30. Political Conclusions

With the economic consequences of government intervention examined (chapter 29), the politics behind intervention can be addressed. It will be found that the motivations for government intervention are typically narrow and self-interested, not necessarily in the common good, and not necessarily representative of the citizenry. “We have met the enemy and he is us," a Pogo line used to characterize the failure of 1970s petroleum regulation, overlooks important aspects of the politics of intervention.[1]

This chapter describes political reality as the interplay between self-interested lawmakers and self-interested businesspersons who use government intervention to achieve pecuniary ends. This insight is then applied to the history of the U.S. oil and gas market to identify the sources of political pressure that resulted in government expansion. "Internal" regulation, which arises within the industry, is differentiated from "external" regulation, which originates outside the industry. The two most common types of internal intervention are then discussed.

After the major government interventions are categorized, five additional aspects of political intervention are described. The first is political rivalry between integrated and nonintegrated companies, industry sectors, and different fuel interests. The second is judicial intervention that abetted interventionist legislation. The third is the positions of the two major political parties on oil and gas policy. This is followed by an examination of regulatory personalities and corruption. The final aspect is extraordinary industry cooperation and noncooperation with government intervention, which underlies the socioeconomic system, political capitalism.

A Theory of Political Behavior

A political theory of economic interventionism must explain why in a democracy, particularly one founded on free-market principles, there can be intervention despite its generally negative effects. An examination of public officials' motives for enacting and administering interventionist policies, and private motives for demanding intervention, provides an explanation.

The picture of the democratic political arena as a bastion of selfless, benevolent servants of the people, as long portrayed by political scientists and advocates of expanding government, has lost its intellectual respectability. The more perceptive view, advanced by Nobel laureate James Buchanan and the public-choice school of economics, is that “benevolent despots do not exist and that government policy emerges from a highly complex and intricate institutional structure peopled by ordinary men and women, very little different from the rest of us.”[2] Lawmakers and regulators, in other words, have personal goals and are alert to opportunities to achieve them.

Officeholders value advancement, prestige, and income. They discount the future and have short-term goals—in particular, winning the next election. They represent constituencies and

---

[1] William A. Johnson, “Why U.S. Energy Policy Has Failed,” in *Energy Supply and Government Policy*, ed. Robert Kalter and William Vogely (Ithaca, NY: Cornell University Press, 1976), p. 305.

[2] James Buchanan, “From Private Preferences to Public Philosophy: The Development of Public Choice,” in *The Economics of Politics* (London: Institute of Economic Affairs, 1978), p. 4.

have an incentive to abandon ideology and the broad view. They may have promises to fulfill, favors to return, elections to win, new appointments to gain, desires for postpolitical opportunities, or other motivations. They are fallible intellectually and morally. They are capable of breaching personal ethics and the law itself. The public sector is not a place of scientific instruction and higher callings but is slave to the ideas, trends, and passions of the moment.

The self-interested, fallible politician does not work in a vacuum. Surrounding the officeholder is the bustle of commerce. In a free market, entrepreneurs provide goods and services to consumers without government favor or interference. This is the *economic means* to business success. Public service and political ambition are limited to enforcing contracts and keeping the peace.

But in an interventionist or mixed economy, there is also the *political means* to success, whereby entrepreneurs seek and receive government subsidies and restrictions on competition.[3] The political means feeds off the economic means; before wealth can be transferred, it must be created, and government does not create wealth.[4]

Economists differentiate between *wealth-creating activity,* entrepreneurship in a free market, and *rent-seeking activity,* which diverts— and diminishes—economic value through political activity.[5] *Political capitalism* is a system in which government is actively involved with business and business with government. It is the intersection of politicians and regulators looking for opportunities for wealth, power, and prestige, as well as business executives wishing to appeal unfavorable marketplace verdicts. Political and business elites meet.

The elitist view of public policy, in contrast to the pluralist view, recognizes that government favor is unequally distributed and that well-organized and well-financed minorities seeking political largesse can outdistance less organized and less well financed majorities in the democratic process.[6] Consumers, in particular, are typically left powerless as some business interests seek intervention at the expense of others.[7] The fact that different business elites compete with each other does not translate into pluralism, and small-business elites are not necessarily more "democratic" than big-business elites.[8] Consumer interests can be violated by any individual firm or business coalition.

---

[3] The terms “economic means” and “political means” are defined by Franz Oppenheimer, *The State* (1914; New York: Free Life Editions, 1972), pp. 12–13.

[4] “By its very nature, a government decree that 'it be' cannot create anything that has not been created before.” Ludwig von Mises, *A Critique of Interventionism* (New Rochelle, NY: Arlington House, 1977), p. 23.

[5] Anne O. Krueger, “The Political Economy of the Rent-Seeking Society,” *American Economic Review* 64 no. 3 (June 1974), pp. 291–303. Also see James M. Buchanan, Robert D. Tollison, and Gordon Tullock, eds., *Toward a Theory of the Rent-Seeking Society* (College Station: Texas A&M University Press, 1980), especially chap. 1.

[6] The elitist view of government was popularized by C. Wright Mills, *The Power Elite* (New York: Oxford University Press, 1956).

[7] This was recognized by Norman Nordhauser regarding oil politics. Norman Nordhauser, *The Quest for Stability* (New York: Garland Publishing, 1979), p. vi.

[8] These misconceptions are contained in Donald R. Brand, “Corporatism, the NRA, and the Oil Industry,” *Political Science Quarterly* 98, no. 1 (Spring 1983): 99–118.

Concentrated benefits, diffused costs explain business activism in the political realm. Other special interests can gain over the general weal. Government goes to those who show up.

Ignorance of consequences also explains why economic policies harmful to the majority are enacted. In many situations, special interests and sympathetic politicians can foist fallacies on the public more easily than opponents can win support for sounder economic findings.[9] This is particularly true when academics, journalists, and the media—society's opinion molders—are predisposed to government intervention as a solution to social and economic problems. This typically has been the case.

Intervention in the oil and gas industries typically takes place with organized business support. While business executives often express support for free markets, abstract preferences and generalities fall victim to short-run business objectives. Instead of capitalism per se, businessmen practice capitalism a la carte.[10]

Once the precedent of intervention has been set, rent-seeking pragmatism spreads; other firms seek government favor, too. Pro-regulation theories portray economic distress as unfair or socially detrimental and in need of legislative or administrative relief. Selective intervention also creates advantages for certain firms that competing firms wish to counter by further intervention. Decisions to seek political privileges are made on purely economic grounds: are lobbying expenses expected to be less than the anticipated benefits of intervention?

The greater the degree of intervention, the more pervasive the interventionist mentality of business and the weaker the social conscience that would otherwise mitigate resource-consuming strategies that narrow consumer choice, increase cost, and raise prices. Compromise and pragmatism win at the expense of principle and limited government.

Like the public-servant view of government, the pluralist view of intervention is circumscribed, even naïve. Interventionist legislation is rarely enacted by legislators looking out for the general public over the objections of business. In the great majority of cases, state activism it is enacted by identifiable coalitions of business firms and politicians. Firms object to regulations that harm them. But favorable regulation is rarely opposed on principle. However small in the aggregate, business lobbying is virtually always a catalyst for intervention.

Oil and Gas Politics in Review

Historical Revisionism

Revisionist analysis of the fundamental role of business in promulgating regulation began several decades ago by left-leaning and Marxist historians. Gabriel Kolko, a leader of this school, concluded from his empirical research on business-government relations that "the economic factor is dominant 'in the last analysis.' "[11] That insight was subsequently adapted

[9] "It is often sadly remarked that the bad economists present their errors to the public better than the good economists present their truths." Henry Hazlitt, *Economics in One Lesson* (New Rochelle, NY: Arlington House, 1979), p. 18.

[10] Charles Koch, "Will Businessmen Be the Death of Free Enterprise?" *Chief Executive* (Autumn 1980): 10.

[11] Gabriel Kolko, "The Premises of Business Revisionism," *Business History Review* (Autumn 1959): 332.

by free-market adherents, who realized that the market is uncomfortably competitive for many participants and is not prone to cartelization and monopolization, as some market critics suggest.[12]

Revisionism has also been at work in oil and gas. The "consensus" view of Gerald Nash, who saw industry and public demand for intervention as synonymous and in the public good, has proved unsatisfactory. Norman Nordhauser documented a far different picture with the important state oil-conservation episode, and the present book has extended the revisionist theme to many other areas. Intervention has been associated with business and political elites and has only coincidentally been public spirited.

The oil and gas industries have gained a well-deserved reputation as a formidable political power broker from academics on both the left and the right. Three public policies have stood out—the depletion allowance, market-demand proration, and the Mandatory Oil Import Program (MOIP). On the left, political scientist Robert Engler has identified the petroleum industry, and the majors in particular, as a "private world government" because "the economic power of oil becomes political and social power."[13] Engler substantiates his thesis by devoting hundreds of pages to documenting the industry's political influence.

On the other end of the political spectrum, George Stigler identified the petroleum industry as "that political juggernaut ... [and] immense consumer of political benefits."[14] Milton Friedman revealed his impatience when he commented, "Time and again, I have castigated the oil companies for ... seeking and getting governmental privilege."[15] Needless to say, these two Nobel Prize–winning economists did not see those privileges as serving the public interest.

Some historians have concluded that political intervention is a natural response to the inherent instability of the oil and gas markets. "Proposition 1," stated Richard Vietor in his history of post–World War II energy policy, is that "market disequilibria, in the form of supply-demand imbalances and price changes, precipitate policy issues and subsequent government initiatives."[16] Although some intervention—programs such as state-level oil proration and federal import restrictions and public-utility regulation of manufactured and natural gas—has succeeded in stabilizing the business environment for oil and gas, most intervention has caused instability by blocking the market's adjustment ("equilibrating") process. This was true during World War I planning, the hot-oil war of the 1930s, World War II planning, and the oil and gas shortages of the 1970s.

In many cases, political intervention feeds on itself to perpetuate instability. Once basis-point intervention is introduced, economic distortions intensify lobbying efforts and, as seen in

---

[12] Murray Rothbard, "Left and Right: The Prospects for Liberty," in *Egalitarianism as a Revolt against Nature and Other Essays* (Washington, DC: Libertarian Review Press, 1974), pp. 14–33.

[13] Robert Engler, *The Politics of Oil: A Study of Private Power and Democratic Directions* (Chicago, IL: University of Chicago Press, 1961), p. 8.

[14] George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics* 2, no. 1 (Spring 1971): 3.

[15] Milton Friedman, "Why Some Prices Should Rise," *Newsweek*, November 19,1973, p. 130.

[16] Richard H. K. Vietor, *Energy Policy in America since 1945: A Study of Business Government Relations* (Cambridge: Cambridge University Press, 1984), p. 9.

chapter 29, create new layers of government involvement. Both the economics and politics of intervention breed instability.

Classification of Political Intervention

A theoretical grouping of political intervention facilitates understanding of the historical review to follow. The first distinction is between *external intervention* and *internal intervention.* External intervention is a regulation, tax, or subsidy imposed on a firm or industry by forces outside the business community. It represents the will of the legislature or regulatory agency and lacks active business support. Interventions of this type will be found to be a distinct minority.

