up sessions. Said one, “A member now goes out to the audience and comes back with a question or amendment [prepared by a lobbyist].”

The open meetings have affected the committee "adversely," according to another veteran, who said:

. . . and remember, I'm a liberal Democrat. Under the old system we made effective trade-offs and had effective discussion which produced effective legislation. Now there is reason for more suspicion than there was before. During the energy [tax bill] mark-up, members went down and sat in the audience and talked with a very specific interest and wrote an amendment, came back up and offered it. The media should be there but not the special interests. Those are the people who are out there day after day.

The member continued, "With the open meetings a member has to play to his special interest"—especially, he said, if the member is not from a safe district.

Apparently one technique that lobbyists employ is to call an important constituent in a member's district as a proposal is being considered in committee and have that constituent call the member immediately in the committee room during the meeting to express a position on the issue at hand. A Republican reported, "People are on the phone before adjournment."

The "public" interest groups are also increasingly active and are becoming more respected by members. Common Cause and Ralph Nader's tax group monitor all Ways and Means meetings and have worked with and even organized sympathetic members on tax proposals. They have also provided members with detailed information on tax "loopholes" and how they work. Another group, Taxation with Representation, publishes analyses of the voting patterns in committee and reports on mark-ups in Ways and Means. Still, the activities of these kinds of groups are insufficient to counter the "private" interest groups. One member, for example, felt that there are "no true representatives of the public. There are neglected areas. Common Cause and Nader have their own particular areas to represent." To the extent that these groups do constitute an appropriate counter to other interest groups, they themselves admit that they are "outgunned."¹⁰

One set of beneficiaries of the open meetings has been the personal staffs of the representatives who had been excluded from executive sessions. At least 12 members now have staff assigned to cover Ways and Means meetings.¹¹ This change provides congressmen with information and assistance that was not previously available to them. Several representatives have even combined their resources and hired a tax expert to assist the lawmakers in their Ways and Means work.

It seems that open meetings have been a mixed blessing for the Ways and Means Committee. Members' votes are now public and

publicized. The press can cover the committee directly rather than through "sources." The aides from Treasury and the committee staff less exclusively control the information that members receive. However, the change in interest group activity provides an unexpected twist to open hearings and mark-ups. Opening meetings to the public has meant opening meetings to everyone, including lobbyists, who, it has been claimed, take an even greater part in writing Ways and Means legislation than they did in the past. As one member commented, "Now if a deal is struck, they'd [the member] better support whatever measure they've promised. If they renege on agreements, the other party is going to know it." Thus, the open meetings have made members more accountable to whoever cares to pay attention. What originally looked like a neutral procedural reform has thus far had an effect that is hardly neutral.

Closed Rule Reform

Like the open meeting reform, the alterations in the use of closed rules has contributed to democratizing the committee and the House: more people directly influence Ways and Means legislation. This reform has broken Ways and Means's exclusive control of the taxation decision process in the House. As a consequence, the making of tax law has been fundamentally altered. Instead of a tightly controlled committee whose decisions are enforced in the House, the decision process has been opened to the Democratic caucus and to the entire House membership. At the same time, the ability of any person or group to produce and pass a coherent piece of taxation legislation whose content is satisfactory to a majority of the House may have been severely hampered.

In the past it had been argued that a closed rule was necessary for Ways and Means legislation because of its complexity and because of the delicate compromise constructed in committee which could be destroyed by modifying amendments on the floor. At the same time, closed rules gave the Ways and Means Committee a considerable amount of power to determine the shape of the tax law and gave members who disagreed with sections of Ways and Means bills little recourse other than voting against the entire bill. Until the closed rule reform, for example, opponents of the oil depletion allowance had had no chance to remove that preference from the tax code since its original enactment in 1926. Since the majority of Ways and Means members supported the allowance, it was retained, although it was modified by the committee in 1969.

