

Why the Rich Shouldn't Worry About Tax Reform

by V. O. French

About two months ago, George McGovern wrote a letter to Belmont Tobin, a New York businessman, in an attempt to put to rest some of Belmont's worst fears about McGovern's latent bolshevism and his radical tax proposals. The letter, which was reprinted as a full page ad in the *Wall Street Journal* to let the rest of the business community in on some of Belmont's tranquility, spurred a raging controversy as to just how much money McGovern was going to take away, and from whom. Unnoticed in all these numbers, however, was one of the McGovern closing paragraphs, which said: "I am well aware that under our System, only Congress initi-

ates tax measures. The suggestions which I have developed in this field should, therefore, always be regarded as suggestions for consideration by the Congress."

If adopted, McGovern's tax and income proposals would rearrange the distribution of income and wealth in a more fundamental way than any scheme ever offered by a man who has come as close to being President as George McGovern has. But these two sentences in the *Wall Street Journal* ad explicitly recognize how little control the President has over the congressional revenue committees, Wilbur Mills' House Ways and Means and Russell Long's Senate Finance. The ad will probably reassure McGovern's big contributors almost as much as a hawk would be reassured by a candidate who said that he would eliminate

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the Pentagon budget, but that his proposal would only be a suggestion to the Joint Chiefs of Staff. These two committees possess nearly all the direct power there is in the federal government to redistribute wealth and income in America, and without them, neither McGovern's tax reforms, nor anybody else's, will have a chance.

Everybody keeps asking the candidates what they plan to do about tax reform, while the men they should be asking are Long and Mills. For quite some time, everything that has been deducted from one paycheck and added to another has been the exclusive business of the men who occupy positions on Ways and Means or Finance. These two committees preside over social security, welfare, corporate and income taxes, excise and estate taxes, tariffs, the national debt, medicare, and medicaid. It is worth looking at how the committees operate, and what they have done to tax reform efforts in the past, because they will have much more say than the President in whether a plan to shuffle income downward, or any other plan, will be adopted next year—and what the plan will look like once it is ready for the President's 100 pens.

It's almost traditional to warn that progressive legislation from a President will face a recalcitrant Congress, but the unique features of the revenue committees add up to a special blockade against tax reform efforts. Despite their vast legislative realm, the revenue committees have no subcommittees, no staff for majority party members except for the chairmen, no record of individual votes on amendments and bills, no public access to the mark-up sessions, and almost no rules. All these provisions concentrate power in the hands of the committee chairmen, and they prevent the kind of public exposure that might cause embarrassment. In short, the atmosphere of the revenue committees is far better suited to quiet murmurs than to populist crusades.

The Eternal Loophole

Some people wonder why repeated attempts at tax reform and loophole-plugging have left the actual distribution of income in this country more unequal than it was 30 or 40 years ago. The most recent of these efforts, the Tax Reform Act of 1969, was trumpeted as an equalizing measure, but in predictable fashion ended up creating at least as many loopholes as it closed. The solution is always a new proposal, such as those advocated by this year's presidential candidates, or a new piece of paper with which to approach the committees. The committees and their rules do not change, and incredibly, are hardly even noticed. A friend with long experience at lobbying for tax revisions told me: "I hope to God Common Cause isn't going to come out for a new reform bill. We can't stand another one."

An example of how the committees can load any tax bill with special interest baggage came in early August, 1969, during the debate on the Tax Reform Act. The Ways and Means Committee, meeting in executive session with the usual lack of notice, no hearings, and by all accounts perfunctory debate, adopted a special amendment granting the railroads the right to depreciate freight and passenger cars over a seven-year period, for federal tax purposes. When this was accomplished, a spokesman for the committee and a lobbyist for the railroads explained that the amendment would "compensate" the railroads for loss of the seven-percent investment credit. They neglected to mention that every other enterprise (barring a small assortment of oil companies, tire manufacturers, and a few others either big enough or lucky enough to swing favors) was losing the credit at the same time, and without compensation. The railroad amendment chugged on through the House, the Finance Committee, the Senate, the conference committee, and wound up in the law. It costs the Treasury around \$150 million a year.