Internal intervention originates within the business sector, most commonly in the particular firm(s) and industry affected. It represents the will and effort of business executives to improve their situation by nonmarket methods. Internal intervention is common in the historical record and can be broken down into the following eleven categories.

1. Self-subsidization—taxpayer benefits sought by the affected firm or firms for competitive advantage.
2. Self-horizontal subsidization—taxpayer benefits that favor the instigating firm or firms and their industry competitors.
3. Horizontal subsidization—taxpayer benefits that the instigating firm or firms desire for their competitors but not for themselves.
4. Vertical subsidization—taxpayer benefits sought for upstream suppliers or downstream customers to advantage the instigating firm(s).
5. Self-vertical subsidization—taxpayer benefits sought by a firm or firms for themselves and for upstream suppliers or for downstream customers for competitive gain.
6. Interindustry subsidization—special government favor for another industry to benefit the instigating firm(s).
7. Self-regulation—regulations sought by a firm or firms for themselves for competitive gain but not for their rivals.
8. Horizontal regulation—disadvantageous regulation sought for competitors but not the instigating firm or firms.
9. Self-horizontal regulation—regulation sought for all firms in an industry because the instigating firm or firms expect to gain a competitive advantage.
10. Vertical regulation—intervention sought for upstream suppliers or downstream customers to advantage the instigating firm(s).
11. Self-vertical regulation—intervention sought by a firm or firms for themselves and for upstream suppliers or downstream customers for competitive advantage.
12. Interindustry regulation—intervention sought by a firm or firms in one industry for another industry for competitive advantage.

As will be seen, some of these categories are evident in the U.S. oil and gas experience, while others are theoretical possibilities only.

A final distinction in the politics of intervention is between *defensive politics* and *offensive politics.* Defensive activity seeks to avoid or annul intervention that is externally imposed or internally imposed by other firms. From the viewpoint of the instigating firm or firms, offensive activity comprises the eleven categories of internal intervention. Offensive politics often but not always breeds defensive politics by other firms. Furthermore, firms can switch from offensive politics to defensive politics and vice versa according to their perceived interests. Intraindustry conflict is a major characteristic of the politics of intervention, second only to the preponderance of internal intervention over external intervention.

Nineteenth Century

Early intervention in oil and gas was predominantly internal. Examples of external intervention include public-land leasing for petroleum development, taxation of crude oil and oil products by the North during the Civil War, and specific municipal ordinances affecting gas-distribution companies.

The balance of government activity, representing internal intervention, is examined below by distinguishing between defensive and offensive politics. On the oil side, the four major participants were state governments; the federal government; Standard Oil; and independent producers, refiners, and transporters. On the manufactured- and natural-gas side, the participants were local distribution companies, municipal governments, and state governments. Consumers were unorganized and thus a secondary force on both fronts.

Defensive Politics. High-profile defensive politics was more common in the nineteenth century than later. The successful revolt of the Petroleum Producers Association of Pennsylvania against the 1865 federal tax on crude oil was one example; the effort of the American Gas Light Association before the 1880s against restrictive municipal ordinances was another. The fight by the Producers Union Association against the Roberts torpedo patent was another lead story on the political front (in that instance, the court system, not the legislature, was the arena of defensive activism).

From the 1880s through the turn of the century, Standard Oil practiced defensive politics against independents and politicians. Whether it was pipeline regulation or state antitrust suits, Standard opposed government intervention that benefited competitors at the expense of the trust.

Offensive Politics. Political initiatives by oil and gas firms were in clear evidence during a period described by historians as the laissez-faire period of American capitalism. It began in 1861 when Pennsylvania producers unsuccessfully sought to impose common-carrier requirements on oil pipelines to improve the marketability of crude. In the next decades, oil producers organized in trade groups, such as the Petroleum Producers Union, successfully lobbied for vertical regulation of their downstream rivals. Federal and state kerosene-safety regulation in the 1860s was a competitive weapon that larger firms used against smaller, less flexible rivals.

Antitrust challenges to Standard Oil by independent producers, refiners, and marketers were attempts to impose both vertical and horizontal regulation. Standard's rivals wanted competitive parity despite their higher costs and higher resulting prices—at the expense of the trust and, ultimately, consumers.

Self-horizontal regulation began when the New York Petroleum Association's kerosene-quality standards became the law in certain states. Self-horizontal regulation was also evident in the 1880s when gas-distribution companies championed franchise protection to tame competition from would-be entrants.

Well casing and plugging requirements in the oil states from the 1870s on—intended to ensure that co-drillers in a reservoir did not neglectfully or willfully damage the common pool—were other instances of self-horizontal regulation. Such regulation was also externally imposed to the extent that the intent of the laws was to prevent freshwater contamination.

Interindustry regulation prominently occurred in the first decades of the petroleum industry. Independents were convinced that preferential rebates to Standard were at the root of their marketing difficulties, and railroad regulation to end rebates became a major priority. An 1876 bill introduced by Congressman James Hopkins of Pittsburgh was the first draft of what, eleven years later, became the Interstate Commerce Act. The law achieved the producers' purpose of prohibiting rebates to end "discrimination" between shippers. What was interindustry regulation from the viewpoint of the oil industry, however, was self-regulation from the viewpoint of the railroad industry, which preferred public-utility regulation (entry restrictions in particular) to unfettered competition.

The oil-transportation industry provides many examples of subsidization. Road interests, canal interests, shipping interests, and railroads sought and received taxpayer subsidies and land rights from government at all levels. A more direct example of self-horizontal subsidization in the petroleum sector was pipeline entrepreneurs' securing eminent-domain rights that lowered right-of-way costs and countered railroad obstructionism.

Conclusion. The opening era of oil and gas intervention witnessed defensive politics, offensive politics, external intervention, and six species of internal intervention. Industry-sponsored intervention included self-subsidization, self-regulation, horizontal regulation, self-horizontal regulation, vertical regulation, and interindustry regulation.

Although intervention was modest compared with what the next century would bring, it was an important competitive weapon. Henry Demarest Lloyd, who along with Ida Tarbell was a leading reformer of the day, identified political activism before state legislatures, Congress, and the Interstate Commerce Commission as a necessary supplement to "thrift, industry, and sobriety" for successfully competing against Standard Oil.[17]

Policy debates in the petroleum industry only incidentally involved consumers. Industry groups were organized; consumers were not. "Given the general public's indifference toward the internal structure of new industry," commented Arthur Johnson, "formulation of specific public policies was necessarily the work of interested parties."[18] These parties included not only independents but opportunistic legislators and state attorneys general who jumped on the anti-Standard bandwagon.

Consumers of manufactured and natural gas also were not formally organized. But the proximity of gas plants and distribution facilities to urban areas gave consumers a greater interest and louder voice than they had on the petroleum side. With the industry leading the

[17] Henry Demarest Lloyd, *Wealth against Commonwealth* (New York: Harper & Brothers, 1894), p. 242.

[18] Arthur M. Johnson, "Public Policy and Concentration in the Petroleum Industry: 1870–1911," in *Oil's First Century: Papers*, ed. Ralph Hidy (Boston, MA: Harvard University, Graduate Business School, 1960), p. 48.

way, regulation of municipal gas service was accepted by state legislatures, journalists, and the public, although experience would destabilize the fragile consensus.

Twentieth Century until 1984

Twentieth-century intervention through 1984 can be divided into two eras. The cooperative era, which lasted roughly from World War I until the 1960s, was a period of industry-government alliance. Antagonism between major industry segments and the government (state or federal) was the exception rather than the rule.

Beginning in the early 1970s, when rising prices made the MOIP obsolete, pent-up political antagonism against the industry set in, and an adversarial era of unprecedented intensity and duration set in. Only with falling oil prices in the 1980s did the adversarial relationship begin to subside. On the natural-gas side, meanwhile, wellhead regulation produced political conflicts between the government and powerful wellhead interests.

A complicating factor for both oil and gas regulation has been the diversity of industry groups and industry positions that make any characterization of cooperation or antagonism imprecise. While parts of the industry were at odds with political outcomes, other segments favored and, indeed, fostered the same outcomes. This was true in the nineteenth century and has been particularly true in the twentieth.

Progressivism. The Progressive Era, from the turn of the century until World War I, was a bellwether period for government-industry relations. In those years, many leading industrialists shied away from the rigors of market competition and took a fraternal view of market stabilization through government intervention. “Important businessmen," commented Gabriel Kolko, began to “regard politics ... as an important part of their larger position in society."[19] Gerald Nash noticed in the petroleum industry a rising tide of protectionist sentiment that grew alongside the new competition from the Southwest.

> During the Progressive Era many leaders of the industry hoped for greater stability in the petroleum business. Competition was rapidly increasing, not only because of the emergence of new markets for petroleum products, but also Moreover, competition of other fuels, such as coal, whetted a desire among many oilmen for a common front against competitors. Improvements in petroleum technology also required increasing large—and long-term—investments, which further aroused a desire among many corporate leaders for stabilization rather than the uncertainties of cutthroat competition.[20]

Regulation of the gas-distribution industry was already mature. Oil-pipeline regulation was also far along, and production regulation—as evidenced by casing and plugging law, natural-gas conservation law, and the Oklahoma Oil Conservation Act of 1915—was growing. With peacetime regulation joined by federal involvement during World War I, an industry trade

[19] Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York: Free Press, 1963), p. 5

[20] Gerald Nash, *United States Oil Policy: 1890–1964* (Pittsburgh, PA: University of Pittsburgh, 1968; reprinted, Westport, CT: Greenwood Press, 1968), p. 242.

group could state that “about every conceivable phase of the industry is now covered by laws,* some of them dating back to the early days of the Corsicana field in 1899."[21]

World War I. World War I was a watershed in domestic economic policy. Pursuant to temporary wartime emergency powers, unprecedented regulation and engineered cartelization were imposed on U.S. industry, including petroleum. “It was a 'war collectivism/ a totally planned economy,” noted Murray Rothbard, “run largely by big-business interests through the instrumentality of the central government."[22]

The petroleum industry, led by the Standard companies and the large Gulf Coast firms, was less than enthusiastic about the opening government moves toward regulation. The formation of the Petroleum Advisory Committee in 1916 as a conduit to federal decision making was more defensive than offensive politics.

A manifestation of early resistance to regulation was the limited price-control authority in the Lever Act. Industry pressure deleted gasoline and kerosene from the act to leave only fuel oil subject to control. But before the November 1918 armistice, the industry's support for intervention grew, and special favors were received. The Petroleum Advisory Committee was expanded and renamed the Petroleum War Service Committee; it grew in stature and influence and issued orders to the industry under the auspices of the federal government.

Other industry trade groups such as the Independent Petroleum Marketers Association became quasi-governmental by issuing directives. Self-regulation in place of formal regulation was the strategy of the industry and government alike. In July 1918, oil czar Mark Requa opined “that the oil industry can govern itself wisely and well, if it will; that it can formulate its own rules and regulations far more satisfactorily by voluntary effort than through Government mandate.”[23] But with the club in the closet, government was in charge; voluntary was mandatory once removed.