Interestingly, it has been dissident committee members rather

than noncommittee Democrats who have made use of the 1973 procedural change. In 1974 Charles Vanik (D-Ohio) and William Green (D-Pa.) each proposed an amendment to a tax revision bill. The caucus instructed the Rules Committee to permit a floor vote on these two amendments, one to change the foreign tax credit for businesses to a foreign tax deduction and the other to eliminate the oil depletion allowance. Both of these amendments were devised to reduce the tax preferences of businesses even though Ways and Means had not recommended this course of action.

This defiance of Wilbur Mills and the majority of the Ways and Means Committee was met with defiance. Mills refused to bring the bill before the Rules Committee with the excuse that he had been given contradictory instructions: for a closed rule by Ways and Means and for a modified closed rule which allowed the two amendments from the caucus. The bill died. The closed rule reform had ended in deadlock.

In 1975, however, there was again a challenge, this time on the 1975 Tax Reduction Act, and the outcome was quite different. Again Ways and Means refused to remove the oil depletion allowance. Chairman Ullman supported this position with the suggestion that the matter be taken up in a subsequent bill, but Green and Sam Gibbons (D-Fla.), along with five new members of the Ways and Means Committee, gathered the required 50 signatures and petitioned for a caucus vote. That amendment and another which would retain the allowance for independent oil producers were permitted. Green and his allies won the removal of the allowance on the floor of the House. (The special provision for independent producers, however, was added to the bill in conference at the insistence of Senator Long.)

Having lost that battle, Ullman began to realize his subservient position vis-à-vis the caucus. In short, the Ways and Means Committee had been and would probably continue to be overruled on certain matters, given the current predilections of the Democratic caucus. As a consequence of this realization and of his political situation in the committee, a situation which often required 19 Democratic votes to form a majority in the face of unified Republican opposition, Ullman began to help the dissidents short-circuit the caucus procedure to add amendments to Ways and Means bills. On the tax revision and extension bill, in order to form a majority, Ullman agreed to request a modified closed rule that would permit six strengthening amendments to the bill. Hence, Ullman gained the Democratic votes needed to report out the bill, and the dissidents were spared the choice of no tax reform or of appealing to the caucus.

Thus, the use of the new procedure to modify closed rules on Ways and Means bills was first tried in 1974 and first succeeded in

1975. It worked to the benefit of disgruntled Ways and Means Democrats and those who desired to strengthen Ways and Means legislation by reducing tax advantages for certain business operations.

In contrast to the new "appeal" procedure, the gradual use of modified-open and open rules is less demonstrably salutary. There is general agreement that the energy tax bill, reported under an ironically entitled "orderly open rule," was completely gutted on the floor of the House with over 200 amendments proposed, not all of which were actually considered on the floor. Many people have argued that it was the open rule which prevented the House from producing a coherent and tough bill. And it is probably that experience which led the Ways and Means Committee later on in the year to shy away from requesting open rules on, for example, H.R. 10210, the unemployment compensation system revision.

It can be argued that the House's performance on the energy bill was less an indication that Ways and Means bills should not be reported out on an open rule than it was that the House and the country are not politically ready for a strong energy policy. The open rule simply allowed the House to work its will, or nonwill, as the case may be.

In any case, the reform of the closed rule has lessened the ability of Ways and Means to determine taxation policy univocally. For the first time the House has been given an opportunity to vote on specific provisions in taxation legislation. The long-run effect of the new procedure for allowing amendments on tax bills will be determined by the composition of the Democratic majority and the Congress.

An open rule provided individual House members more say in the intricacies of Ways and Means legislation and reduced the committee's exclusive claim on tax bills in the House. At the same time, the open rule permitted a significant weakening of the energy tax bill to the extent that some people have dubbed it a "nonpolicy." Complained one veteran Democrat, "Now we have 435 independent Democrats and Republicans. . . . The modified rules have destroyed the opportunity for strong leadership and will potentially destroy the institution." There are already suggestions to "reform the reform." For example, one proreform observer of the energy debacle observed, "The 'orderly open rule' proved to be a near disaster. . . . It seems obvious that a more restrictive rule is needed."