Taken alone, this amendment means little, but it was just one of hundreds of similar baubles ironically strung from a bill that was supposed to give the little person a break by removing tax breaks for the rich. The revenue committees are the best place from which to hang these baubles, because they offer their members unparalleled opportunities for providing lucrative benefits to private interests, and without fanfare. Such opportunities are seized frequently.

The lobbyists like doing business through the tax laws. Unlike a defense contractor, for example, the intended beneficiary of a tax amendment doesn't have to plead with at least two subcommittees and two full committees for a line item in an authorizing bill, then repeat the process to make sure his earmarked funds show up in the conference report of an appropriations bill, then lobby the Office of Management and Budget to release the money, negotiate with an Executive agency to sign a contract, and finally get someone to write checks. Only the two revenue committees are involved in creating a tax amendment. Best of all, once such an amendment becomes law, the only thing a corporation or individual has to do is file a tax return—which, unlike federal contracts, is protected by law from public inspection. From start to finish, the process of getting helped by a tax expenditure is comparatively simple, unhassled, direct, swift, and unpublicized. A tax break is just as real and lucrative as a subsidy, but it doesn't look so bad to the public as a direct expenditure.

An Inside Joke

An example of the way a tax break comes out in the law is shown by Section 512 of the Internal Revenue Code, which exempts only one institution—radio station WWL, owned by Loyola University—from a tax on income derived by religious institutions from business unrelated to their religious activities. The provision

became part of the Tax Reform Act after a short conversation at the door of the Finance Committee between Senator Long of Louisiana and Washington lawyer Tom Boggs (son of House Majority Leader Hale Boggs, then second-ranking member of Ways and Means). You could tell to whom the amendment applied just by looking at the opening letters of the bill's first three paragraphs, which spelled out "WWL"—an example of Long's sense of humor. Generally, special-interest bills are drafted so they appear to apply to a large number of persons, firms, or foundations. Only close inspection and expert knowledge will show that they really benefit only a small part of one industry, or maybe even one person.

The friendliness extended by the members of Ways and Means and Finance, of course, is not a one-way street. The probable, or known, willingness of a senator or congressman to help out the lobbyists can be a factor in his favor if he wants to get onto the revenue committees. The interests who will want him to intervene later will first intervene on his behalf in the committee-assignment process. It works the other way, too—one good reason why Congressman Don Fraser didn't get on Ways and Means last year was doubt about his solicitude for the special tax amendments. Conservatives, and others of different philosophy but similarly benevolent inclinations, have found it relatively easy to win assignment on the two committees.

Senators or congressmen will give up considerable seniority on other committees to take last place on Finance or Ways and Means. Dirksen, for example, chose to become the last-ranking man on the minority side of Finance a couple of years before his death. Senior conservatives who represent relatively safe districts but who can never be elected President or Vice President consider their places on these committees the apex of their careers.

Although most members of the

two committees are conservatives, the ideological tendencies of a legislator are no certain guide to his willingness to play along with lobbyists who want him to provide a tax break for some client. A congressman with liberal tendencies, less inclined to trumpet his embrace with business interests, finds both discretion and anonymity on these two committees.

Bending Seniority

Ordinarily, the seniority system that gradually floats legislators onto the key committees is quite rigid. But it can be easily bent when something like Finance is at stake. In one famous example, Senator Lee Metcalf unexpectedly announced his resignation from Finance one morning several years ago. Within about three hours, and before the news was out, a conservative quorum of the Democratic Steering Committee met and replaced Metcalf with Senator Harry Byrd. Byrd was a relative neophyte in the Senate, and many likable senators with more seniority than Byrd might have applied for the opening if they had known about it.

Senator Walter Mondale, a strong progressive with more than seven years of seniority, is reported to have written every member of the Democratic Steering Committee early this year to announce his intention of seeking the next opening on Finance. It will be interesting to see whether he is passed over for Senator Lloyd Bentsen, for example, when the seats of retiring Senators Clinton Anderson and Fred Harris are filled. Bentsen, who is committed to the tax preferences of the oil and gas industry, reportedly lost in his bid for Finance membership in February, 1971, by one vote, after he had been in the Senate only a few weeks.