With antitrust law suspended, the depletion allowance liberalized to encourage production, and a refiner constituency lobbying for crude-price controls, wartime political capitalism was gain here-lose there for each industry firm. A neutral approach of a free market was absent, just like during peacetime.

With the end of the war, Requa looked back at the unusual political-economic arrangement that the country had just endured. “By agreement with the Government, uniform prices have been fixed; pooling of output has been accomplished; markets have been divided; methods of distribution have been agreed upon; competition has been largely eliminated and Government direction and supervision substituted.” The *Oil and Gas Journal* took this to mean, “Now that the war is over, [Requa] believes individual factors in the business should resume control of

---

[21] “They Do Not Want Any New Oil Laws,” *Oil & Gas Journal*, January 24, 1919, p. 44. Cited hereafter as *OGJ*.

[22] Murray Rothbard, “War Collectivism in World War I," in *A New History of Leviathan,* ed. Ronald Radosh and Murray N. Rothbard (New York: E.P. Dutton, 1972), p. 66.

[23] M. L. Requa, “How the Oil Industry Can Regulate Itself,” address delivered in Washington, DC, July 12, 1918; reprinted in *Commerce and Finance* 7, no. 30 (July 24, 1918), p. 801. Quoted in Joseph Pogue, *Prices of Petroleum and Its Products during the War* (Washington, DC: Government Printing Office, 1919), p. 27.

their affairs."[24] Unfortunately, as *National Petroleum News* observed, "Congress has as members, in both House and Senate, a large number of men with a decided leaning toward making the world perfect by legislation."[25] It would be back to prewar politics in the industry, with more government to come.

Cooperation had gone from informal and cautious to formal and enthusiastic. "Progressive thinking" by industry stalwarts such as Walter Teagle of Jersey Standard was behind the industry's changed outlook and operation. The replacement of the National Petroleum War Service Committee with the American Petroleum Institute (API) after the war to "afford a means of cooperation with the government in all matters of national concern" was the embodiment—the institutionalization—of the new cooperation.[26]

Oil-State Regulation. The newfound fraternalism among major integrated oil companies at the federal level was echoed on the state level. After 1925, when major oil discoveries destabilized the industry's price structure, the majors fostered cooperative state relations also.

Sagging prices and reduced profitability prompted large integrated firms to seek voluntary agreements to stem production in the major Texas and Oklahoma oil fields. Humble Oil & Refining Company was a leader. When various obstacles, some scientific and some legal, prevented success, the same major companies turned to state officials for reform. Prominent oilmen such as Will Farish of Humble Oil & Refining Company, J. Edgar Pew of Sun Oil, and E. W. Marland of Marland Oil were instrumental in securing market-demand proration in major southwestern oil states in the late 1920s and 1930s.

Some large nonintegrated firms joined the majors, but most smaller firms played defensive politics, produced illegal hot oil, and used the courts for protection. The Independent Petroleum Association Opposed to Monopoly and the Independent Refiners Association of East Texas favored unrestrained production, while the Texas Oil and Gas Conservation Association and the Texas Petroleum Council, which represented the majors, lobbied for proration and an end to hot-oil output.

The hot-oil war revealed the polarization of smaller oil firms that resented the majors' self-horizontal regulation. Later, wellhead proration was joined by well-spacing regulation, compulsory pooling, maximum gas/oil ratios, maximum efficient rate production ceilings, and compulsory unitization—all self-horizontal regulation by producers seeking higher prices from restricted output.

As with much other industry regulation, the consumer was on the sideline, while firms in differing competitive positions skirmished politically. Northcutt Ely, a legal authority of the period, commented, "With the exception of the obsolete statutes attempting to restrict the use of gas fields to local consumers, the conservation laws have been enacted upon the insistence of the industry, and the indifference of the consuming public."[27]

[24] M. L. Requa, address in Atlantic City, NJ, reported in *OGJ*, December 20, 1918, p. 42.

[25] "Administration Will Be Slow to Drop Control of Industries," *National Petroleum News*, November 13, 1918, p. 13. Cited hereafter as *NPN*.

[26] Leonard M. Fanning, *The Story of the American Petroleum Institute* (New York: World Petroleum Policies, 1959), p. 30.

[27] Northcutt Ely, "The Conservation of Oil," *Harvard Law Review* 51, no. 7 (May 1938): 1241.

The independents were not shut out of the legislative arena. Common-carrier and common-purchaser laws (examples of vertical regulation) that were passed in major oil states, including Texas, helped nonintegrated producers at the expense of independent pipelines and integrated firms. A tariff on crude and oil products in 1932 was a victory for the Independent Petroleum Association of America (IPAA), which was founded in 1929 to counter the political muscle of the majors' API. As large importers, the majors were hurt by the tax, but they gladly went along to win the support of the independents for market-demand proration, which raised domestic prices. Oil protectionism thus was horizontal regulation by independent producers seeking to hold their own against the majors and self-horizontal regulation by majors willing to accept regulation of domestic production.

New Deal. A decade before the National Industrial Recovery Act of 1933 (NIRA), and four years after the end of wartime planning, an event occurred that defined the limits of federal intervention that the oil-producing community would accept. In 1923, Henry Doherty, a producer victimized by drainage competition and low prices, began a one-man crusade for a federal unitization law.

His fellow API members viewed Doherty's proposal as a dangerous peacetime precedent in its own right and one that could lead to public-utility regulation. The fear of cost-plus pricing at the wellhead reflected two considerations: the failed railroad industry under similar regulation and the nature of oil and gas discoveries, the market value of which greatly exceeded the directly associated costs. Profits calculated under standard public-utility regulation would have been unacceptably low.

State regulation in place of federal regulation, and mandatory proration instead of unitization, resulted when the Seminole field and other major oil discoveries made major-company executives lose whatever predilection for laissez faire they may have once had.

Soon after Franklin Roosevelt was elected president in 1932, oil executives were again busy in Washington, D.C. State regulation of wellhead production needed federal help to achieve price stability and improved profitability.

Self-horizontal regulation by majors to corral dissident independents dominated state and federal regulatory efforts between 1933 and 1935. Federal administration was assigned to the Interior Department's Petroleum Administration Board and the industry (majors') counterpart, the Planning and Coordination Committee. Those organizations were partners when it came to production allowables, the refinery control program, a marketing code of fair competition, and labor regulations.

New Deal regulation, like state oil proration, was the majors' program. The independents, organized in the IPAA and ad hoc groups, helped push federal oil regulation. They also joined with some of the majors to defeat proposals to both require federal drilling permits and set crude-price floors. Consumers were not a major force. The Consumers Advisory Board of the National Recovery Administration was less effective in petroleum as elsewhere, and the lone voices such as the American Automobile Association were marginalized. As Rene Williamson commented, "If consumers have an undoubted interest, many of them are quite unconscious of the fact and thereby do not qualify as a political force in industrial struggles."[28]

The changed political outlook of the industry was a major development of the period. The abandonment of laissez faire by industry leaders in the bedrock production sector was not a wartime expedient but the result of waning patience and a deep-seated suspicion of free-market production predicated on the rule of capture. Texas Company president Amos Beaty made this point before the API in 1934:

> I may say that some effective regulation of the initial branch of this business has been proved essential times without number. A great majority of the industry has been forced to advocate it as a means of justice and protection.[29]

API executive W. R. Boyd, while acknowledging the industry's direct role in regulation, pointed out the unintended consequences of horizontal regulation.

> Many oil men have advocated, and still advocate, in one form or another, federal regulation or control of some phase of the oil business. Many, in doing so, perhaps have been thinking in terms of regulating or controlling the operations of competitors rather than their own operations. Many of you are chafing under various government restraints which originally you were instrumental in imposing.[30]

J. Howard Pew, in a speech entitled "Government is in Business because Invited in by Business Men," chastised pro-NIRA oilmen for their role in federal regulation.[31] But Pew himself was no model advocate of laissez-faire capitalism, which underscores a stark fact: *no important oil figure in the crucial late 1920s and 1930s had a principled belief in the free market.*[32]

On the government side, quick-tongued Petroleum Administration Board administrator Harold Ickes described the industry as a welfare case.

> The proposition the oil industry made to the government was the startling one that the Government, in effect, take over the industry and run it. It was frankly confessed that the situation was beyond control and that only the strong hand of the Government could save it.... The mental state of these great industrialists can be judged from the fact of their willingness to entrust the destinies of a great business enterprise to a Government official who was

[28] René de Visme Williamson, *The Politics of Planning in the Oil Industry under the Code* (New York: Harper & Brothers, 1936), p. 49.

[29] Amos Beaty, "The Petroleum Code and Permanent Federal Legislation," *15th Annual Proceedings* (New York: American Petroleum Institute, 1934), p. 41.

[30] W. R. Boyd, "Gasoline-Production Control," *15th Annual Proceedings* (New York: American Petroleum Institute, 1934), p. 15.

[31] "Government is in Business because Invited in by Business Men," *NPN*, January 15, 1936, pp. 23–25.

[32] In addition to Pew's direct role in fostering state proration, he favored "Hamiltonian tariffs" and wartime price controls. *NPN*, January 15, 1936, p. 25, and "Sun Oil Head Says Refiners' Opportunities Threatened by OPA's Economic Strait-Jacket," *NPN*, January 2,1946, p. 22. His selective advocacy of government intervention contradicts a major thesis in the biography by Mary Sennholz, *Faith and Freedom: A Biographical Sketch of a Great American, John Howard Pew* (Grove City, PA: Grove City College, 1975).

> without scientific knowledge with respect to oil as a product or special acquaintances with oil as a business[33]

One of Ickes's two right-hand men, J. Howard Marshall, similarly recollected:

> Many big shots in the business, who later denied it, literally prayed for us amateurs in the government "to save us else we perish." A few years later, when most of them, for one reason or another, found salvation, few sinners remembered their prayers. Such is human nature![34]

Old patterns of behavior continued after the demise of the NIRA. The Connally Hot-Oil Act of 1935 prohibited interstate transportation of illegally produced oil. The Interstate Oil Compact Commission was established in the same year to coordinate state regulation. With federal help, state regulation was able to effectively limit oil production and stabilize prices. Industry-government cooperation was critical.

One anomaly in the cooperative New Deal experience taught the industry that government intervention was a double-edged sword. Federal antitrust law since the 1911 Standard Oil case was a potential weapon not only against bigness per se but also against concerted behavior by firms. In 1936, the Justice Department followed up on independent-jobber complaints and made sweeping indictments of eighteen majors and several trade journals for their role in the gasoline-buying stabilization plans that continued after the New Deal ended in May 1935. The Madison trial foreshadowed later antagonism between federal officials and majors as well as between independents and majors.

Other Interwar Developments. Withdrawals of public land from leasing, beginning in 1900, and the establishment of the Naval Petroleum Reserves, between 1912 and 1923, were external intervention.