The Loss of the Democratic Committee Assignment Duty

If open rules have lessened the ability of the Ways and Means Committee to enforce its will on the floor of the House, the loss of the Democratic committee-on-committees duty has exacerbated that dif-

ficulty. How important the committee assignment duty was in securing floor support for Ways and Means bills is a matter of some dispute among committee members. That this duty was important to the Democratic members is underscored by John Manley: "Thus the Ways and Means Democrats . . . see this [committee assignments] as one of the most important things they do." ¹²

Most veteran Democrats see the loss as inconsequential, as affecting primarily the committee's prestige, and feel that the assignment power was never employed to exact support for Ways and Means bills. In their view the threat of using the committee assignment process as a means of reprisal against opponents of Ways and Means bills was slight, for members receive their committee assignments before they vote on Ways and Means legislation, and Ways and Means had no power to take away an assignment from an opponent. Said one veteran Democrat, "I never saw it used to gain support for a bill." Said another, "That [committee-on-committees function] amounted to nothing. It only happened once every two years." A third felt that the loss of the function affected the committee "not a bit. Once they get on a committee, they forget how they got on it." With this loss, he continued, "we lost prestige, not power."

It might be argued that prestige was perceived as power by those representatives who did not have it. Perhaps the old Ways and Means Democrats in fact did *not* consciously use their assignment duty to enforce support, but other Democrats may have *perceived* that assignment power as a threat. Another explanation is that the loss of this function was sufficiently embarrassing and perhaps demeaning that senior members prefer to discount its value.

New members, on the other hand, tended to emphasize the importance of the loss. One new Ways and Means Democrat, for example, felt that the loss of the assignment duty has had a "tremendous" effect on the committee's operation. "It constitutes a substantial diminution in power for the committee. It is exactly where Ways and Means people had their power." A senior Republican concurred:

From the standpoint of pure politics the most important change on the operation of the committee is that the Democrats lost their committee-on-committees power, the power to appoint House members to committees in the House. This power provided them with an element of respect and gave House members second thoughts about crossing them on the floor or not going along.

One likely result of the loss of the assignment duty is that as the committee becomes less prestigious and powerful, different people will be attracted to the committee. As both Fenno and Manley have

pointed out, the major goal of Democrats on the old committee was one of internal influence in the House. Presumably, as the committee is less able to meet that goal, members will readjust their goals, and the committee will begin to attract members with different personal objectives. Perhaps the predominant goal for "safe seat" Democrats will begin to shift to the predominant Republican goal of making good public policy, while Democrats from less sure electoral districts will probably have to focus their primary attention on the goal of reelection.¹³

Changing the Decision Makers

Of course, democratizing the decision process automatically alters who makes and influences the decisions. Expansion of the committee, for example, has increased the number of people who are involved in committee decisions. The closed rule reform has increased the influence of liberal dissidents on the committee, and it has in part taken the decision process out of the hands of the Ways and Means Committee. Subcommittees have provided new positions of leadership for some committee members.

One personnel change that has not yet been discussed is the change of chairmen from Wilbur Mills to Al Ullman. This change has received as much attention in the press as any of the committee reforms, and yet this change is probably not as important as any of the other changes (that is, except to Mills and Ullman personally).

Over the years in Congress, Ullman had apparently moderated his liberalism considerably to the point that in the last few years his voting pattern (on the basis of conservative coalition scores) has become similar to that of Mills. Mills and Ullman have shared another similarity as chairmen. The composition of the Ways and Means Committee is such that there is no automatic majority coalition. Winning coalitions more often have had to be developed. Both Mills and Ullman have frequently found themselves in the enviable position of being the crucial swing vote on the committee. The two chairmen also have largely had the same tax staff accessible to them. The staff of the Joint Committee on Internal Revenue Taxation, with Lawrence Woodworth as its chief of staff, has continued to serve the Ways and Means Committee on matters of taxation.