Conservatives control the Senate committee assignment process, and the technique of shoving conservatives to the front of the line at Finance keeps business going as usual. Meanwhile the liberals are stacked up on

top of each other on less important committees. Their strength is diluted by having overkill power in some areas and almost no power in others.

The most extreme examples of packing committees with either conservative hegemony or liberal superfluity are the Senate Labor and Public Welfare Committee and the Finance Committee. The average Americans for Democratic Action voting index (a percentage of liberal votes cast by congressmen on major issues) is 38.9 for Finance and 71.7 for Labor, a difference that reflects the permanent conspiracy to bottle up the liberals where they are least likely to do any real damage. The funny thing is that most of the liberals like it that way.

That's because few of them, at the height of their careers, want to sacrifice seniority and visibility and one or more subcommittee chairmanships for a seat on a committee where legislation is tremendously complex and unfamiliar (unless a senator or congressman is exceptionally able and sets out with determination to learn about the layers on layers of complex minutiae, disguised benefits, and highly technical terms, he may serve for several years before he is competent enough to take initiatives on his own), where no subcommittees exist, and where the trek up the ladder is the slowest in the Congress. Most liberals don't enjoy being surrounded by uncongenial and crafty conservatives, and don't find it much fun to be outvoted on every issue.

The liberals, therefore, tend to seek out membership on more congenial committees—like Labor and Public Welfare or Banking and Currency, to name the two in greatest demand. These committees hold sway over the bulk of urban programs—especially the dozens invented by the Johnson Administration. It is here that liberals have the best chance to convince people back home that they really are in Congress. All 10 majority members on the Labor Committee, for instance, chair at least one subcommittee, which brings with it an extra staff

budget and opportunity for publicity. While the conservatives on Finance base their power on a lack of public scrutiny, a liberal's power often depends on exposure, and any attempt to reform the revenue committees must take this into account.

Strategic Amnesia

The revenue committees have preserved their anonymity through all the recent attempts at congressional reform. The requirement in the 1970 Legislative Reorganization Act that committees publish all record votes has not opened the door to Finance or Ways and Means, for the simple reason that hardly any decisions there are made by recorded vote.

The key tallies of both these committees are usually wired up in advance by Mills, Long, other committee members, the lobbyists, and the Treasury—and official approval of any bill is a foregone conclusion registered by grunts, winks, and nods. One has to be present at one of these votes to understand what is really going on.

Nobody is present, of course, except the committee itself. Neither Long nor Mills permit even personal staff members to attend meetings. Not only are the staffs, the press, and the public barred at decision-making caucuses, but committee members alone (and perhaps their assistants) are allowed to read the records of executive sessions of Ways and Means. Such records are guarded with far greater care than any official history of American involvement in Vietnam or any record of a National Security Council meeting. Neither yesterday's notes, nor last year's, nor, presumably, the ones taken during the debate on the Smoot-Hawley Tariff Act of 1930 are shown to anyone on the outside.

Even with all this, Ways and Means is still leaky in comparison with the Finance committee, which offers the ultimate in document security—no records at all. There is no chance for an Ellsberg with a prolific xerox

machine at Finance, because the committee keeps itself protected as man did before the advent of the printing press, through showing of hands and through guttural utterances. Somebody just makes notes on the decisions, not on who voted for them. To go along with its strategic amnesia, up until this year Finance had no rules of any kind. Russell Long once put down an assistant secretary of the Treasury by saying: "This committee doesn't have a single rule. We just make ourselves up as we go along. Why, we can vote on the time of day if we want to." Even now, the rules are so few, and so flexible, that they hardly interfere at all with Long's power.

Earlier this year, Senator Harris, who has led the fight for Senate reform for some time, asked the Finance Committee on which he sits to hold all its meetings in public. His motion was defeated by a vote of 14-1. When John Gardner, in connection with an anti-secrecy project at Common Cause, recently wrote to Mills and Long to ask them to take the lid off committee meetings—or at least to publish records of the sessions dealing with the Tax Reform Act of 1969 and the Revenue Act of 1971—Mills said he'd take it up with his committee "at an appropriate time," while Long replied that people already find out as much as they need to know about his committee.

