

**The Struggle for Energy Legislation in the 109th Congress:
Are There Lessons to Be Learned from the 1970s?**

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Nearly thirty years ago I was engaged in a research project analyzing the capacity of Congress to develop legislation that came to comprise a national energy policy. My original concern was how the reforms and changes that swept the House in the early 1970s, and altered the Senate more subtly, affected Congress' capacity to resolve major policy issues throughout that decade. It is hard to argue that there was a more pressing area than energy policy or one on which the public held greater expectation for government to respond at that time. Accordingly, it seemed the ideal test case for evaluating the effects of institutional change. That research effort produced two published pieces.¹ The conclusions I reached emphasized the degree to which the reforms and changes that occurred handicapped congressional efforts to produce energy legislation. Although many of the changes were designed to improve the policy influence of the institution, there were also unanticipated consequences that hindered its capacity to mobilize majorities and to resolve issue conflicts.

The formal changes were greater in the House. The election of committee chairs (and the stripping of many of their administrative powers) and the development of subcommittee government created an arena that fostered legislative policy initiation and spread influence more equally among House members, but they also gave rise to overlap, duplication, and turf competition among subcommittees. In addition, some influence accrued to House parties and party leaders with a revitalization of party organizations and with greater control over committee assignments and the scheduling of legislation. For most of the decade, however, party leaders were reluctant to exploit their new powers fully, recognizing that what had been given could easily be removed. On balance the forces of decentralization were dominant.² Senate changes

¹ Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity to Resolve Energy Issues," *Legislative Studies Quarterly* 5 (1980): 5-30 and "Congress and the New Obstructionism: Developing an Energy Program." in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered* 2nd ed. (Washington, D.C.: CQ Press, 1981), 275-295.

² For a fuller discussion of the House reforms of the 1970s see Lawrence C. Dodd and Bruce I. Oppenheimer, "The House in Transition," in Dodd and Oppenheimer, eds, *Congress Reconsidered* (New York: Praeger, 1977), 21-53.

were more in terms of behavioral norms rather than rules, as a climate of “individualism” was gradually replacing the folkways of a preceding era³ Only in area of committee jurisdictions did the Senate undergo bigger changes than the House. In particular, the partial consolidation of energy jurisdiction in an Energy and Natural Resources Committee as part of the Stevenson Committee reforms stood in stark contrast to the failure of the House to do likewise when it rejected most of the recommendations of the Bolling Committee.⁴ The Senate was, thus, better able to avoid some of the problems of jurisdictional competition that plagued energy legislation in the House.

The purpose of this paper is to revisit my earlier findings and contrast them with the ongoing efforts since the start of the 107th Congress for the House and the Senate to respond to what now appears to be a new and growing energy crisis. Many of the energy policy issues that Congress faced in the 1970s are ones that are being debated in the early 21st century— increased dependence on foreign energy sources, rapidly rising energy prices, the efficacy of production-oriented solutions as opposed to conservation-oriented solutions, environmental concerns, and the development of new energy technologies, among others. But the American political landscape has changed, and those changes are reflected in the composition and organization of Congress. It is more than the fact that Republican majorities in the House and Senate have displaced Democratic majorities. It is that the congressional parties have become more cohesive and more ideologically polarized than at any point in more than a century. Members have been willing to give their party leaders, especially in the House, the resources with which to hold their majorities together in the pursuit of the party’s legislative agenda. In many policy areas this has resulted in the majority party pursuing party-oriented legislative solutions at the center of where its party members’ preferences lie rather than moving to the political center of the entire chamber

³ See Barbara D. Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989) and Donald R. Matthews, *U.S. Senators and Their World* (New York: Vintage Books, 1960).

⁴ Roger H. Davidson and Walter J. Oleszek, *Congress Against Itself* (Bloomington: Indiana University Press, 1977).

to enact legislation.⁵ In response, especially during years of unified party control of government, the minority party, be it the Republicans in the 103rd Congress or the Democrats in the 106th, 108th, and 109th Congress, has relied on means available to it to sidetrack policy initiatives that it views as too extreme. Accordingly, the excesses of the 1970s, decentralization, weak parties, members being overly responsive to constituencies, coalitional politics, and the limited capacity to mobilize majorities has been replaced with stronger, more homogeneous, more ideological parties. Why then does it appear as difficult to enact major energy legislation today as it was in the 1970s? And how much of the explanation is due to the nature of the congressional process?

In what follows I will attempt to tackle these questions. For organizational purposes this paper is divided into three sections. First, I will examine the changing amount of public attention that is given to energy issues today compared to the 1970s and will suggest that there is a linkage between the level of public concern and the ability to enact major energy legislation. Second, I will discuss why the nature of coalition building by proponents of energy legislation in the 1970s differs from the efforts to mobilize majorities in recent years. This analysis will highlight how the institutional problems of passing energy legislation now differ from those of the 1970s but it will also make it clear why passing major energy legislation remains so difficult. Finally, I will contrast the differing resources available to parties and party leaders in their efforts to hold members together to enact energy legislation. It is important that we recognize how unusual, and untested the means Democratic House leaders employed to pass the Carter energy plan in the 95th Congress were at the time, although many of their efforts appear routine in today's congressional environment. In the course of developing these sections of the paper, I will review some of the key findings from my research in the 1970s. This will focus on the following aspects of that struggle: the lack of party unity (especially among Democrats on energy issues), the ability of the extremes to sidetrack or defeat compromises developed by those holding moderate positions, and

⁵ This movement to the majority party median position as opposed to the chamber median position as the result of polarized and cohesive parties has been labeled by John Aldrich and David Rohde as "conditional party government." For a fuller explanation of this concept see: John H. Aldrich, *Why Parties? The Origins and Transformation of Political Parties in American* (Chicago, University of Chicago Press, 1995) and David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991).

the extraordinary use of party leadership prerogatives to make legislative enactments feasible. I will then contrast them with contemporary efforts of the past four years to pass an energy bill with special attention to the use of what are now everyday party leadership tools in the House and the complexities of garnering sixty votes required for cloture in the Senate.