There are differences between the two chairmen—in their personal styles, for instance—but the drastic changes in the committee, the demands which the committee faces from the caucus, the different legislation confronting the committee in 1975, and the lessened power of the chairman make it impossible to compare the two chairmen.

Their situations are entirely different, and style is circumscribed by opportunity. One member of the committee, for example, commented, "The changes in the Ways and Means Committee and the House changes are tied together. The chairman must react differently from the way he reacted in the past. He's not protected by seniority. This causes a tremendous change in the way the committee operates."

To the extent that the changes have undercut Ullman's ability to lead the committee, Ullman has tried to overcome this difficulty by making use of the Democratic caucus on the committee. He tries to forge agreement in closed meetings among the Democrats. He employed this method with the energy bill by setting up task forces composed of Democrats and with the tax revision bill in which the final compromise was hammered out in a secret caucus meeting. Inevitably, this method of operation arouses the ire of Republicans whose response is to vote en masse against Ullman in committee. This method also breaks up the conservative coalition of Republicans and southern Democrats on the committee. A senior Republican complained, "The Republicans feel cut out and therefore resist supporting the chairman. . . . The committee is polarized. It's partisan. The Republicans are responding to being cut out of the process." Said another, "The Republicans have to act together. . . . It's the only way we have to make our position felt." Ullman, in turn, has publicly mentioned that he resents the consistent and staunch Republican opposition that he has confronted in the committee.

Another consequence of the chairmanship change is that Chairman Ullman is challenged in the committee, on the floor, and in conference to a much greater extent than Mills ever was. The fact that Ullman is successfully challenged reduces his own power and the power of the committee to determine tax law. One Republican member explained, "There's a group on the Democratic side testing the chairman all the time. It's sort of the middle-level, middle-management group who were on the committee under Mills—Gibbons, you've probably noticed him the most, but also [Joseph] Karth [D-Minn.], [James] Corman [D-Calif.], and Green." Said a senior Democrat, "There's a different atmosphere. Members feel freer to challenge Ullman."

Ways and Means's success in getting its bills passed on the floor unamended has declined since Wilbur Mills's departure, if for no other reason than that individual members now have a *means* by which they can challenge Ullman and his committee's decisions. When Mills finally brought a bill to the floor, he was sure of its passage and was protected from amendments by bringing his bills out under a closed rule. When he went to the floor, he could count on his own committee to support him, and the non-committee members "assumed he knew what he was talking about, and they would go along,"

explained one veteran committee member. "But the new members have changed the whole complex of the House."

If Ullman has confronted opposition on the floor of the House, he has also experienced considerable difficulty in dealing with the Senate Finance Committee and its chairman, Russell Long (D-La.), in conference. Two senior Democrats who have participated in many conferences over the years both noted this phenomenon. The fact that Ullman can command less authority in the committee and the full House than Mills could has reduced Ways and Means's bargaining position in the conference. "Ullman doesn't have the votes in his pocket the way Wilbur did, but even Mills wouldn't have them anymore." Not only can the Ways and Means Committee no longer offer a solid front in conference, Ullman is less experienced than Mills in dealing with Long, who has made a point of humiliating Ullman in conference.¹⁴

The power of the chairman of Ways and Means apparently has been decimated. The opportunities for forceful leadership are much fewer. More committee and House members are getting a say in Ways and Means legislation at the expense of the chairman and the committee as a whole. In turn, the House is itself apparently experiencing a weakened ability to deal with the Senate in conference.