The underwriting of public roads with gasoline taxes was supported by several major oil companies seeking to increase demand for their major product. More roads meant more driving and more gasoline consumption. The oil firms that advocated this public-finance innovation calculated that there would be a net increase in driving that would outweigh the tax's depressive effect on gasoline sales. By 1929, all states had retail gasoline taxes, a classic example of self-horizontal regulation and industry-government consensus. Consumers were characteristically absent.

The passage of the Natural Gas Act (NGA) in 1938 was an instance primarily of vertical regulation by gas-distribution companies and partly of self-horizontal regulation by supportive interstate gas pipelines. For distribution companies, such public-utility regulation lowered a major cost; for interstate pipelines, NGA certification could keep out new entrants.

The NGA was not imposed by public demand. The lobbying group Cities Alliance was not a consumer group, as advertised, but a gas-utility lobby with customers in tow. Captive consumers who supported their utilities' stand on expanded regulation were certainly no more

[33] V. B. Guthrie, "Self-Government or More U. S. Laws," *NPN*, March 21, 1934, quoted on p. 20.

[34] J. Howard Marshall, personal communication with author. Marshall also said: "A more frightened lot of oilmen you never saw. The president of Barnesdale Oil Company carried his most recent balance sheet in his pocket, showing it to everyone and wearing an agonized expression on his face." Marshall, *Done in Oil* (College Station: Texas A&M University Press, 1994), p. 37.

sophisticated than coal interests who favored the same regulation for its anti-consumer effect of restricting entry. Waiting-list gas customers were unorganized; it would be several decades later in the debate when they opposed price ceilings that discouraged new interstate supply.

The trio of gasoline service-station taxes that appeared in 1935 (most notably the chain-store tax) was external regulation. The chain-store levy led to defensive economic measures by the majors; they began to lease stations instead of operating them.

Already the independent marketing sector was politically mature. In 1929, the Independent Petroleum Marketers Association was organized, and more than fifty local independent marketing groups were active in national politics by 1933. The sector's newfound market share from functional divorcement meant a greater role for political activism.[35]

Regulation of interstate oil pipelines began in 1906, the political result of independent producers seeking lower rates, particularly from Standard Oil's pipeline affiliates. Regulation under the Hepburn Act was largely dormant until the early 1940s when complaints by the Louisiana-Arkansas Refiners Association and the Petroleum Rail Shippers Association led to maximum-rate orders for crude-oil and oil-product lines.

Both the initial regulation and the prescribed standards were internally generated by the industry, and each represented vertical regulation by either downstream or upstream parties. Regulated-rate controversies in the 1970s and 1980s with interstate oil pipelines would similarly emanate from industry complaints. Regulation setting maximum dividends that an interstate could distribute to its parent, on the other hand, was generated externally through a Justice Department antitrust suit.

World War II. World War II petroleum planning was a more formalized and expanded version of the World War I experience. As before, price controls were externally imposed with independents and majors practicing defensive politics. But constituencies developed once price controls were in place, and further intervention was welcomed. External intervention and internal intervention overlapped, although producers would feel disadvantaged by regulation through the end of the war.

Patriotism and cooperation with the federal government were evident when major companies joined Ickes in an East Coast gasoline-conservation campaign. Also, before the attack on Pearl Harbor, numerous companies and industry trade associations came together to create the Petroleum Industry Council for National Defense. Renamed the Petroleum Industry War Council when the United States declared war, it assisted federal bureaucracies in determining industry regulation.

In this period of unprecedented national petroleum planning, the industry was pragmatic and opportunistic. On the one hand, its strategy was to cooperate and make the best of regulation; on the other hand, it seized opportunities to support favorable intervention and suggest new intervention. Refiners helped preserve strict crude-oil price controls—a vertical regulation.

[35] The Independent Petroleum Marketers Association was headed by Warren Platt, who also in 1929 began publishing the *National Petroleum News*. Fifty-eight independent marketing groups cooperated in producing the "Chicago Code" in June 1933. "List of Marketing Associations Represented at Chicago," *NPN*, June 28, 1933, p. 17.

State conservation law was strengthened as the major oil firms desired—a self-horizontal regulation. Antitrust law was relaxed—a rare move away from intervention. Transportation, inventory, and refinery pooling were undertaken by the industry at the request of authorities. The IPAA lobbied for federal financing of wildcat wells as a second-best alternative to relaxed price controls and settled for stripper-well subsidies—an example of self-horizontal subsidization. Refiners, too, welcomed federal subsidies and accelerated depreciation that helped insulate them from sudden conversions to peacetime product slates. On the other hand, anti-industry external regulation pushed by price controller John Kenneth Galbraith was also prominent.

The end of World War II, as had been the case with World War I, inspired attempts by the oil industry to continue its partnership with the federal government. In 1946, industry executives founded the quasi-governmental National Petroleum Council to advise the secretary of the interior on opportunities for cooperation and national-security issues.

On the government side, the Oil and Gas Division was created in the Interior Department to consolidate federal oil activities and increase accessibility to the regulated industry. Ralph Davies, its first head, was one of the architects of World War II petroleum planning and would have an important career in government and industry. The Military Petroleum Advisory Board (1947), the Gas Industry Advisory Council (1951), and the Foreign Petroleum Supply Committee (1951) were other agencies that fostered cooperation between the oil and gas industry and the federal government.

Korean Conflict. Petroleum planning during the Korean conflict was an abbreviated repeat of the previous wartime experience. The initial price controls were externally imposed despite the reservations of the industry. But unlike before, not even the downstream industry favored them. The establishment of the Petroleum Administration for Defense, a remake of World War II's Petroleum Administration for War, was supported by the industry. "A number of the oilmen" who staffed the agency, commented Robert Engler, were "viewed as Washington lobbyists for their individual corporations."[36]

The major coup on the industry side was accelerated tax writeoffs of refining investments associated with the war.[37] Other regulation was more external than self-regulation, foreshadowing the period to follow.

Eclecticism and Antagonism: 1954–84

The previous period was characterized by a consensus between major integrated companies and the state and federal governments. Independent producers, the second most powerful industry voice after the integrated majors, were courted with stripper-well exemptions at the state level and tariffs at the federal level. Independent refiners also enjoyed tax breaks, and independent marketers were aided by below-cost laws and antitrust laws designed to disadvantage their major-company rivals. Different company positions prevented a general industry consensus on intervention. Consumers, on the other hand, were not organized into a major force.

[36] Robert Engler, *The Politics of Oil*, p. 295.

[37] This was not self-subsidization because it was a reduction of the tax burden instead of the receipt of taxpayer money and thus not an intervention.

Beginning in the 1950s, political fortunes would change. Downstream independents, opportunistic politicians, and budding consumerism countered the major companies and independent producers. The majors were checked by independent producers on one side and lessee-marketers on the other. There was far less industry consensus and, therefore, little industry-government consensus. These circumstances were magnified in the 1970s when regulatory distortions became so pervasive that virtually every sector of the industry was at odds with intervention at one time or another. Antagonism between the oil industry and the government and consumers reached unprecedented levels.

Small-business favoritism was one characteristic of the period. In the eyes of the public and government, independents represented small business, and the majors were big business. Previously, the majors had disproportionately influenced public policy because of their size and political friends in Congress; beginning in the late 1950s, the independents found their political fortunes enhanced. By the 1970s, independents turned the tables and dominated the majors and their trade organization, the API.

The new relationships among majors, independents, and government were evident with wellhead natural-gas regulation, the MOIP, gasoline-marketing regulation, wellhead tax policy, and peacetime petroleum price and allocation controls.

Natural-Gas Policy. In 1954, creeping wellhead gas regulation culminated in price regulation of all gas dedicated to interstate commerce. This was an early setback for the majors and a rare political blow to independent producers. It was not a defeat, however, for the entire industry. Gas utilities and some interstate pipelines achieved advantageous vertical regulation of their upstream brethren by judicial and legislative activism. Defensive politics by majors and independent producers against wellhead regulation was the most concentrated effort the industry had ever mounted, but victories in Congress were voided by a Truman veto in 1950 and an Eisenhower veto in 1956 to prevent a wellhead exemption from the NGA.

Not since the Madison trial in 1936 had the majors been repulsed, although the second veto occurred more from bad luck than a change in political winds. Without the Case incident, the lobbying of the Natural Gas and Oil Resources Committee could have made the next decades different not only for the majors and independent producers but for consumers as well.

The consumerist Federal Trade Commission appointed by President Kennedy in 1960 represented another setback for the majors and independent producers. Wellhead pricing was polarized into a consumer-versus-producer contest, and below-market prices sacrificed longer run coordination and growth for short-term, narrow gains.

Elizabeth Sanders noticed a political principle at work in each of the fateful decisions of Truman, Eisenhower, and Kennedy about natural gas. “Elected officials ... seemed to be more sensitive to the immediate effects of policy decisions on constituent incomes than to complex, long-term consequences that might not occur in their political lifetimes and, if they did, might be too remote from specific legislative decisions for unambiguous attribution.”[38] A

[38] Elizabeth Sanders, *The Regulation of Natural Gas: Policies and Politics,1938–1978* (Philadelphia, PA: Temple University Press, 1981), p. 99. This was a major aspect of energy policy throughout the period. Stated Craufurd Goodwin, “What we witness above all is a Congress dominated by relatively narrow special interests, both regional and industrial, an executive branch riven by bureaucratic conflicts of all kinds, and a presidency distracted constantly by 'larger' issues and with

combination of ill fortune, political opportunism, and a vocal industry minority with urban public support overpowered economic reasoning and the policy preferences of the large majority of the oil and gas industry.

Oil Protectionism. Oil tariffs established in the Revenue Act of 1932 and import quotas enacted in the MOIP of 1959 were internal intervention. The impetus for protectionism did not come from the government or the general public. Rather, domestic independent producers organized in the IPAA sought this form of horizontal regulation to enhance their competitive position relative to that of foreign oil and the firms importing it. Utilitarian arguments based on the contribution of domestic production to national security won the day, but this legislation would not have passed without industry support.[39]

Industry support for protection was the same in the 1950s as it had been in the 1930s. Growing imports put pressure on the market-demand proration programs of the southwestern oil states. Rather than allow prices to drop, authorities increasingly reduced allowables to absorb expanding imports.

This squeezed independent producers; majors were squeezed less because they imported crude as well as produced it domestically. The political solution for the independents was a quota restriction on imports, which, practically speaking, meant the majors' imports.

For majors, it was not as much of an economic and political setback as it might appear. As they had in 1932, the integrated companies with foreign production acquiesced to state production limits increasing overall prices and kept good relations with nonintegrated producers, who, because of their numbers, wealth, and political power, had to be respected. While to independents, protectionism represented price subsidies through horizontal regulation, to majors, it was self-horizontal regulation tempered by the pragmatic concern of rescuing their self-horizontal regulation elsewhere—namely, market-demand proration.

Along with independent producers, independent refiners benefited from the MOIP. Traditional nonimporting (independent) refiners were assigned valuable import rights that were profitably exchanged with coastal (often major) refineries. The American Petroleum Refiners Association was founded in 1961 to represent these favored independents. Since independent marketers were associated with inland refiners, virtually the entire independent sector benefited from the MOIP—at the expense not only of the majors but of relatively quiet consumers.