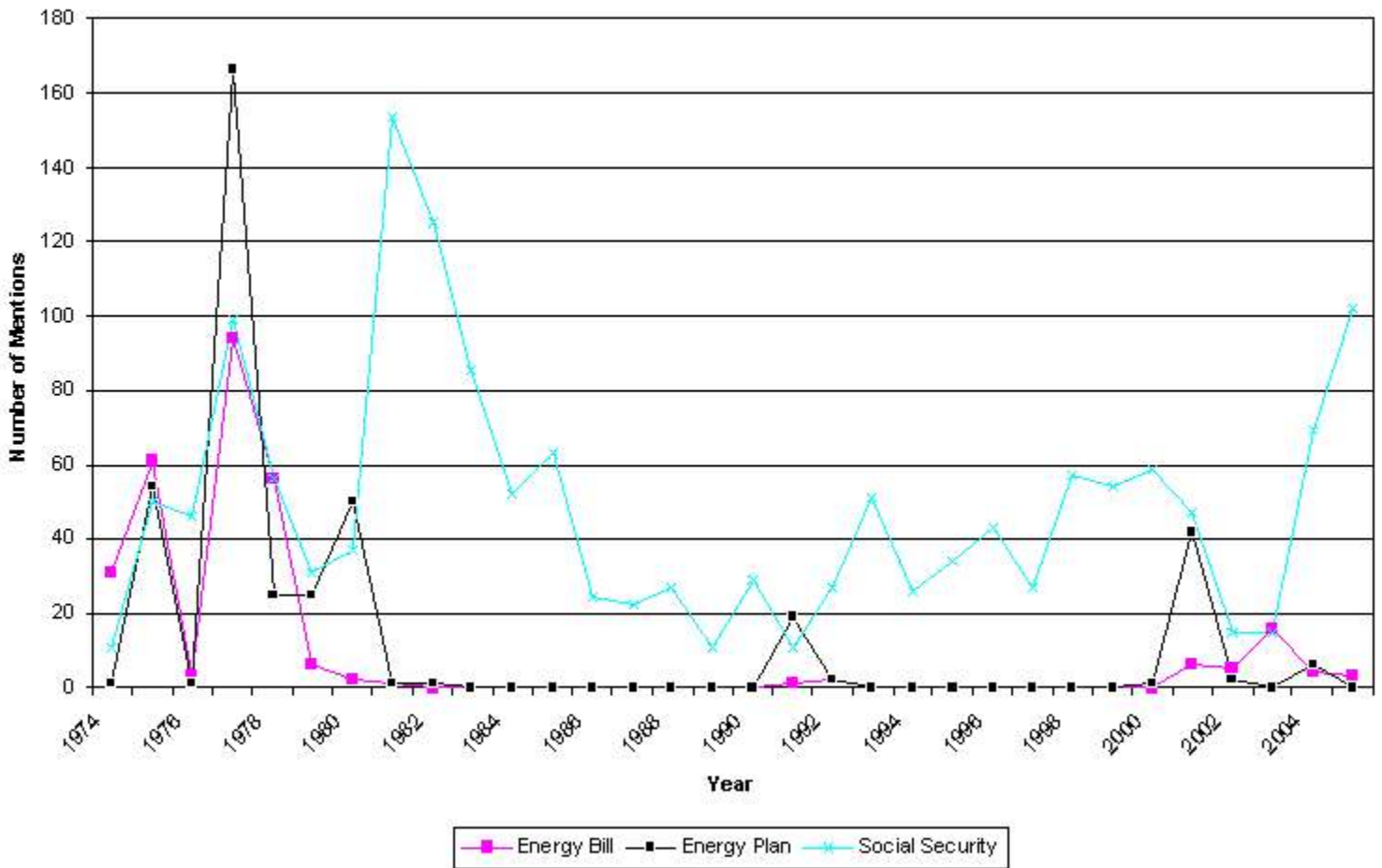
Although the goal of this paper is to contrast the effect of the changing congressional context on the capacity to enact energy legislation in two different political eras, there is one relative constant that is common to both. Unlike many issues on which an overwhelming majority of people are on one side, and are accordingly relatively easy for government to resolve, energy policy, then and now, is comprised of issues on which the American people and their elected representatives remain closely divided.. And in a non-impulsive governing system that exists in the United States, closely divided issues are particularly difficult to resolve and the advantage always rests with those who oppose changes in the status quo.

Before analyzing the efforts to enact energy legislation in the 1970s and more recently, it is useful to examine briefly the level of media attention that energy policy and legislation has received over the past thirty years.