Changing the Substance of Legislation

Assessing the degree to which the substance of Ways and Means legislation has been altered as a result of the procedural reforms is probably the most difficult and most interesting aspect of the changes in the committee. It is probable that the change in chairmen, given the other changes, has not particularly altered the legislative product of Ways and Means, with the exception that the House is in a weakened position in House-Senate conference. Nor have open meetings apparently had much effect other than giving interest group lobbyists more direct opportunity to influence legislation. One member, for example, commented, "It [open meetings] has had no effect. That surprised me. . . . I miscalculated. . . . Members are as willing to support special interests in public as they are in private."

The reform of the closed rule, however, has definitely put its mark on the taxation legislation produced by the House. The caucus procedure of forcing floor votes on specific amendments, for example, has meant that the tax reduction act and the tax extension and revision bill are somewhat more liberal than they would have been without the new procedure. That is, tax preferences for businesses were reduced by the House to some extent from those in the bills that Ways and Means reported out of committee. More generally, the decision pro-

cess is no longer exclusively a committee process but has been extended to the Democratic caucus and to the entire House.

There is another change in the committee which has had an impact on legislative outcomes, although the impact is less noticeable than one might have expected. That change is the enlargement of the committee, or, more exactly, the change in the composition of the committee. The committee is considerably different from that of previous years. For instance, for the first time in this century there is a black, Charles Rangel (D-N.Y.), on the committee. Also for the first time, a woman, Martha Keys (D-Kans.), was selected to serve on the committee.

Prerequisites for membership on the committee in the past included considerable prior service in the House and a moderate style. But the average length of prior service for Democrats has dropped from 8.0 years in the 92nd Congress to 4.5 years in the 94th. Four freshmen Democrats, two of whom had served in the House previously, received unprecedented appointments to the committee. Moreover, the new members, including the freshmen, are more outspoken and more integral to the committee than new members had been in the past.

The composition of the new committee has thus changed in that the new members are more diverse, less legislatively experienced, and much more likely to participate in the committee. The committee members are also on the average somewhat—but only somewhat—more liberal in their voting patterns on the floor of the House (with conservative coalition scores as a criterion for comparison). Committee Democrats and Republicans vote more often with their party than committee members voted in the past. Thus, the committee, because of its additional Democratic members, is more likely to reflect the position of House Democrats, but the Democratic side is only slightly more liberal than in the past.

Despite the increased number of liberals on the committee, there is not a dependable liberal majority. A useful comparison of the old and new committees is provided by the proposal to end the oil depletion allowance, which had given the oil industry a lucrative tax reduction. This proposal was considered by the old committee in 1974 and again by the new committee in 1975. In both years the proposal lost, but on the second vote oil opponents almost doubled their strength. In 1974 the proposal lost 6 (25 percent) to 19 (75 percent); in 1975 the proposal gained ground in a vote of 14 (40 percent) to 22 (60 percent). Thus, the increased proportion of liberals on the committee has not always been sufficient to constitute a majority even in the new committee.

One reason for the unstable support of "liberal issues," as con-

ceived by the members, is the need for new members, especially those who for the first time hail from unsafe districts, to respond to interest group and district demands. If a representative is dependent upon the United Auto Workers for support, he will tend to vote with them even though their position on automobile efficiency taxes, for instance, may not be the "liberal" one. Or if a number of multinational corporations have their home offices in a representative's district, it is difficult to vote to eliminate an important tax advantage, such as the Domestic International Sales Corporations (DISC), even though DISCs may constitute a substantial tax "loophole" in the eyes of tax reformers. With regard to the substance of the legislation that the committee has produced, one liberal veteran member expressed it this way: "The expansion of the committee has not had as much impact as reformers thought it would. The committee is only slightly more liberal."

A comparison of the two tax reduction acts written by the committee in 1975 is instructive on this point. In February 1975 the Ways and Means Committee reported out a tax rebate bill of \$2.3 billion. Although the committee persistently rejected two "liberal" attempts to remove the oil depletion allowance, the tax bill did include "liberal" provisions that redistributed the tax burden away from low-income persons. The taxes sustained by low-income persons had increased more than those of any other income group over the last twenty years, but the effect of the 1975 tax cut as designed by the new Ways and Means Committee was proportionately greater for those with low incomes. In short, the new committee reversed the regressive twenty-year trend.