Within the committees, the power of the chairman is extended by the fact that Mills and Long have sole authority to hire or fire majority staff members, thus ensuring loyalty to them. There are also no regular chances for other members to conduct investigations or independent hearings, due to the absence of subcommittees. And finally, Mills at least, is famous for his "consensus" method under which no votes are ever taken until he is assured from a private canvass that the people on the committee will approve a measure, frequently unanimously. That way, the opposition can never mobilize its support in anticipation of a clash or

decisive vote that will occur on a particular day.

There are other advantages. In the House, the Rules Committee invariably grants Ways and Means a privilege no other committee enjoys—a closed rule which in effect bars all amendments. The result of this is to grant the 25 members of Ways and Means a franchise to say to the other 410 House members—“Take it or leave it, but you can’t amend it.” Mills has made good use of such devices. He won’t bring a bill to the floor unless he believes it will pass. Once he’s sure of that, the closed rule allows him to preserve every colon and comma just as his committee adopted it.

The opposite situation governs revenue bills in the Senate. Every such bill reported by Finance is almost certain to be loaded down with a variety of amendments. The liberals take this opportunity—the only one they get throughout the entire legislative process—to hook on riders that expand welfare programs or close loopholes. Other senators, as we have seen, are more feverishly attaching riders to contract welfare and expand loopholes. The favorite horse is the annual Social Security bill. Everybody figures that it’s so popular that their riders will have a better chance than anywhere else. Long likes to take up such bills at the end of a session—using the pressure for adjournment and the liberal fatigue to good advantage.

A Gambler in Church

Long, in fact, has made a career of outfoxing liberals and opponents, both through the Finance Committee and through its own ingenuity. In 1967, for instance, the House and Senate had both passed a welfare measure. The House version contained several punitive provisions which the Senate as a whole had voted to reject. They were put back in the bill by the conference committee, which met to work on the differences. Once the conference report was made public,

Fred Harris and Robert Kennedy decided to lead a filibuster against it in the hope of postponing the final vote until the new session, in order to allow time to build a national lobbying attack on the measure. At the time, I was a legislative assistant to Harris, and with Peter Edelman of Kennedy’s staff, I made a roster of about a dozen senators who would cover the floor and protect our position when the conference report was called up. Our strategy was to object to any request to make that report the pending business, then filibuster any motion to take a vote on it.

Senator Tydings drew the first floor watch, from 9 to 11 a.m. In order not to waste time, he brought a large stack of mail which he began to read and sign. The chamber was nearly empty. But Senator Long was there, and, seizing a moment when Tydings was absorbed in his mail, he approached the chair, and whispered a request to take up the matter of the conference report. Senator Robert Byrd was presiding. Talking like a gambler making a bet during church service, he asked whether there were any objections, and hearing none, declared the conference report the pending business. Seeing that Tydings continued to sign mail, Long immediately asked unanimous consent for final passage of the conference report. This time, Byrd held the gavel for a full 10 seconds. Again, nothing from Tydings. Quite audibly now, Byrd announced that the report had been adopted, and the world’s foremost deliberative body had again made its decision.

Getting to Gravel

The trouble with the conference committees, which must be called every time there are differences between a House and Senate version of a bill, is that they always consist of the conservative senior members of Ways and Means and Finance. Although Long often makes a great show of

declaring he did his best to protect progressive Senate floor amendments, somehow they usually vanish in conference—while the special-interest provisions survive.

When a conference report returns to the Senate floor, that body can vote up or down, but cannot entertain amendments. Thus, the Senate has no chance to undo damage done to its liberal amendments after conference. That explains the real value of the filibuster: Admittedly a bludgeon where a scalpel is required, the filibuster is the last resort available to senators who want to prevent the enactment of conference reports that fail to represent a fair compromise between Senate and House versions of a bill.

The Finance Committee has helped defeat, through judo, any attempts to reform the conference reporting set-up. Since the fact that Long can get his friends on all the conference committees enhances the power and value of a membership on Finance, such membership can be held out as a prize for dissidents who advocate changing the conference system. In this way, a senator who opposes such lopsided power is comforted when some of it is offered to him. That, in fact, is just how Long and several others helped defeat a measure in the Senate Democratic Caucus that would have taken the power to pick the conferees out of the hands of Long, and put it into the hands of the Senate majority leader.