The MOIP was blatantly anti-consumer, yet vague protectionist arguments based on national security went unopposed except in select left-leaning publications. Consumers were not organized during the fourteen years of the program; a lawsuit by the Consumers Union in 1972 was far too little too late.

---

a time horizon normally extending not beyond the next election and often much less.” Craufurd D. Goodwin, "The Lessons of History," in *Energy Policy in Perspective: Today’s Problems, Yesterday’s Solutions,* ed. Craufurd D. Goodwin (Washington, DC: Brookings Institution, 1981), p. 681.

[39] National-security arguments for synthetic-fuel subsidization in the 1945–55 period and again in the 1970s and 1980s, on the other hand, primarily attracted political support from outside the industry.

Gasoline Marketing. Gasoline marketing was a second area over which independents and majors were at odds. To elected officials, independent jobbers and dealers epitomized small business. On the local level, independents used horizontal regulation, such as entry restrictions and self-serve bans, and self-horizontal regulation, such as below-cost (minimum-markup) laws, the anti-competitive effects of which touched primarily independents and would-be entrants.

On the federal level, independent lessees used vertical regulation against their major-company suppliers. Antitrust suits and federal probes were the independents' political weapons. Major baiting was good press and good politics, and the independents had powerful friends in Congress. In the House of Representatives, Wright Patman (D-Tex.), chairman of the House Small Business Subcommittee; Patman's successor, James Roosevelt (D-Calif.); and later, John Dingell (D-Mich.) was pro-independent and anti-major. On the Senate side, small businesses, including gasoline marketers, had an ally in Hubert Humphrey (D-Minn.), chairman of the Senate Small Business Subcommittee. Between 1955 and 1972, periodic congressional investigations on behalf of independents, in addition to antitrust suits and investigations by the Department of Justice and the Federal Trade Commission, kept the majors on the defensive.[40]

In the turbulent 1970s, dealer protectionism accelerated. States considered, and in several instances enacted, divorcement and divestiture laws. Lease regulation favoring lessees over lessors became the law of the land in 1978, replacing similar legislation on the state level. Such pro-independent-lessee regulation was internal and virtually imposed on supplier-refiners.

Like import protectionism, gasoline-station protectionism went unopposed by consumers. A challenge by the American Automobile Association against a 25 percent minimum-markup law in Massachusetts, in addition to the AAA's support for legalized self-service, was as close to an organized consumer position as was ever taken.[41] Instead, national trade groups representing downstream independents such as the National Oil Jobbers Council (founded in 1948 and reorganized in 1955), the Society of Independent Gasoline Marketers of America (founded in 1958), the National Congress of Petroleum Retailers (founded in 1958), and numerous local trade groups representing area independents controlled the debate.

Depletion Allowance Modification. Oil and gas producers have received a special tax deduction for reservoir extractions since 1913. Its rate varied until 27.5 percent of income was adopted in 1926. This allowance, combined with intangible-cost expensing, greatly accelerated cost recovery to give the producing sector a lower effective tax rate than that of other industries. Along with market-demand proration and import restrictions, preferential tax treatment was a political victory for independent producers. The majors were similarly advantaged.

[40] See, for example, "What Congress Is Doing in Oil Marketing," *NPN*, April 1955, p. 62; "Roosevelt Committee: What's Ahead for Marketers," *NPN*, November 1955, pp. 30–32; "Jimmy Roosevelt's New Strategy for Oil," *NPN*, March 1963, pp. 99–100; "Washington Roundup," February 1968, p. 62; "Price, Supply Woes Told at Dingell Hearing," June 1972, pp. 17–18; and "Jobber Woes Deluge Dingell Hearings," July 1972, pp. 47–51.

[41] The American Automobile Association in 1941 lobbied for more effective gasoline price regulation, an early example of misplaced, short-sighted consumerism in the oil and gas market.

Beginning in 1951, congressional sentiment surfaced for reducing or eliminating the depletion allowance. Stalwart oil-state representation in Congress by Senate Majority Leader Lyndon Johnson (D-Tex.), House Speaker Samuel Rayburn (D-Tex.), and Senator Robert Kerr (D-Okla.) repelled the attacks through the 1950s and well into the 1960s. In 1969, however, a new era began when the depletion rate was reduced to 22 percent. As with wellhead price controls on natural gas, a setback occurred for majors and independent producers alike. But this time extenuating circumstances (such as the 1956 gas-bill veto) were absent. The mood of Congress was decidedly against producers for the first time in peacetime history. The tax increase was external intervention, although some downstream independents lobbied to end the depletion allowance in the belief that it subsidized the downstream operations of their integrated rivals.

Congress and the 1970s Energy Crisis. The relation between Congress and the oil industry, which had been worsening since at least 1969, became decidedly hostile when oil-product shortages appeared in the 1970s. Congress was not going to blame its own policies for the energy problems, and blaming the public was as suicidal as it was erroneous. The industry in general, and the majors in particular, became the scapegoat.

The multidecade history of political favoritism became a liability to the industry in the 1970s. Severance taxation, market-demand proration, and import restrictions, which were widely perceived to benefit energy-producing states at the expense of energy-consuming states, created a hostile group of lawmakers and constituencies from the latter states. Legislators such as Senators Henry Jackson (D-Wash.), chairman of the Senate Interior Committee; Edward Kennedy (D-Mass.); Philip Hart (D-Mich.); Howard Metzenbaum (D-Ohio); James Abourezk (D-S.D.); Birch Bayh (D-Ind.); and Abraham Ribicoff (D-Conn.) and Representatives Dingell; Toby Moffett (D-Conn.); and Bob Eckhardt (D-Tex.) became thorns in the majors' side when the energy crisis hit.

In 1973, when the energy crisis was developing, Milton Friedman in a *Newsweek* column pleaded with Congress to remove, not extend, regulation and let bygones be bygones. “We shall only hurt ourselves," he stated, "if we let resentment at [the industry's] past misdeeds interfere with our adopting the most effective way to meet the present problem.”[42] Several years of crisis and regulation later, William Johnson identified the industry's legislative and public relations problem as a self-inflicted wound.

> A major reason for the public's misunderstanding of the energy crisis and demand for government intervention has been continuing warfare within the ranks of the industry itself. Some oil companies have, from time to time, seized upon opportunities for profit from various public policies. In building a case for government intervention, these companies have also helped to undermine public respect for the oil industry and to bring about federal regulations and controls.[43]

Craufurd Goodwin made a similar point by noticing that oil-surplus intervention to keep prices from falling naturally led to oil-shortage intervention to keep prices from rising. "A

[42] Milton Friedman, “Why Some Prices Should Rise,” *Newsweek*, November 19, 1973, p. 130.
[43] *NPN*, September 1976, p. 37.

half century of market intervention was a fact of life, and it was simple now for consumers to use well-known interventionist arguments, perfected by the producers, to insist on grounds of 'equity' and other considerations that prices should be restrained from moving upward as well as downward."[44]

Energy-Crisis Legislation. President Nixon's price-control program was sudden and unexpected by business and the public. For the oil industry, it represented external intervention. (It was less of an event for the natural-gas industry, which was already regulated except for intrastate production.) Once the program was implemented, patriotic support for it emerged in the industry. In Phase II, a price increase by Shell Oil was opposed by the Independent Refiners Association of America (IRAA). By Phase IV, constituencies had formed on each side of the regulations. Explained Charles Owens:

> The producers wanted a free market for domestic crude; the refiners wanted a ceiling on all domestic oil. The large refiners argued that the cost allocation and special product rules were too restrictive, and the small refiners claimed that the regulation should be more restrictive for large refiners and less strict for them. The resellers wanted a guaranteed markup and the same margin date as refiners. Retailers demanded to be allowed to pass through increased product costs. ... They also wanted larger margins to be authorized. Business interests argued that the regulations would curtail expansion and economic growth. Consumer interests called for tighter controls of integrated refiner profits. State governments wanted stricter octane and lead posting requirements.[45]

The constituencies of Phase IV produced the Emergency Petroleum Allocation Act of 1973 (EPAA), which governed the oil market for seven tumultuous years. The supplier-purchaser rule was vertical regulation achieved by the IRAA and the Society of Independent Gasoline Marketers of America against integrated suppliers. The buy-sell program was self-horizontal regulation by the IRAA. Price controls, on the other hand, had a strong external basis in legislative consumerism. A major goal of the EPAA, and later the Energy Policy and Conservation Act of 1975 and the Energy Conservation and Production Act of 1976, was to shield U.S. consumers from world oil prices. Downstream industry support for price controls existed, however. Mobil, for example, criticized crude-oil decontrol as a "shock to America's fragile economic recovery."[46]

The refinery entitlements program and the mandatory allocation program were internal interventions. The lobbying efforts of the IRAA and the American Petroleum Refiners Association represented attempts at both vertical and self-horizontal regulation. The participation of the Society of Independent Gasoline Marketers of America was an attempt at vertical regulation—the imposition of intervention on an upstream sector in hopes of receiving downstream price benefits.

---

[44] Craufurd D. Goodwin, "The Lessons of History," p. 667.

[45] Charles Owens, "History of Petroleum Price Controls," in *Historical Working Papers on the Economic Stabilization Program*, 2 vols. (Washington, DC: Government Printing Office, 1974), vol. 2, p. 1283.

[46] H. J. Maidenberg, "Mobil Opposes Decontrol of Oil; Urges Phaseout of Price Curbs," *New York Times*, August 25, 1975, p. 1.

By early 1974, over sixty trade groups or company legislative affairs groups, headquartered in Washington, D.C., were engaged in offensive politics to obtain favorable regulation. The API, on the other hand, was engaged in defensive politics against divestiture proposals, increased taxes, and even nationalization.[47] More trade associations would spring up over the next six years.

External regulation in the 1970s included not only price controls but the removal of traditional tax deductions and the imposition of an altogether new industry-specific levy. In 1975, the depletion allowance was eliminated for majors and reduced for independents. A year later, tax benefits for oil extraction were further narrowed. Such reform was anti-industry. Congress was in a punitive mood, and only independent marketers expressed support for such tax reform. The Windfall Profit Tax of 1980 was punitive, yet it received some industry support as the political price for crude-oil decontrol. Mobil Oil, however, favored eliminating the tax on undiscovered oil instead of across the board. ARCO, advantaged by the North Slope provision of the excise tax, went to court to preserve the levy.

The Synthetic Fuels Corporation was founded in June 1980 as an agency independent of the Department of Energy (DOE). Industry support made it partly self-subsidization, while deep-rooted government support for synfuels as a cure for the energy crisis made it primarily external intervention. A trade association, the National Council on Synthetic Fuel Production, was formed to garner subsidies for its member firms. Another offspring of the energy crisis was the Strategic Petroleum Reserve. Its political origin was external to the industry, inspired by the government-planning mentality. In that regard it was akin to the Synthetic Fuels Corporation.