In the fall of 1975 the Ways and Means Committee considered the extension of the Tax Reduction Act and a revision of the tax code, popularly referred to as "tax reform." At first the committee voted to reduce tax expenditures or "loopholes" which favored large businesses (considered a "liberal" position by committee members), but three days before reporting out the bill, the committee reversed itself. The \$2.6 billion in additional revenues which had been tentatively proposed was trimmed to \$752 million. Chairman Ullman was faced with solid Republican opposition (12 votes) because the Republicans refused to support the bill without spending ceilings, as requested by the Republican president. Since the committee had rejected such ceilings, Ullman was faced with the fact that without any Republican votes a mere seven Democrats could block the passage of the bill. In order to be able to report a bill out of committee at all, the chairman had to work to weaken the bill to pick up support from wavering Democrats. In some cases lobbyists actually provided the weakening language. Members, especially new ones who are not impervious to district demands, responded to lobbying from those industries hailing

From these two tax bills some patterns do emerge. The committee is probably more liberal in fiscal policy than the old committee was. Further, the redistribution of the tax burden created by the Tax Reduction Act suggests that the committee is willing to support a more progressive income tax system.

Where observers are probably thrown off, however, is in the tax revision bill in which the committee retrenched from a tax reform position. The votes simply were not there, and the reason probably inheres in the composition of the new members of the committee. The majority of the new members are liberal in fiscal policy in that they support a fairer distribution of the tax burden. But many of the new members are not from safe districts; thus they are not guaranteed reelection and must listen and respond to interest group demands.

Hence, the committee reform which included a new kind of member was double-edged: new members were selected with an eye to removing the Ways and Means Committee from its past insulation from the Democratic caucus, the Congress, and national forces, but this receptiveness is by definition not selective. The committee is as little able now to reduce tax expenditures or "plug loopholes" as the old committee was, but some substantive changes have resulted from the enlargement of the committee.

Conclusion

The Committee on Ways and Means has been successfully reformed from three perspectives. Internally, the committee operates in the open. The committee's procedures have been democratized: subcommittees have been established, with the important exception that taxation remains a full committee matter, and some staff have been distributed among subcommittee chairmen. Meetings are held in the open, with the result that there is more direct participation in the deliberations of the committee by whoever cares or is able to participate. The effective power of the chairman, and, especially with the expansion of the committee, of the individual members of the committee, has been reduced.

Second, the reforms have successfully altered *who* is making the decisions. With the committee's expansion, closed rule reform, the establishment of subcommittees, and change in the chairmen, different people and more people are involved in making decisions that previously had been controlled by the chairman. The closed rule appeal procedure has given liberal Democrats in the committee more leverage within the committee. The new members have also made their mark on the committee. From their arrival they have actively participated in

committee deliberations. In some respects they are somewhat more liberal than the older members, and the new Democrats are especially more likely to support party positions. Finally, they are less legislatively experienced and less electorally entrenched than some of the older members.

Third, the reforms have affected the substance of the legislation that is produced. The new procedures and the new participants (both committee and non-committee members) have enabled the House to pass legislation that might not otherwise have been passed, for example, the removal of the oil depletion allowance. However, the addition of the new committee members and the altered party ratio which increased the percentage of Democrats on the committee have not consistently translated into more liberal legislation emanating from the committee.