Media Coverage of Energy Policy

One thing I sensed as I refocused on energy policy after a long hiatus was that while the governmental decisions on energy policy today seem just as critical as they were in the 1970s, energy issues do not seem to be attracting the same level of media or public attention as they did three decades ago. Rather than rely just on my feeling that the centrality of energy policy among the range of national concerns has diminished, I decided to see if any indicators supported this belief. Accordingly, I chose to check the frequency with which references to energy policy were broadcast on the nightly newscasts. For this purpose, I used the Vanderbilt University Television News Archives which has recorded, indexed, and preserved news programs since 1968. After searching with several different terms or phrases, I settled for searches using “energy bill” and “energy plan” as effectively illustrating the trends in the level of media coverage. In Figure 1, one can see the number of times each of these terms was used in a television news story by year

Figure 1- Mentions on Evening News (1974-2005)



from 1974 - 2005.⁶ To give the coverage of energy policy some relative perspective, I also have included the number of mentions of “Social Security.” Assuming that the frequency of mention of these terms provides a reasonable indicator of the level of media coverage of energy policy, then one can see that the coverage in the 1970s was quite robust. It had a couple of peaks during the time when Congress and the Ford and Carter administrations were most focused on energy

⁶ For 2005, it only includes stories televised between January 1 and April 21.

legislation in 1974 and 75 and again in 1977 and 78, with a high point in 1977. In fact, the coverage level is even higher than that of Social Security during a period when a Social Security tax increase was major pending legislation. Energy mentions in 1977 even exceed those for Social Security in 1982 and 1983 when Congress last considered major changes in that program. From 1981 until 2001, after many of the legislative issues had been resolved, and imminent concern in the public over an energy crisis had abated, coverage nearly ceases entirely. Importantly, however, renewed governmental concern with energy policy since 2001 has not received the same level of media coverage as was the case in the 1970s. Despite the fact that Congress has been struggling with major energy legislation and energy prices are rising at rates not seen since the 1970s, the level of coverage has been modest. By contrast, coverage of Social Security, which never totally ceased, is spiking up again, even without any formal legislation being considered in Congress as yet.

One can reasonably speculate why energy policy is not now receiving media coverage (and, in turn, public attention) comparable to what it earned in the 1970s. The long gasoline lines of the 1970 allowed energy policy to be perceived as a crisis. That perception is not yet present now. The Ford and Carter administrations made energy policy their front burner issue, while it has never had the same primacy during the George W. Bush presidency. Although gasoline prices have continued to rise in 2005 and the House has passed H.R. 6, energy policy remains overshadowed by Social Security, Iraq, ethics concerns, and the confirmation of judicial nominations. It can be argued that the relative lack of media and public attention means that energy policy does not have the same legislative priority as it did in the 1970s. In turn, members may not have felt sufficient impetus to reach a legislative agreement. Thus, after the Senate fell two votes short of invoking cloture on the conference report on H.R. 6 at the end of the first session of the 108th Congress, the bill languished.⁷ Had the level of attention to the issue been greater, it is more likely that Congress would have felt compelled to achieve some final resolution on the bill before the 2004 elections. Without that attention and the corresponding

⁷ Although only 57 senators voted for cloture, Majority Leader Frist voted against only to preserve the option of requesting reconsideration of the vote. In essence, only two more votes were needed.

public concern, closely divided, high-conflict issues are likely to remain unresolved. Remember even with the attention energy policy received in the 1970s, it took the better part of a decade for Congress resolve most of the energy legislative issues. Lacking high levels of public concern, it is doubtful, for example, that House members would have allowed the majority party leadership the authority which it used to ensure House passage of the Carter program.

The Nature of Coalitions

One important way in which the struggle to enact energy legislation currently differs from the 1970s is in the means that proponents have selected to build the support necessary to pass bills. The political contexts both within Congress and externally are very different now than they were in the 1970s. Accordingly, the strategies for and the problems in building winning coalitions have changed.

In the 1970s a major problem in the enactment of energy legislation was the capacity of the extremes to defeat compromises that the middle formulated. Efforts to forge a variety of compromises (the gradual price decontrol of oil linked to a windfall profits tax, the extension of price regulation to intrastate natural gas with the phasing out of natural gas price regulation, a mix of production and conservation incentives) found regular opposition from House members and senators from energy producing constituencies (who opposed windfall profits taxes and who wanted immediate price decontrols on oil and gas as incentives for increased production) and also those representing strong consumer/conservation constituencies (who argued that prices were already high enough to encourage production and favored conservation approaches to energy issues). Through the 94th Congress the extremes coalesced not just to defeat compromise positions but to prevent compromise positions from being considered on the floor, especially taking advantage of the divided committee jurisdiction for energy legislation in the House. Neither the Ford administration nor the Democratic congressional leadership had the capacity to hold enough members of each party together to overcome opposition from the extremes. The problem is best exemplified by what occurred in 1975 in the House. With energy tax issues under the jurisdiction of the Ways and Means Committee and price control issues the jurisdiction of the Interstate and Foreign Commerce Committee, opponents from both extremes used

jurisdictional conflicts to prevent the House from considering oil price decontrol and a windfall profits tax simultaneously. In the Ways and Means Committee, opponents from both sides attacked Chairman Al Ullman's energy tax proposals. A proposed gasoline tax of \$.40/gal. eroded to \$.03. An excise tax on gas guzzler automobiles was weakened, and a tax credit for efficient ones was defeated. Most importantly, any action on a windfall profits tax was deferred until after Congress resolved the oil price decontrol issue. Not only were these the work of members favoring production approaches, but they were joined by those favoring conservation approaches. The latter knew that without substantial energy tax provisions in place, they could defeat efforts at oil price decontrol.