Public distrust of and legislative antagonism toward the oil industry explained not only the unprecedented degree of external intervention but also the rise of self-styled energy-consumer groups. The Consumer Federation of America formed an Energy Policy Task Force in 1973. Energy Action was created two years later. In 1978, the AFL-CIO formed the Citizen/Labor Energy Coalition, whose efforts were subsidized by $300,000 in taxpayer money between 1979 and 1981.

The objective of these groups was to secure or retain strict price controls, favor independents over majors, and side with environmentalists against public-land oil and gas production. Ironically, while such formalized consumer representation was a first in industry history, the groups' prescriptions were anti-consumer. Free-market positions were only reluctantly taken, but the market would have had the last say. After the decontrol of oil prices in early 1981, Energy Action consolidated with the Citizen/Labor Energy Coalition, and energy consumerism shifted from oil and gas to electric-utility regulation. Less petroleum regulation resulted in less distortion for “consumerism" to combat.

Summary

The preceding analysis of political capitalism in the oil and gas industry has revealed an opportunistic mix of free-market processes and government intervention. As a rule, the free market was the "default" situation into which government intervention was introduced to achieve business objectives. In the great majority of cases, identifiable industry coalitions led the way. The history of regulation of the oil and gas industry is the story of how compromise

[47] “Washington Climate: Oil Fights Back,” *NPN*, March 1974, pp. 29–35.

and pragmatism, in the absence of principle, created interventionist pressure at every turn. When it was costless, the industry proclaimed its support for the free market in principle. But this philosophical leaning meant little when more was at stake.[48]

Industry and government motivations for individual oil and gas interventions are summarized in table 30.1. Approximately sixty major interventions are listed with their associated government jurisdictions, time periods, and political types.

The first conclusion is that intervention in the oil and gas industry has been predominantly *internal* (industry sponsored). The imbalance increases noticeably when taxation is removed to leave regulation and subsidization. Remaining external intervention is further narrowed after an intervention when industry segments often came to support it. Wartime planning, synthetic-fuel subsidization, and wage and price controls by the Cost of Living Council were examples of external regulation that found a following within the industry.

The most common category of internal intervention is *self-horizontal regulation*. Horizontal and vertical regulation are less common but still frequent. Examples of self-regulation, on the other hand, are absent because regulation generally covers the entire class of firms, not just certain firms within a class.

There are examples of interindustry regulation in the oil and gas experience. Self-horizontal subsidization is the only one of the five subsidization categories with oil and gas examples. Another theoretical possibility (with no examples) is self-vertical regulation.

The major lesson to be drawn from over a century of intervention is that *the interests of political elites outweighed consumers' interest in maximum quality at lowest price*. Short-run business and political objectives and fallacious economic analysis were at the root of the

[48] Testimony by the IPAA on merger policy was illustrative of pro-free market sideline philosophy. “The recent wave of mergers and acquisitions in the oil industry which are the subject of these hearings has actually very little direct effect on the independent oil and gas producers in the United States. However, on general principle, we oppose any anti-merger legislation that interferes with the free play of market forces in America.” *Legislation Affecting Oil Merger Proposals, Hearings on S. 2362, Before the Subcommittee on Energy and Mineral Resources, of the Committee on Energy and Natural Resources,* 98th Cong., 2d sess. (1984) (statement of Jon Rex Jones, president, Independent Petroleum Association of America), p. 311

Table 30.1
POLITICAL SUMMARY OF MAJOR OIL AND GAS INTERVENTION

Intervention	Jurisdiction	Period		Description
Gas distribution	Municipal	1817-	External Internal	Self-horizontal regulation
Rail, road, and water subsidies	Federal, state	1859	Internal	Self-subsidization
Crude/product taxation	Federal	1862–66	External	-
Kerosene safety	Federal, state, municipal	1862–1919	Internal	Self-horizontal regulation
Roberts torpedo monopoly	Federal	1864–80	Internal	Horizontal regulation
Government-land leasing[3]	Federal, state	1866–	External	-
Oil-pipeline common carrier	State	1872–	Internal	Vertical regulation
Oil-pipeline eminent domain	State	1879–	Internal	Self-horizontal subsidization
Antitrust vs. Standard	State, federal	1880–1911	Internal	Vertical regulation, horizontal regulation
Railroad regulation[13]	Federal	1887–	Internal	Self-horizontal regulation, interindustry regulation

(Continue on next page)

Table 30.1 (Continued)

POLITICAL SUMMARY OF MAJOR OIL AND GAS INTERVENTION

Intervention	Jurisdiction	Period	Type	Description
Casing, plugging wells	State	1878–		Self-horizontal regulation
Gas distribution, public utility	State	1885–	Internal	Self-horizontal regulation
Natural-gas conservation	State	1899–	External Internal	Vertical regulation
Oil output conservation	State	1900–23	External	-
Oil pipeline, public utility	State	1905–	Internal	Self-horizontal regulation
Interstate oil-pipeline regulation	Federal	1906–	Internal	Vertical regulation
Wellhead severance taxation	State	1907–	External	-
Oil pipeline, common purchaser	State	1909–	Internal	Vertical regulation
Corporate taxation	Federal	1909–	External	-
World War I Planning[3]	Federal	1917–19	External	-
Well spacing	State	1919–	Internal	Self-horizontal regulation

Gasoline taxation	State	1919–	Internal	Self-horizontal regulation
Wellhead-gas price floors	State	1920–	Internal	Self-horizontal regulation
Oil proration	State	1927–	Internal	Self-horizontal regulation
Natural-gas proration	State	1929–	External Internal	Self-horizontal regulation
Oil-field shutdowns	State	1931–	Internal	Self-horizontal regulation
Gasoline self-serve bans	Local, state	1930–	Internal	Horizontal regulation
Oil tariff	Federal	1932–	Internal	Horizontal regulation, self-horizontal regulation
Crude-oil tax	Federal	1934	Internal	Self-horizontal regulation
Securities regulation[11]	Federal	1933–	External Internal	-
NIRA oil code	Federal	1933–35	Internal	Self-horizontal regulation
Compulsory pooling	State	1935–	Internal	Self-horizontal regulation
Hot-Oil Act	Federal	1935–	Internal	Self-Horizontal regulation
Trucking regulation	State	1915–	External Internal	- Self-horizontal regulation

TABLE 30.1 (CONTINUED)
POLITICAL SUMMARY OF MAJOR OIL AND GAS INTERVENTION

Intervention	Jurisdiction	Period	Type	Description
Gas/oil ratios	State	1929–	External Internal	Self-horizontal regulation
Madison trial	Federal	1936–41	Internal	Horizontal regulation
Natural Gas Act	Federal	1938–	Internal	Vertical regulation, self-horizontal regulation
Synthetic fuel subsidies	Federal	1944–55	External Internal	Self-horizontal subsidization
World War II planning[3]	Federal	1941–45	External	-
Compulsory unitization	State	1945–	Internal	Self-horizontal regulation
Interstate oil-pipeline rate ceilings	Federal	1940, 1941	Internal	Vertical regulation
Interstate oil-pipeline dividend ceilings	Federal	1941–82	External	—
Maximum efficient rate of production	State	1945–	Internal	Self-horizontal regulation
Korean conflict planning[3]	Federal	1950–53	External	-
Wellhead gas regulation	Federal	1940–93	Internal	Vertical regulation

Mandatory oil import program	Federal	1958–73	Internal	Horizontal regulation, self-horizontal regulation
Air quality regulation	Federal	1970–	External	-
Oil-ship subsidies	Federal	1970–	Internal	Self-horizontal subsidization
Cost of Living Council wage and price controls	Federal	1971–74	External	-
Oil export ban	Federal	1973–	External Internal	Interindustry regulation
Import fees	Federal	1973–79	External Internal	Horizontal regulation
Price and allocation controls	Federal	1973–81	Internal	Vertical regulation
Refinery entitlements program	Federal	1974–81	Internal	Self-horizontal regulation, vertical regulation
Service-station divorcement/ divestiture	State	1974–	Internal	Vertical regulation
Alternative fuel subsidies	Federal	1975–78	External Internal	Self-horizontal subsidization
Strategic Petroleum Reserve	Federal	1975–	External	

(Continued on next page)

Table 30.1 (Continued)
POLITICAL SUMMARY OF MAJOR OIL AND GAS INTERVENTION

Intervention	Jurisdiction	Period	Type	Description
Natural Gas Policy Act	Federal	1978–	External Internal	Various
Powerplant and Industrial Fuel Use Act	Federal	1978–87	External Internal	Interindustry regulation
Service-station lease regulation[11]	Federal	1978–	Internal	Vertical regulation, horizontal regulation
Windfall Profits Tax	Federal	1980–88	External	-
Synthetic Fuels Corporation	Federal	1980–85	External Internal	Self-horizontal subsidization

a Once undertaken, political activism of the industry shaped particular interventions within the general government program.
b Federal regulation was preceded by state regulation.

mass denial of consumer sovereignty. Steps and strategies to end this unsatisfactory state of affairs are the subject of chapter 31 concluding this book.

Additional Aspects of Political Intervention

Several additional aspects of the political side of intervention in oil and gas remain to be elucidated. The first concerns several important, long-standing rivalries in the oil and gas market. The most important—independents versus majors—began with the Standard Oil Trust in the 1880s and continues today. The influence of coal interests on oil and gas policies has been a second important area of contention. A third rivalry has been between energy states and nonenergy states; that rivalry began early this century with natural gas and later included oil.

The second aspect is court decisions that have been favorable to expansive government. Some decisions have upheld existing intervention, while others have expanded it. The judicial branch has played a major role in defining public policy in oil and gas markets.

The third aspect is the positions of the two major political parties. Their positions since the New Deal are examined to ascertain whether important ideological differences existed and how each party shaped the interventionist landscape. That is followed by an examination of the bureaucratic personality to gain a better understanding of the mentality of major politicians and regulators involved in the oil and gas arena. The chapter concludes with a review of major instances of cooperation and noncooperation by oil and gas firms within the industry-government relationship.

Energy Rivalries

Independents vs. Majors. A major conflict in the petroleum industry has been between major integrated firms and nonintegrated companies feeling the pressure of competition.[49] Prior to the formation of the Standard Trust, producers in the Pennsylvania oil region pushed for laws against oil pipelines, some of which were part of integrated firms.

The skirmish between Standard Oil and its competitors, all much smaller, was the major industry story from the 1880s through 1911 and even after. After the turn of the century, national trade groups such as the National Petroleum Association, founded in 1902 to represent independent refiners, and the Independent Petroleum Marketers Association, founded in 1909 to represent independent marketers, heightened the political presence of downstream independents. One of the first legislative attacks on the majors was the independent marketers' campaign for one-price laws, which were passed between the world wars.

Another independent-major tiff concerned oil proration in Oklahoma and Texas. Mom-and-pop independents foiled voluntary production limitation plans initiated by the larger, integrated firms located in the major fields, which then persuaded state authorities to set mandatory proration quotas. The result was the hot-oil war in the East Texas and Oklahoma City fields in the 1930s. Later in the 1930s, the independents flexed their political muscles and received the state regulation they wanted.

[49] This discussion parallels the analysis in chapter 29, “Challenges to Integration,” pp. 1795–97.