Probably the most important impact on the substance of legislation has derived from the changes in the closed rule. Those changes have meant that the Ways and Means Committee and, in particular, its chairman have lost control of the decision process.¹⁵ Increasingly, the substance of legislation is determined in the caucus and on the floor. Given the current composition of the caucus, liberal positions have benefited from the closed rule appeal procedure. In effect, the new procedure has provided an appeal process for dissatisfied Ways and Means Democrats (or any other Democrat, for that matter) and thus has paved an avenue of greater accountability of the Ways and Means Committee to the Democratic caucus, as the new (1973) caucus procedure to select committee chairmen by secret ballot has forced more accountability of committee chairmen to the caucus.

In sum, the consequences of the reforms have been to democratize procedures, to alter who the decision makers are, and to change the substance of legislation, particularly in the caucus and on the floor. But there have been other consequences as well, consequences that, if not surprising, were probably not explicitly anticipated. There are, for example, a different kind of interest group activity and influence, more partisanship in the committee, more closed meetings among Democratic committee members, more dissension within the committee, fewer opportunities for leadership, and less House influence in conference with the Senate.

The fact that new committee members hail disproportionately from unsafe seats has had its secondary effects on the committee as well. While the inclusion of these new members has led to more diversity and more responsiveness to public or popular opinion, it has also lessened the ability of Ways and Means members to make taxation decisions from a national point of view. If individual members' first goal is reelection, those from "unsafe" districts must

cast their votes with reference to how those votes will affect their reelection prospects. Thus, the process has been altered such that members are more accountable to whomever of their constituents pay attention, in particular, interest groups.

One might argue that congressional reform, if anything, has been too successful, especially that democratization has been too complete. Ways and Means, for example, has been stripped of its power to make binding decisions. In the reformed committee no decision is final but is subject to change in the caucus and on the floor of the House. What this means, beyond the obvious point that more people are able to participate in Ways and Means decisions, is that a compromised legislative package cannot be developed in the committee with any assurance that that package will be passed intact on the floor.

Democratization of the Congress has coincided with a national realization that resources are finite, that legislative solutions cannot be found in the relatively painless route of distributive policies. The new "politics of scarce resources" requires redistributive and regulative policies. An example of this kind of politics is found in the energy tax bill. The Ways and Means Committee "bit the bullet," as some members like to express it, and reported out a tough piece of legislation that included a 23-cents-per-gallon gasoline tax for most consumers, along with incentives to save gasoline. When the bill went to the floor, the incentives were retained, while every stringent section of the bill, including all of the gasoline tax, was either eliminated altogether or weakened substantially. Many Ways and Means members voted against their own bill, as it was considered title by title on the floor. Even though the energy tax bill might have failed had it been voted upon as an entire package, in general, logrolled bills that call for sacrifice or for redistribution will have a better chance of passing without being gutted if coalitions can be built and maintained around an indivisible legislative package.

Finally, democratization places emphasis on only one side of the concept of "representative democracy," and that side is one that emphasizes the need for governmental responsiveness. However, there is another aspect of representation that has been slighted by the zeal to break down unaccountable structures of power. That aspect is the obligation to govern and to govern responsibly.

In order for Congress to function, to produce coherent, responsible legislation, structures of power are needed. In the case of taxation legislation, for instance, some group, presumably Ways and Means, has to have the ability to aggregate interests and to maintain the coalition that it develops.

The problem with the old structures of power, it was claimed, was that they were often anonymous, unaccountable, irresponsible, and

unresponsive. Democratization has addressed the problem of responsiveness but has lessened the ability of Congress to govern responsibly. Thus, structures of power will have to be built in the Congress again. Both the obligation to govern responsibly and the politics of scarce resources require it.

There are already deliberate efforts in this direction: the new budgetary process, the active Democratic caucus, and the two adjuncts to the majority party leadership, the Rules Committee and the Steering and Policy Committee. As these new structures develop, they will need to be accountable and responsible, if they are to be improvements over the dismantled structures. What needs to be dealt with in a conceptually coherent way is the perennial question: To *whom* should these structures be accountable? to themselves? to the congressional parties? to the entire House membership? to the national parties? or to home districts which, after all, send people to Congress in the first place?