The lobbyists from Common Cause and the United Auto Workers, who were the main advocates of the reform, made no secret of the fact that the principal target of this reform was the Senate Finance Committee. Frequently in recent years, not a single conferee on a major revenue bill has voted on the Senate floor—or in committee—for progressive tax or welfare amendments adopted by the full Senate. They had no interest in fighting to keep these amendments in the bill reported out of conferences with the House.

There were recurring reports that

Russell Long and Herman Talmadge were personally lobbying against the reform, and that they might affect the votes of senators interested in becoming members of the Finance Committee. Senator Bentsen, for example, had told Fred Harris that he was strongly in favor of the reform measure, and was considering speaking on its behalf. We were most dubious about this commitment because we knew that Bentsen very much wanted to go on the Finance Committee. We regarded two other commitments as soft—Hartke's and Gravel's.

On the morning of the Caucus, our doubt about Bentsen and Gravel was confirmed. Four of us carefully watched as senators entered and left the closed meeting room. No one saw Bentsen appear. Gravel had given his proxy in favor of both resolutions to Senator Mansfield, and his office had told us that a speaking engagement would make it impossible for him to attend the Caucus in person. He showed up, however, about an hour after the Caucus had started, entered the meeting, stayed about five minutes, and departed. We suspected that he had come for the purpose of switching his proxy from "yes" to "no," and one senator present at the meeting told us he believed that is just what Gravel did.

Two Senate staff members who helped us count noses said that Long got to both Bentsen and Gravel by promising to do everything he could to secure them seats on the Finance Committee next January, when the Democratic Steering Committee will fill the places vacated by the retirements of Anderson and Harris.

As it happened, the lack of Bentsen's and Gravel's votes made no difference in the outcome. Before a vote could take place, Senator Hollings offered a substitute, which preserved the principle that a majority of conferees must have supported the Senate position on a bill headed for conference, but reaffirmed the power of committee chairmen to hand-pick conferees instead of transferring that

power to the majority leader, as we wanted. Our support vanished, and the Hollings substitute carried by a vote of 34-14.

A Hex on Reform

If a President McGovern does not have the support of Mills, Long, and a good number of the people on the revenue committees, the fate of his tax reform, regardless of its original wording or intent, will be the fate of the Reform Act of 1969. It will be riddled with amendments, delays, confusion, and all the other hexes that revenue committees can cast on unwanted bills. It is possible that Mills, at least, might go along with some tax reform. He has been talking about it, and even suggests a three-year phase-out of all major personal and corporate tax loopholes, beginning in 1974. This plan would force Congress to review the entire tax structure. This is far from a radical reshuffling of the paychecks in America, however, and from past experience, Long isn't about to accept any of that.

McGovern has said he won't reform government without first finding the money to pay for it, but in the case of the two revenue committees, the money flow probably will never be altered until the procedures of the

Answers to June puzzle:



two committees themselves are changed.

One proposal would be to take Social Security, public assistance, and Medicare and Medicaid from the revenue committees. Another suggestion would keep the present jurisdictions intact, but create four or five subcommittees in the hope that a progressive majority would eventually drift to whichever ones had jurisdiction over the social insurance programs. Subcommittees tend to determine the substance of the legislation they handle, regardless of the views of members of the full committee to which the subcommittee is nominally subject.

A ban on secret meetings is not beyond reason. Open meetings would help even if the congressmen who now talk freely in executive sessions simply made their deals in private. Votes would have to be taken, and open meetings would tell us who showed up and who didn't, whether every member supported each amendment, the intensity of opposition to a bill, and other kinds of information one does not get now.

Revenue bills should also be open to amendment on the House floor. Even though this would create the danger that the House as a whole would ram through more regressive legislation than the Ways and Means committee does under the current setup, it's worth trying. The House has never held a separate, clean vote on the oil depletion allowance. My guess is that such a vote, coupled with a determined lobbying effort, might result in a reduction in the depletion allowance.

The problem of how to place better senators and congressmen on the committees is more difficult. Senator Mansfield wants to appoint more liberals to the Democratic Steering Committee, which would set the stage for more liberal assignments to the Finance Committee.