When the Commerce Committee began work on its energy bill, H.R. 7014, debate centered on an amendment to link decontrol of oil prices to the enactment of a windfall profits tax. Opponents of the linking on the Ways and Means Committee imposed on Chairman Ullman (D-Ore.) to fight this effort. In the immediate aftermath of Caucus reforms that had resulted in the defeat to three incumbent committee chairs and the divesting of a range of committee chair powers, committee chairs felt compelled to protect the jurisdiction of their committees. Ullman was no exception and wound up undermining the compromise that he favored. In referring to the Commerce committee debate, Ullman charged: "What we are doing here is, in effect, voting out a tax bill without having hearings, without have tax experts from the joint committee look at all the ramification, without having the Ways and Means Committee look at the whole gamut of options."⁸

Thus, two pillars of an energy policy ended up being considered separately and any hope of final hope of merger was lost when each was unraveled on the House floor. Despite what at the time was a novel "modified" rule accompanying H.R. 6860, the energy tax bill, there were 20 roll call votes on amendments, the bill was stripped of its key provisions, and it required two weeks to complete floor action. Much the same was true of the Commerce Committee's bill. Extended hearings and mark-up delayed the bill in committee and when the House considered it, 23 amendments were offered.. Both bills were unraveled on the floor, and delaying the

⁸ *Congressional Quarterly Weekly Report*, 1975: 1016.

Commerce bill effectively undercut the last opportunity to merge tax, conservation, and price decontrol provisions.

Although the Congress was more successful in enacting energy legislation during the Carter administration, the same strategy of the extremes attacking the middle emerged. This strategy prevailed from the introduction of the Carter energy package all the way through to votes on the conference report. Two roll call votes, one in each chamber, illustrate the unusual nature of the coalitions. In the Senate, Howard Metzenbaum (D-Ohio) moved to recommit the conference report with instruction to delete almost all of its natural gas pricing provision. The motion was defeated but had the support of 21 Republicans and 18 Democrats. Included among the yea votes with Metzenbaum were the most liberal Senate Democrats (Nelson and Proxmire of Wisconsin, Abourezk and McGovern of South Dakota, Sarbanes of Maryland, Riegle of Michigan, and Kennedy of Massachusetts) but also energy state Democrats (Bentsen of Texas and Johnston and Long of Louisiana). Republican supporters included, among others, Bartlett and Bellmon of Oklahoma, Hansen and Wallop of Wyoming, Dole of Kansas, and Goldwater of Arizona, but also Weicker of Connecticut.

In the House a similar coalition formed in opposition to Richard Bolling's (D-Mo) motion on the previous question on the rule providing that the five separate conference reports that comprised the National Energy Act be considered en bloc, an essential procedural maneuver if the program was to be enacted. The motion was adopted 207-206. In this instance it makes sense to focus on the votes of Democrats, as Republicans, comprising less than a third of the House members, voted overwhelmingly against the rule on this procedural vote. Among the 79 Democrats who joined the Republican in an effort to defeat the rule were 17 members from big energy producing states of Texas, Oklahoma, and Louisiana. But they were joined by among the most liberal House member from energy consuming districts, including six northern Californians, six New Yorkers, five from Minnesota and Wisconsin, and even five of Speaker O'Neill's home delegation in Massachusetts (despite the fact that the Speaker was a major architect of the strategy to pass the legislation).

In addition to demonstrating how the extremes coalesced in efforts to defeat compromise energy legislation that had support of the middle, these votes also attest to the limited influence

of parties and party leaders over their members. Even with over 290 Democratic House members, Speaker O'Neill was barely able to deliver a victory to a president of his own party on the major piece of that president's legislative agenda.

The situation also afforded an opportunity for members to act as free agents and hold the legislation hostage. This occurred even among some of those who supported the legislation in the end. No where was this more evident than in the bargaining that occurred among conferees in the spring and summer of 1978 which I detailed in one article from which I quote at length as follows:

By March 1978 it appeared a compromise allowing for deregulation by 1985 had been reached. Five members on each side of the natural gas issue supported the compromise, and the Senate conferees approved it, 10-7. Then, by a slim 13-12 margin, the House conferees accepted the compromise with an amendment. (This indicated a loss of three antideregulation House conferees without any gain from the proderegulation side.) Senator Pete Domenici (R-N.M.), one of the 10 supporting the compromise, threatened to withdraw his support in reaction to the House amendment, and Senator Abourezk, an opponent of the compromise, threatened to filibuster any plan that allowed for deregulation. Once again a compromise unraveled.

In late April a group of House and Senate conferees and Secretary of Energy James Schlesinger seemingly had worked out a new natural gas compromise, but now 2 of the 13 House conferees who had accepted the March compromise, Henry Reuss (D-Wis.) and James Corman (D-Cal.), objected to the new agreement. Reuss reportedly felt it was too generous and would assist separate passage of the crude oil equalization tax that he opposed, and Corman wanted to insure a strong crude oil tax if he were to support the new compromise. Obviously, to win Reuss back would mean losing Corman and vice versa. A 13-12 majority in March became a 12-13 minority in April.