The Oil Code under the NIRA also fostered political divisions between majors and independents. The upper hand gained by majors led to resentment on the part of independents, who retaliated with the Madison antitrust suit after the NIRA was declared unconstitutional. In the same period, the Iowa plan, whereby the majors franchised their service stations to avoid a progressive tax, created a new class of independents who continued to obtain intervention in the name of competitive equity with major-company lessors.

In recent decades, a number of government policies have expressly advantaged independent and small facilities at the expense of majors and large facilities. Those policies include quota assignments under the MOIP; government fuel contracts; government royalty-oil contracts; small-business exemptions under Phase II of the Cost of Living Council's price-control program; the small-refiner bias under the 1974–81 refinery entitlements program; antitrust law applications in gasoline retailing; depletion allowance rates after 1975; and the Windfall Profit Tax rates. Majors have generally acquiesced to the small-business mood of Congress and the political clout of their rivals.

Intersectoral Conflict. Cases of intersectoral conflict overlap with vertical regulation. Crude-oil producers from the beginning sought to reduce their transport charges and improve the marketability of their crude by regulating pipelines. The "Texas Gas War" from the mid-1930s to the late 1940s found gas-hungry intrastate natural-gas pipelines lobbying the Texas Railroad Commission to ban flaring at the wellhead.

The IRAA lobbied for strict gas-well allowables in Texas and other states to increase the market share of oil over gas. Independent refiners opposed wellhead price deregulation during Phase II and Phase IV of President Nixon's price-control program because they wished to reduce their feedstock costs.

Competing modes of transportation have utilized intersectoral politics for business advantage. Oil-carrying railroads have protested reductions of pipeline rates. Trucking companies and railroads were other political adversaries on the state and federal levels.

Coal Politics. Coal is a competitor to fuel oil and natural gas in the electric generation market. Given a political forum, it was inevitable that interfuel conflicts would lead to market constraints. With the rise of natural gas, coal interests formed the National Coal Association in 1917 to lobby against the entry of natural-gas pipelines.

The National Coal Association and coal-carrying railroads were ambivalent toward the NGA. They feared lower prices as a result of cost-based ratemaking, but they favored certification authority that could only slow the entry of new interstate pipeline capacity. Victory came in 1942 when section 7(c) of the NGA was expanded, and rival fuels (oil and coal) received “the right for full participation" in certification hearings.[50]

Whereas interstate projects required certification only if they entered an occupied market, the new version required a section 7(c) certificate for all new projects. But this was only half of the battle. While certification hearings had great potential to delay or block new natural-gas

[50] See chapter 15, pp. 879–80.

projects, the coal interests' conservation and end-use arguments against new projects needed to be sanctified in the hearings. This was achieved in 1943.

From the 1940s through the early 1960s, coal interests actively intervened against pipeline applications for entry into new interstate markets and expanded service in existing areas. They also lobbied for restricted natural-gas imports. During the 1955–56 debate on wellhead decontrol, the coal contingent feared expanded interstate service as a result of market pricing and lobbied for continued price ceilings. After competing for several decades against artificially low gas prices, however, the National Coal Association supported the Natural Gas Policy Act of 1978 for increasing natural-gas prices.

Although the coal lobby failed to prevent interstate pipelines from receiving eminent-domain rights in 1947, attempts to expand that privilege to underground storage reservoirs were blocked. The crowning success of the coal lobby was the Powerplant and Industrial Fuel Use Act of 1978, which restricted or banned oil and natural-gas burning in existing and new power plants. Another victory for coal-state lawmakers was *incremental pricing*, a provision of the Natural Gas Policy Act that raised the price of gas to industrial customers to subsidize residential and other captive users. The drive to repeal these two regulations in light of surplus oil and gas in the early 1980s pitted the National Coal Association against the American Gas Association.

Other oil and gas issues since World War II have attracted the participation of the coal lobby. The privatization of the Big Inch and Little Inch pipelines after World War II was opposed by the National Coal Association, the Eastern States Solid Fuel Conference, and the United Mine Workers. They opposed converting the lines to natural gas and argued that the government should mothball the pipelines as military assets. As a second-best alternative, the coal lobby favored oil carriage.

The National Bituminous Coal Advisory Council, formed in 1948 to advise the government on national coal policy, lobbied against the oil and gas depletion allowance that was considered lower than the depletion allowance for coal. Equal interfuel competition was the slogan for that effort.

The MOIP also attracted the active participation of the coal lobby. In 1959, a national coal policy conference in Washington, D.C. advocated oil-import regulation. Bills were introduced in Congress by coal-state representatives, but President Eisenhower used his discretionary authority to impose quotas instead. The main concern of the coal contingent was growing imports of residual fuel oil. Lobbying in the 1960s centered on keeping residual fuel oil quotas unchanged in the face of consuming-state pressure to relax them.

Another important issue for coal interests was synthetic-fuel production. Shale-oil and coal-gasification prospects incited coal interests to ardently lobby the Department of the Interior in the 1944–55 period and the DOE and the Synthetic Fuels Corporation in the 1980–85 period for synthetic-fuel subsidies.

Fuel-Oil Politics. Fuel-oil interests have entered the political arena on occasion to challenge the market position of coal and natural gas. Federal certification proceedings for natural-gas transmission companies have attracted fuel-oil intervenors to block, or at least to delay, new gas service. The same thing has occurred on the state level; one example was the fuel-oil jobbers' delay of introduction of gas service in Florida in the 1950s. Fuel-oil distributors have also challenged the marketing strategy of gas-distribution companies offering free or discounted gas appliances.

Petroleum refiners have also acted against gas on occasion. The IRAA, for example, lobbied for wellhead gas proration to increase the market share of refined oil over gas.

Regionalism. One of the first occurrences of regionalism in the U.S. oil and gas experience concerned interstate sales of natural gas. Nearby gas sources were recognized as a boon to local industry before the era of long-distance pipelines, and Oklahoma in 1907 and West Virginia in 1919 banned out-of-state shipments to restrict gas to home-state use. The Oklahoma and West Virginia laws were declared unconstitutional in 1911 and 1923, respectively, to end this regional conflict.

The controversy that erupted in the 1970s between net-energy-producing states and net-energy-consuming states was decades in the making. Its roots can be traced to oil-state proration, severance taxes, and import restrictions that advantaged the oil industry and home governments at the expense of importing-state consumers, those in the Northeast in particular.

In the 1970s, intrastate surpluses and price discounting of natural gas, at a time when the interstate market was searching for new gas supplies and experiencing record prices, caused resentment in major consumer markets. Natural-gas shortages in the same interstate markets made things worse. Consumer-state politics led to punitive regulation and taxation of the major producing states, which created antagonism toward gas-consuming states. The egalitarian effects of intrastate wellhead gas regulation beginning in 1978, and improved industry performance and falling prices in the less regulated 1980s, made the conflict between energy states and industrial states all but disappear.

Judicial Intervention

The court system is a branch of government, and judges are often politically appointed. It is not surprising, therefore, that the judiciary has joined the legislative and executive branches in expanding intervention. A review of major U.S. Supreme Court decisions regarding oil and gas reveals a decided bias toward government intervention. Broad powers to tax and regulate, particularly on the state level, have been upheld, and questionable economic reasoning has been used to side with Congress and regulatory agencies in upholding the constitutionality of intervention.

The first important Supreme Court decision regarding government intervention in petroleum, *Waters-Pierce Oil Company* v. *Texas* (1900), upheld the authority of states to impose regulation even if it was discriminatory and economically harmful to a firm. (Two years earlier, *Smyth* v. *Ames* had blessed economic intervention per se.) Nearly eight decades later, a gasoline-marketing divestiture law was upheld, despite discrimination and economic distortion, because of the state's "legitimate purpose" in regulating retail gasoline sales.[51] State actions upheld by the high court have encouraged a variety of pernicious interventions favoring some industry groups at the expense of others.

Several major antitrust decisions shaped the oil market politically. The 1911 *Standard Oil* decision established a reasonableness criterion to avoid automatic prosecution of dominant business firms, yet the high court stopped short of remanding the case for evidence that the

[51] Exxon Corp. v. Governor of Maryland, 437 U.S. 117 at 124–25 (1978).

trust was a reasonable monopoly resulting from superior economic performance. The decision restructured Standard Oil and the entire industry.

In the gasoline market, where antitrust applications have been the most prevalent, several Supreme Court opinions have promoted soft competition and weakened the contractual obligations of the lessee to the lessor. Lower tank-wagon prices given to particular lessees by a supplier to meet retail price cutting were ruled a trade restraint in a 1963 Supreme Court case, *Sun* v. *Federal Trade Commission,* because the supplier allegedly had an economic advantage over the original price cutters. The "meeting-the-competition" defense was overruled on the structural grounds of big-is-bad.

In the 1949 *Standard* v. *United States* decision, exclusive dealer contracts were ruled in restraint of trade on the assumption that lessors had economic power over lessees. Exclusive consignments of tires, batteries, and accessories were also struck down on economic-advantage grounds by the Supreme Court in 1965 and 1968 cases.

The *Phillips* decision in 1954, expanding natural-gas regulation to the wellhead despite ambiguous congressional intent, was deemed necessary to achieve effective interstate pipeline regulation. The *CATCO* decision in 1959 built upon *Phillips* to rule that arm's-length contracts exploited consumers. "The Court," stated Francis Welch, "seems to be telling the commissions to go farther, to regulate more actively."[52]

In its 1961 *Transco* opinion, the Court ruled against producer-distributor gas contracts to prevent circumvention of the NGA. In *Texaco* (1974), it ruled against free-market pricing of wellhead gas as inconsistent with "just and reasonable" pricing. With sounder economic analysis, each of these high-court decisions would have gone the other way.

The lower courts have also supported activist natural-gas regulation by the Federal Power Commission. "In so far as jurisdiction could be expanded by interpretation of the NGA," Richard Rosan concluded, "the [Federal Power Commission] generally found support in the federal appellate courts for its interpretations."[53]

In *Champlin Refining Co.* v. *Oklahoma Corp. Comm.* (1932), the high court sanctioned market-demand proration on the grounds that the physical waste of oil was being prevented. Eight years later, the Supreme Court upheld the Texas Railroad Commission's policy of granting well-spacing exceptions for small producers—despite the anti-conservation result of more drilling and production.

In *Fox v. Standard Oil* (1935), the high court upheld state chain-store taxation, despite its radical implications for the retail gasoline market, to allow small outlets to achieve competitive parity with multioutlet firms. State taxation was again blessed in a 1981 case, *Commonwealth Edison* v. *Montana,* in which the Court ruled that the tax rate did not have a judicial limit.

Taxation by Indian tribes was upheld a year later in *Merrion* v. *Jicarilla Apache Tribe.* In 1983, the Windfall Profit Tax was ruled constitutional in *Ptasynski* v. *United States,* despite

---

[52] Exxon Corp. v. Governor of Maryland, 437 U.S. 117 at 124–25 (1978).