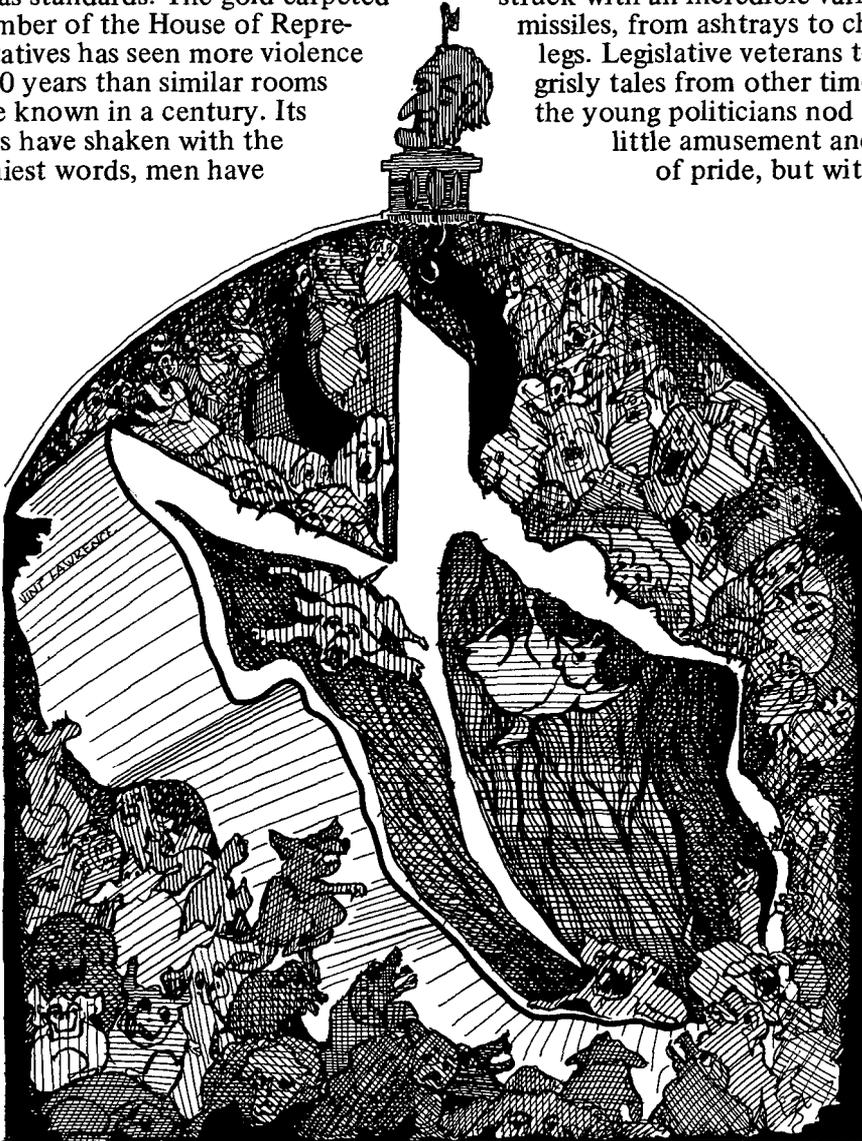
Meanwhile, Belmont Tobin and the other *Wall Street Journal* readers can rest easy. ■

How the Dirty Thirty Cleaned Up Texas

by Harvey Katz

No session of the Texas legislature can be considered peaceful by non-Texas standards. The gold-carpeted chamber of the House of Representatives has seen more violence in 50 years than similar rooms have known in a century. Its walls have shaken with the filthiest words, men have

been beaten senseless on that carpet, and those polished desks have been struck with an incredible variety of missiles, from ashtrays to chicken legs. Legislative veterans tell the grisly tales from other times and the young politicians nod with a little amusement and a lot of pride, but with very



Harvey Katz is an investigative reporter. This article is adapted from Shadow on the Alamo, to be published by Doubleday this fall. Katz researched the book with a grant from the Fund for Investigative Journalism. He worked as a volunteer for the Dirty Thirty.