This required bargaining with yet another hostage holder, Joe Waggoner (D-La.), who had problems with the extension of price controls to intrastate natural gas. By mid-May a compromise was finally worked out allowing for increases in the ceiling prices for intrastate gas. Waggoner provided the deciding vote among the House conferees, and the Senate conferees accepted the new agreement. All that remained was for the staff to draft the proper language. But when the final language was presented to the conferees in August, three house and two Senate conferees who had supported the May compromise refused to sign the report, again holding the legislation hostage. Although some claimed that the formal language did not reflect what they thought had been agreed to in May, others held out on related issues. For example, Louisianians Senator Johnston and Representative Waggoner, in the interests of a Louisiana pipeline company, became concerned with a Federal Energy Regulatory Commission case involving allocation of natural gas in intrastate markets.

Thirteen votes were reassembled on the House side only after Corman and Charles Rangel (D-N.Y.), who had not agreed to the May compromise, replaced Reuss and Waggoner.

President Carter reassured Corman and Rangel that the poor would be given protection from large increases in energy prices. On the Senate side Domenici and James McClure (R-Idaho) agreed to rejoin those supporting the report, thus providing a majority. Afterwards, however, McClure revealed that his support for the report was gained in return for President Carter softening his position on the breeder nuclear reactor.⁹

One would be correct to note that in the 96th Congress, when Congress enacted a windfall profits tax on oil companies (a condition that President Carter set for him to end oil price control gradually), the key issues and votes no longer pitted the extremes against the middle. That was largely because it was generally assumed that some form of windfall profits tax would be enacted and that Carter was committed to following through with his side of the bargain. Once that bargain was struck, there was nothing to be gained from those opposed to windfall profits taxes coalescing with those opposed to price decontrol. Thus, the issues to be resolved instead were ones about the size of the tax, how long it would last, and how the revenues from it would be used. On those issues members generally divided along energy producing versus energy consuming constituency lines.

Throughout the 1970s resolving energy legislative issues involved efforts to move policy solutions toward the middle and to reach compromises that allowed that middle to expand to produce winning coalitions. Where that middle was, varied in terms of which party controlled the presidency and the composition of the House and Senate. The struggle was largely one of facing those who preferred the status quo on energy policy to the available alternatives that a compromise position might produce.

By contrast the struggle to enact energy legislation since 2001 has been quite different strategically. Unlike the efforts in the 1970s, legislation is not being built around the preferred position of the middle members of the House and Senate on the issue. Instead it is pitched to changing the status quo energy policies by enacting legislation that reflects the median position of congressional Republicans and relies on resources given to Republican party leaders to hold party members to that position. This has been far easier to achieve in the House than in the Senate, in large part because the cloture rule in the Senate has allowed the Democrats, as the

⁹ Oppenheimer, "Congress and the New Obstructionism: Developing and Energy Program," 284-285.

minority party except for eighteen months of the 107th Congress, to block efforts at cloture.

To illustrate and better comprehend the changed nature of coalitional building, it is useful to examine the House floor voting on the Markey amendment to strike provisions allowing for oil and gas exploration in the Arctic National Wildlife Refuge (ANWR) and the Capps motion to strike the MTBE liability provision in April 2005. On both of these votes, but particularly on the latter, there are only a limited number of Democrats who vote against these amendments, 30 on Markey and 14 on Capps, and most of them are from energy producing states. Of the Democrats who voted against Capps, 11 were from Texas, Louisiana, and Oklahoma. And they are an overwhelming majority of the current Democratic House members from those states, who number only 14 in the 109th Congress. By comparison, in the 95th Congress there were 32 Democratic House members from those states.

The decline in the number of Democratic House members representing energy producing states or districts has meant that the cleavages on energy legislation tend to be more reinforcing than they were in the 1970s. Energy producing districts are more heavily represented by Republican House members and consuming districts are more heavily represented by Democrats. This undercuts the tendencies toward moderation in developing energy policy options in the House. With few Democratic House members from producing constituencies, there is little voice within the Democratic caucus to moderate in favor of more producer-oriented solutions. And with members from energy producing constituencies more dominant with the Republican House membership, producer-oriented solutions are the mainstay of the party's energy legislation. Because they are the majority party, House Republicans can afford to lose some consuming-district party members from the northeast and upper midwest on key energy votes. With the help of the declining number of energy state Democrats, they still can get party-backed energy bills through the House largely intact.

Because of the cloture rule in the Senate, however, the ability to hold to party positions in producing energy legislation has proven untenable. Again, the interaction of party and constituency factors illustrates why the calculus in the Senate differs. This can be seen in an analysis of the 2002 cloture vote on the Murkowski amendment that would have allowed oil and gas development in ANWR and the 2003 cloture vote on the conference report on HR 6. In

analyzing each vote, I used a logit regression technique. In each case the vote of the senator for or against cloture is the dependent variable. In the case of the cloture vote on Murkowski in 2002, I used senator's party and a measure of energy production per capita in the senator's state as the independent variables.¹⁰ Those two variables are both statistically significant and combined produce a Cox & Snell R square of .498. More importantly, however, we can use the data to understand the relative impact of party and state energy production on the likelihood of a senator voting for cloture. The effect of state energy production level on the cloture vote was modest among Republican senators. A Republican senator in a state with the lowest production level had a predicted probability of .78 of voting for cloture, while a senator in a state with the highest production level had a probability of .999 of voting for cloture. So energy production level of the state increased the probability by nearly twenty-two percent, but even at the lowest state production level a Republican senator had nearly an 80 percent likelihood of voting for cloture. Among Democratic senators the effect was somewhat larger. At the lowest state production level, a Democratic senator had only a .05 probability of voting for cloture. At the highest state production level, the probability increased to .428. Still that remained under .5, meaning that no Democratic senator would be predicted as voting for cloture, while no Republican senator would be predicted as voting against cloture.¹¹

In 2003, the need to produce a bill capable of winning sixty votes in the Senate was recognized. And although the bill was written "entirely by Republicans,"¹² it necessitated considerable bargaining between among Republican Senate and House conferees and their party leaders. Unlike the energy package in the 95th Congress, the conference negotiations in 2003 only involved Republicans. Senate Republican conferees acknowledging the need for 60 votes in

¹⁰ The energy production measure is total state energy production in 2000 in terms of quadrillion BTUs per capita as obtained from Department of Energy figures.