NOTES

1. I would like to acknowledge the assistance of a number of people without whose help this research could not have been undertaken. First, the American Political Science Association through its Congressional Fellowship Program provided me with firsthand experience in Congress. Representative Abner Mikva graciously assisted me in gaining the interviews with the members, and he, along with his staff, shared their congressional "home" with me during my stay on the House side. Genie Irmoyan, Jacques DePuy, and Zoe Gratzias deserve special mention. I would not have been able to accept the Congressional Fellowship without the support of the University of Georgia. Joyce Murdoch provided helpful editorial assistance. Finally, the extensive and thoughtful comments of Terry Sullivan shaped my thinking fundamentally.
2. John F. Manley, *The Politics of Finance: The House Committee on Ways and Means* (Boston: Little, Brown, 1970); Gary Orfield, *Congressional Power: Congress and Public Policy* (Washington, D.C.: Brookings Institution, 1975); Lawrence C. Pierce, *The Politics of Fiscal Policy Formation* (Pacific Palisades, Calif.: Goodyear, 1971), pp. 135-78.
3. The following account of the Committee on Ways and Means prior to 1975 is heavily indebted to Manley, *op. cit.*

4. Manley, *op. cit.*; Richard Fenno, *Congressmen in Committees* (Boston: Little, Brown, 1973), p. 18.
5. Factual information and background on the reforms that affected the House Committee on Ways and Means and on its subsequent behavior have been drawn from the *Congressional Quarterly Almanac, 1973*, *Congressional Quarterly Almanac, 1974*, various issues of *Congressional Quarterly Weekly Report*, and contemporaneous news reports, unless otherwise noted.
6. On the expansion of the Rules Committee, see James A. Robinson, *The House Rules Committee* (Indianapolis, Ind.: Bobbs-Merrill, 1963).
7. See, for example, Ralph K. Huitt and Robert L. Peabody, "Foreword," in Fenno, *op. cit.*, p. vi.
8. See, for example, Duncan Black, *The Theory of Committees and Elections* (Cambridge At the University Press, 1968).
9. Members interviewed include Al Ullman (Oreg.), James A. Burke (Mass.), Dan Rostenkowski (Ill.), Phil M. Landrum (Ga.), Charles A. Vanik (Ohio), Omar Burleson (Tex.), James C. Corman (Calif.), William J. Green (Pa.), Sam M. Gibbons (Fla.), and Joseph E. Karth (Minn.)—veteran Democrats; Herman T. Schneebeli (Pa.), Barber Conable (N.Y.), John J. Duncan (Tenn.), Donald B. Clancy (Ohio), Bill Archer (Tex.)—veteran Republicans; Richard F. Vanderveen (Mich.), Henry Helstoski (N.J.), William Cotter (Conn.), Fortney H. Stark (Calif.), James R. Jones (Okla.), Andy Jacobs, Jr. (Ind.), and Abner J. Mikva (Ill.)—new Democrats; Philip M. Crane (Ill.), Bill Frenzel (Minn.), James G. Martin (N.C.), L. A. "Skip" Bafalis (Fla.), and William M. Ketchum (Calif.)—new Republicans.
10. Thomas J. Reese, *Tax Notes*, June 30, 1975, p. 9.
11. Thomas J. Reese, *Tax Notes*, May 19, 1975, p. 21.
12. Manley, *op. cit.*, pp. 77-78.
13. Fenno, *op. cit.*, pp. 1-14.
14. Aaron Latham, "Behind Closed Doors: How Russell Long Won the Battle of the Tax Bill," *New York*, May 5, 1975, pp. 61-68. A veteran of Ways and Means conferences commented that Latham's article is uncannily accurate.
15. See Terry Sullivan, "Voter's Paradox and Logrolling as an Initial Framework for Committee Behavior on Appropriations and Ways and Means," *Public Choice* 25 (Spring 1976).