¹¹ In part, the low effect of state energy production among Democrats is due to the fact that the highest per capita energy production for a state represented by a Democratic senator was 2.088 quadrillion BTUs/capita. Whereas among Republican senators, the highest was 14.28 BTUs/per capita.

¹² Joseph C. Anselmo, "Energy Overhaul: Not Much Difference after a Decade," *CQ Weekly*, November 8, 2003: 2750.

the Senate insisted dropping the House provisions allowing for oil and gas drilling in ANWR. They also sustained the Senate position to double consumption of ethanol by 2012. That appeared to be the best vehicle for attracting the support of enough farm state Senate Democrats to reach the 60 vote level. Although these two changes clearly moved the legislation away from the preferred position of House Republicans and the Bush administration, the former insisted on preserving a liability waiver for MTBE producers that was a critical provision for Energy and Commerce Committee chairman, Billy Tauzin, and for House Majority Leader, Tom DeLay.¹³

The corn sweetening provision and the removal of ANWR exploration had the predicted effect as 13 Democrats voted for cloture on H.R.6, as opposed to only 5 in 2002. But those concessions proved insufficient, as the MTBE issue became more salient. Again a logit analysis of the vote provides more exact estimates of the effect of party and constituency factors on the cloture vote. In addition to the party and energy production variables that I employed for the analysis of the 2002 vote, I included another constituency variable, the level of state corn production in millions of bushels per capita.¹⁴ Again both the party and constituency variables have a statistically significant effect on the probability of voting for cloture. But among Republican senators, corn and energy production in their states have relatively little impact. Regardless of constituency factors, Republican senators were extremely likely to vote for cloture.¹⁵ Thus, the probability of a Republican senator from a state that has corn production at the mean for all states voting for cloture goes from .9 if his/her state is lowest in energy production to 1.0 if his/her state is highest in energy production. Holding energy production at the mean state level, a Republican senator from a state with the lowest corn production would have a .94 probability of voting for cloture, as opposed to a 1.0 probability for a Republican

¹³ Joseph C. Anselmo, "Omnibus Energy Conference Finally Yields Results," *CQ Weekly*, November 15, 2003: 2840.

¹⁴ The data on corn production is for the year 2002 and comes from the United States Department of Agriculture, National Agricultural Statistics Survey.

¹⁵ For the purposes of this analysis, Majority Leader Bill Frist was coded as voting for cloture, because the reason he changed his vote was to preserve his ability to move for reconsideration.

senator from a state with the highest level of corn production.

For Democratic senators the effect of constituency factors on the likelihood of voting for cloture was far greater. Holding state corn production at its mean, a Democratic senator from a state with the lowest energy production would have a .17 probability of voting for cloture as opposed to a .85 probability from a state with the highest level of energy production. That's an even stronger effect for state energy production levels than on the 2002 cloture vote. When energy production levels are held at the state mean, the effects of state corn production on the probability of voting for cloture are even greater, however. For a senator from the lowest corn producing state, the probability was .082, but from the highest corn producing state it was 1.0.

Thus, although party is the most important factor in explaining the vote of Democratic senators on cloture, constituency factors, especially state corn production, had a big independent effect on the vote decision. From this, one is tempted to conclude that adding the ethanol provision to the bill, even if it was viewed as either tangential or opposed to Republican party and Bush administration energy policy goals, was very effective in adding votes of Democratic senators for cloture on the energy legislation while preserving the overall production thrust of the bill (absent ANWR). This conclusion, however, requires a significant caveat. Knowing that their votes would not be enough to invoke cloture, farm state Democrats were free to vote for it. In doing so they could please pro-ethanol constituencies without undermining their party's position of being opposed to the bill..

In trying to build a winning coalition to enact energy legislation in recent years, Republicans in Congress have clearly pursued a more party-based strategy than was evident in the coalition building of the 1970s. That is hardly surprising in a more partisan and polarized institutional setting. And, as will be discussed below, the majority party leadership has more resources with which to hold members to party positions than was true in the 1970s. Plus with an ideologically more homogeneous membership, there are fewer likely defectors with whom leaders may have to deal. The downside is that they face a minority party membership that is also more unified and whose leadership also has more resources. Accordingly, there are fewer defectors that can be attracted, and they are harder to win over if one needs to expand beyond a simple majority coalition, as is the case with cloture votes.

There is also a more subtle distinction. Because the struggle in the 1970s was one of the middle against the extremes, those trying to enact energy legislation had the flexibility to attract support in two directions (from members representing producing and from those representing consuming constituencies). This gave them some leverage in bargaining because the option was present to move the legislative policy mix in the other direction. But no such leverage exists with the strategy now being used. Lacking a sufficient number of votes for cloture in the Senate, there is only one direction in which bargaining can occur and that places Republicans in a relatively weaker bargaining position.

The Resources Available to Party Leaders

As alluded to previously, one major difference between the efforts of Congress to pass energy legislation now compared to the 1970s can be seen in terms of the resources available to party leaders in terms of structuring legislation, protecting it during floor consideration, and maintaining the support of their own party's members. Not only did the leaders in the 1970s have to cope with far less homogeneous party membership in terms of ideology than is the case today, but they were dealing with a House and Senate, which in the aftermath of the end of the era of committee government, were faced with a more decentralized operating environment than had existed since parties first evolved in the late 18th century. In the House this took the form of subcommittee government and broadly participatory behavior that allowed even first term members to play an active role. In the Senate, an institution that in the 50s and 60s had been characterized as the home of "whales" and "minnows" had been replaced by a Senate of "speckled trout."¹⁶ Committee chairs, especially in the House, had seen their powers dispersed, but party leaders had not fully developed the tools to mobilize majorities that are commonplace today.

I have already discussed how in the 94th Congress the House leadership could not overcome the jurisdictional tangle that prevented the most important pieces of a legislative compromise on energy policy from being considered simultaneously, how chairs were expected

¹⁶ The "whale" and "minnow" terms come from Harry McPherson, *A Political Education* (Boston: Little, Brown, 1972).

to protect the jurisdictions of their committees and subcommittees, and how relatively unrestricted rules and a hostility to cutting off debate led to the unraveling of energy bills on the House and Senate floors. Multiple referrals were new and combining them with time limits on committees reporting had not yet been tried. Leadership initiated, post committee adjustments that are now frequently used before a bill reaches the floor were not as yet available options. Restrictive rules, other than the episodic use of a closed rule, were just an occasional experiment that occurred with the reluctant go ahead from Speaker Albert. And the failure to adopt the Bolling committee jurisdictional reforms meant that competition for pieces of the energy jurisdictional pie were fierce.

In the Senate the excesses of individualism and an increasing workload led to the more frequent and more effective use of the filibuster. The situation got so problematic that even senators who had defended Rule XXII through most of their careers were willing to support a change from two-thirds present and voting to a three-fifths of the members cloture rule in 1975. Still, creative senators perfected post-cloture means to delay final votes on legislation.

In this environment what the Democratic party leadership did to pass the Carter energy plan, especially in the House, was truly inventive and unprecedented, although by today's standards it would appear unremarkable. The new speaker, Tip O'Neill, clearly took risks in using the powers that his office had been granted under the Democratic caucus reforms of the 93rd and 94th Congresses. Recognizing that the Carter energy plan could not survive if it were exposed to the same forces of obstruction in a decentralized House— competing committees and subcommittee, weak committee chairs who had to protect jurisdictions, delays in the layers of subcommittee and committee considerations, and lengthy floor debate and amending—, O'Neill made several critical decisions. The first was to push for the establishment of the Ad Hoc Select Committee on Energy, and the second was the care with which it was designed. Although the use of the ad hoc committee could not supercede the standing committees and subcommittees with energy jurisdiction, it succeeded in placing time limits on them and providing the first major use of what was effectively a post-committee adjustment. The committees and subcommittees were given primary jurisdiction over appropriate pieces of the Carter energy proposal, but O'Neill imposed a 60-day deadline for reporting, at which point the legislation would effectively

be discharged and move to the ad hoc committee. Despite complaints from committee chairs, all met the timetable. In addition, key members of committees with original jurisdiction were named to the ad hoc Committee. Thus, O'Neill preserved some sense that the process was legitimate.

By giving the ad hoc committee the ability to make what would now be labeled post-committee adjustments, the leadership provided a safety valve for dealing with the separate decisions made in the various committees and subcommittees and could reestablish a package from the pieces that they produced. Moreover, it could serve as a vehicle for resolving jurisdictional differences. To ensure that disputes could be resolved at the ad hoc committee level, O'Neill took great care in selecting the Democratic members. On the one hand they appeared to be a broadly representative group in terms of geography, committee representation, and position on energy issues. But effectively, O'Neill stacked the ad hoc committee to guarantee that the leadership could count on a majority of members on the tough issues by including members on each side of those issues with whom O'Neill knew he could bargain.

The third decision that the leadership made was to work with the Rules Committee in designing procedures for floor consideration that would make amending activity predictable, limit the number of key amendments that would be offered, prevent the rewriting or unraveling of the bill on the floor, and ensure that the floor would complete its work on the bill in a timely fashion. In the 94th Congress, the Democratic leadership had occasionally allowed its operatives on the Rules Committee to experiment with complex rules. But compared to the rule designed for the energy package, those efforts were quite modest.¹⁷ Aside from amendments from the ad hoc committee, there were only nine other amendments offered on which roll calls occurred. Most importantly, the Republicans were primarily limited offering an alternative energy package substitute and a motion to recommit with instructions. They were not allowed to amend the ad

¹⁷ For discussions of the movement toward writing complex rules see: Bruce I. Oppenheimer, "The Rules Committee: New Arm of Leadership in a Decentralized House," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 1st ed. (New York: Praeger, 1977) and Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, D.C.: Brookings, 1989).

hoc committee version with a stream of bits and pieces amendments.¹⁸ This allowed the Democratic leadership to focus its attention on mobilizing majorities on just a few key votes. Moreover, debate and voting on amendments was completed in four days. Only three minor amendments, none of which the Carter administration formally opposed, were adopted. In fact, the only floor loss for the president was on an effort to increase the gasoline tax. Although changes would occur in the Senate and in conference, the House, which had previously been the stumbling block for the passage of any significant energy legislation, held together the core of an energy legislative package.

Except for the creation of an ad hoc committee, the use of party leadership resources to enact energy legislation in the 95th Congress seems routine by today's standards. But it was anything but routine. Had energy legislation not had the priority level it did in the public and with the Carter administration, it is doubtful that O'Neill would have expended the resources he did to ensure that the extremes could not use the post-reform disarray of congressional decision making to obstruct the passage of energy legislation, as had been the case previously.

What was unorthodox about the House majority party leadership's efforts in 1977 is now largely accepted practice, with variations. Although energy jurisdiction in the House is still somewhat dispersed today, Republican leaders do not have to form ad hoc committees. In part this is due to the shift of power from the committee and subcommittee level to the party leadership, part of which occurred during the O'Neill and Wright speakerships but much of which unfolded with the Republican revolution following the 1994 election. With term limits on committee chairs and with candidates for those positions competing for selection by a leadership dominated party committee, committee chairs and those with ambitions to succeed them are not in a position to resist leadership demands to produce legislation that is part of the party's legislative agenda in a timely fashion. H.R. 6, as it passed the House in 2003, combined four bills, each produced by a separate committee in time for consideration as an omnibus energy bill, when the 108th Congress was not even 100 days old. With party leaders assured of committee cooperation and with the use of leadership post-committee adjustments an accepted practice, ad

¹⁸ Some other amendments with Republican sponsors were made in order, but they were not strictly party amendments.

hoc committees of the type used in the 95th Congress are no longer necessary.

Similarly, high structured and restrictive rules for the consideration of major legislation are now typical, not exceptional. H. Res. 219, the rule that accompanied the new H.R. 6, Energy Policy Act of 2005, divided general debate among the chairs and ranking minority members of four committees, made only amendments listed in its report in order, and limited the time allotted for debating each, with most limited to a minimum ten minutes. From the start of general debate until final passage of the bill, and including any interruptions and recorded votes, less than fourteen hours over two days were consumed in completing floor consideration of the bill, and all four major amendments (those allotted more than ten minutes of debate time) plus the Capps motion to strike the MTBE provision were defeated. Even with only 232 seats, not the 290 plus that the Democrats held in the 95th Congress, Republicans were able to pass an energy bill that contained most, if not all, of what the party wanted. The more cohesive and ideologically uniform nature of the political parties in the House, whose members are willing to give their leaders the powers necessary to foster and protect legislative programs, make what was so difficult to achieve in the 1970s rather straight forward today.

This transformation that has occurred in the House contrasts with a Senate in which the leadership faces perhaps more severe problems than those that confronted Democratic party leadership in the 1970s. In building a middle coalition on energy legislation in the 95th Congress, parts of the Carter plan that had passed the House had to be sacrificed. Most critically, a majority coalition in the Senate required the inclusion of natural gas price deregulation. But with relatively weak parties, at least by today's standards, party-sponsored filibusters were not yet being used.. So with the exception of having to overcome the Abourezk-Metzenbaum filibuster on Pearson-Bentsen, producing simple majorities was all that was required. Ironically, while the norm of individualism and the absence of polarized, cohesive parties in the Senate made mobilizing majorities on energy legislation difficult, parties did not normally use their potential organizational resources to block legislation. In the 103rd Congress, as parties became stronger in the Senate, however, the tactical use of party-sponsored filibusters began. (They have subsequently, not been limited to, but, are more frequently employed during periods of unified party control.) And here is the other irony. It is precisely because of the growing strength of

parties and party organizations that Republicans can the party's energy legislation through the House with relative ease. But in the Senate it is that same strength of party that makes Democrats in that chamber so cohesive that they can sustain party-sponsored filibusters and block to Republican energy bills.

Conclusion

Are there valuable lessons that one can draw from comparing the efforts to pass energy legislation in the 1970s to the efforts that have been ongoing since 2001? I think the answer to that question is a "qualified yes." It is qualified in the sense that the political contexts of the two time periods are so different that many factors that others might claim are important have not been included in this paper. But having acknowledged that shortcoming, I think the following lessons are available from the analysis I've presented:

1. It is difficult to pass controversial legislation through the Congress even under the best of circumstances. The process was designed, and continues, to favor the status quo. Among other things there must be sufficient, sustained public concern with the issue, if Congress is going to act. As the media coverage data suggests, that level existed in the 1970s, but it does not seem to be present today. Without it, members rarely have the incentive to make the tough choices or compromises that are necessary to enact major legislation.
2. The nature of coalition building in Congress has changed. Not only are the parties more polarized and more cohesive, but many of the cleavages that were crosscutting in the 1970s are now reinforcing. Although it ensures relatively strong support for energy proposals from the majority party, it makes drawing support from the minority more difficult. Legislation does not tend to be drafted with goal of creating a coalition that builds from the middle out, instead it is focused on appealing to the center of the majority party's membership.
3. The powers that have accrued to party leaders in the House have made the mobilization of majorities in that chamber far easier than in the 1970s. The Senate has been far more reluctant to cede the prerogatives of individual members to the leadership. And stronger, more cohesive parties are as much a burden to Senate majority party leadership as they are a help. In the 1970s the House was the major stumbling block in enacting energy legislation. Clearly, the Senate has

taken on that role in recent years. The question in the 109th Congress is whether having 55 Republican senators is sufficient to pass party-designed energy legislation without significant movement away from some party positions.