[53] Richard Rosan, “Post-World War II Growth of Gas Industry,” in American Gas Association, *Regulation of the Gas Industry,* 4 vols. (New York: Matthew Bender, 1982), vol. 1, p. 3-27.

its violation of the uniformity clause of the Constitution. The high court reasoned that Congress had wide latitude to structure a tax on utilitarian grounds. Inventive reasoning masked the true basis of the decision—preservation of a major source of government revenue at a time of fiscal deficits.

In the 1914 *Pipe Line Cases,* the Supreme Court brought interstate oil pipelines under federal regulation "to give the public adequate protection."[54] Seven decades later, the lower courts favorably reviewed proposals to replace light-handed public-utility regulation of oil pipelines with heavy-handed regulation.

State courts have been partial to activist oil and gas legislation and regulation as well. Jacqueline Lang Weaver summarized the Texas judicial experience as follows:

> From the earliest time forward, the Texas courts have been willing to interpret the commission's statutory authority to prevent waste in a broad and expansive manner.... Clearly, the Texas Supreme Court has been a full partner in the Railroad Commission's efforts to prevent the waste of oil and gas in Texas fields.[55]

Many additional cases could be cited in which the Supreme Court upheld the constitutionality of major interventions at all levels of government. Decisions such as *Schechter Poultry* v. *United States,* which declared the NIRA unconstitutional in 1935, were exceptions to the rule. The Supreme Court, like the lower federal courts and the state courts, has been partial to expanding legal powers to address societal issues.[56] No doubt the political climate reinforced the constructivist idealism of the bench. As Justice Oliver Holmes noted:

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.[57]

Reversal of the utilitarian bias toward intervention, so prevalent among jurists this century, awaits a fundamental change in political philosophy and a new political climate.

Democrats vs. Republicans

The conventional wisdom—Republicans (conservatives) favor the free market and Democrats (liberals) favor economic intervention—must be highly qualified in the oil and gas

---

[54] Pipe Line Cases, 234 U.S. 548 (1914).

[55] Jacqueline Lang Weaver, *Unitization of Oil and Gas Fields in Texas: A Study of Legislative, Administrative, and Judicial Policies* (Washington, DC: Resources for the Future, 1986), pp. 262, 287.

[56] Felix Frankfurter in 1930 expressed the credo of legal constructivism: “Government is no longer merely to keep the ring, to be a policeman, to secure the observance of elementary decencies. It is now looked upon as one of the energies of civilization. It is being drawn upon for all the great ends of society." Felix Frankfurter, *The Public and Its Government* (New Haven, CT: Yale University Press, 1930), p. 24. Quoted in Robert Engler, *The Politics of Oil,* p. 268.

[57] Oliver Wendell Holmes Jr., *The Common Law* (Boston, MA: Little, Brown & Co., 1881), p. 1. Quoted in Bernard Siegan, *Economic Liberties and the Constitution* (Chicago, IL: University of Chicago Press, 1980), p. 283.

industry, as elsewhere in the economy. The primary consideration has not been the party line but the interests of the lawmakers' constituencies.

Regardless of party affiliation, members of Congress from oil states have voted quite differently from those from nonoil states. As Robert Engler concluded in his study of oil politics before 1960, "Certainly it is difficult to find a Congressman from an oil or gas state who will ever vote 'wrong' on oil or gas legislation."[58] In fact, as Engler documents, oil executives have been active supporters of the Democratic party, the Republican party, and during its brief existence, the Dixiecrat party.[59]

Several more decades of experience have not contradicted Engler's observation. Principle has been a scarce commodity, and without principle, legislators have voted according to campaign contributions and the provincial economic impact of legislation.

Democrats. Many leading Democrats have carried the banner of government intervention. Federal and state involvement in the oil industry under FDR reached new heights during the New Deal and World War II. President Truman's veto of wellhead gas decontrol to appease northern urban markets set the tone for future debates and decisions in this important area. President Kennedy revamped the Federal Power Commission to introduce "consumerist pricing." Kennedy and his successor, Lyndon Johnson, retained the MOIP inherited from a Republican administration. The next Democratic president, Jimmy Carter, notoriously embraced intervention and "national energy plans" in the most controversial regime of energy policy in U.S. history.

The long tradition of oil and gas intervention by Democratic presidents is true to form, but the legislative records of Democrats in Congress contradict the generally perceived party line. Powerful Texas Democrats such as Senator Tom Connally (1929–53), Representative Sam Rayburn (1913–61), and Lyndon Johnson as a senator (1947–61) were pro-oil first and pro-party second.

The same can be said for the Oklahoma contingent led by Senator Robert Kerr (1949–63). They adamantly fought against wellhead gas regulation when their party colleagues from consuming areas favored it. The depletion allowance, repeal of which was a liberal cause celebre, was defended by oil-state Democrats. Democrats embraced both interventionist positions, such as favoring proration and import restrictions, and noninterventionist positions favorable to oil and gas.

In the turbulent 1970s, oil-state Democrats such as Senator Lloyd Bentsen of Texas and Senator Russell Long of Louisiana toed the oil industry line first and the Democratic party line second when most of their colleagues voted against industry positions.

Republicans. Oil-state Democrats have outnumbered oil-state Republicans in Congress, but the White House offers many examples of pragmatic Republicans. Theodore Roosevelt parlayed anti-Standard Oil positions into political gains during his 1901–09 tenure as president. Herbert Hoover withdrew federal lands from oil leasing but was relatively

---

[58] Robert Engler, The Politics of Oil, p. 397. A rare exception would be Representative Robert Eckhardt (D-Tex.), who before his defeat in 1980, regularly took positions against the oil industry.

[59] Robert Engler, The Politics of Oil, pp. 353–61.

noninterventionist on the oil front, unlike elsewhere in the economy. Most intervention in Hoover's term occurred on the state level.

President Eisenhower vetoed wellhead natural-gas deregulation in 1956, an infamous example of political opportunism. Three years later, he invoked oil import quotas to the detriment of consumers and international relations.

Eisenhower's opportunism influenced his vice president, Richard Nixon, who became president in 1969. After signing into law standby wage and price control legislation submitted by a Democratic Congress, Nixon unexpectedly imposed the same by executive order in August 1971. Distortions created by regulation led directly to the EPAA of 1973, which Nixon signed before resigning. He also formed the Federal Energy Office to administer growing federal involvement. Nixon proposed, without success, a windfall tax on crude oil and gasoline rationing to deal with the emerging energy crisis. In short, a Republican president was the father of the energy crisis.

Gerald Ford, Nixon's successor after Watergate, continued in the pragmatic Republican tradition of Eisenhower and Nixon. Mandatory conservation plans were unveiled in Ford's first energy address. The Federal Energy Administration was created by Ford in what William Simon called a "classical Republican rationalization." [60]A windfall profit tax on crude oil was again proposed.

Another "Republican rationalization" was Vice President Nelson Rockefeller's proposed $100-billion Energy Resources Finance Corporation, which received Ford's endorsement.[61] The ultimate act of compromise, labeled by Simon "the worst error of the Ford Administration," was the Energy Policy and Conservation Act of 1975, which continued price and allocation regulation at a time when shortages and rising prices had given way to increased supply, price stability, and hope for decontrol.

Ronald Reagan's first term was remarkable for the free-market revolution that did not occur. On the oil and gas front, as elsewhere, there were high hopes. Campaign-trail opposition to oil price and allocation controls was joined by more gutsy stands on ending wellhead natural-gas regulation, terminating the Windfall Profit Tax, and abolishing the DOE.

On January 28,1981, Reagan's energy agenda began on a decidedly free-market note when oil price and allocation controls were removed eight months ahead of schedule. Several weeks later, Reagan canceled the 65-degree winter, 78-degree summer thermostat restrictions, which Carter had extended just before leaving office, for government buildings. After that auspicious beginning, Reagan's free-market program lost momentum and even backslid. In a July 17, 1981, energy message to Congress, Reagan acknowledged

> an appropriate Federal role in certain long-term research and development related to energy production and distribution. The goal of these projects is to develop promising technological innovations to the point where private enterprise can reasonably assess their risks.[62]

---

[60] William Simon, A Time for Truth (New York: McGraw-Hill, 1978), p. 76. Simon himself, however, was no Republican saint for the free market. See this chapter, p. 1865.

[61] William Simon, *A Time for Truth,* p. 79.

[62] "Message to Congress Transmitting the National Energy Policy Plan," July 17, 1981.

On that premise, Carter's infant Synthetic Fuel Corporation was given life with new appointments, and Reagan approved three DOE loan guarantee requests tentatively approved by Carter. The synfuel program was literally resurrected by Reagan despite falling prices and over the objections of budget chief David Stockman and other advisers. The approved projects and subsequent federal synfuel commitments under Reagan would not prove to be economical.

Natural-gas deregulation, a logical complement to crude-oil deregulation, was bypassed in Reagan's honeymoon period with Congress. This was a tactical as well as a policy mistake; the volatile issue required the full support of the president at the apex of his popularity. The first delay led to a second delay in an election year, and a "decontrol" bill introduced in 1983 was so watered down that its defeat was anticlimactic.

The abolition of the DOE was also bypassed. The appointment of Energy Secretary James Edwards, who vowed to terminate the agency and salt the earth to prevent its return, was a promising beginning that soon evaporated when Reagan and Edwards downplayed the issue and appointed career bureaucrats to key departmental positions.

By early 1982, seasoned political analysts recognized that President Reagan was different from candidate Reagan.[63] Wellhead natural-gas prices remained regulated under the NGA, the DOE remained with selective budget cuts, and synfuel commitments and Strategic Petroleum Reserve tillage rates were at a high. Ambitious plans for federal-land leasing for mineral development were proving to be a poor substitute for privatization. A half-hearted plan to dismantle the DOE was long on transfer and short on abolition; it was rejected by Congress as "disorganization," rather than a tax-saving reorganization.[64]

Several free-market gains were recorded in 1982, arguably the first since Reagan's first month in office. Reagan's principled veto of standby oil price and allocation controls was narrowly upheld by the Senate in March. His deregulation efforts between January 1981 and July 1982 eliminated an estimated 2 million hours of mandatory industry reporting.[65]

But with the positive came the negative. Reagan's "free-market" alternative to standby controls was a fill rate for the Strategic Petroleum Reserve that averaged above 230,000 barrels per day between 1981 and 1984, four times Carter's average fill of 56,500 daily barrels.[66] The Energy Emergency Preparedness Act, signed into law by Reagan in August 1982, called for fill rates of 300,000 barrels per day or greater. But with the changing energy

---

[63] See Joseph P. Kalt and Peter Navarro, "Administration Backsliding on Energy Policy," *Wall Street Journal*, February 9, 1982, p. 24; and Milton Copulos, "Reagan's Fading Energy Agenda," Heritage Foundation Backgrounder no. 204, August 17, 1982.

[64] "DOE Breakup Plan Due Tough Time in Congress," *OGJ*, March 8, 1982, p. 103, and "DOE-Commerce Merger Savings Claims Blasted," August 9, 1982, p. 77.

[65] "Paperwork for Industry Cut by 2 Million Hours," U.S. Department of Energy, *Energy Insider*, August 1982, p. 1. This conclusion was not accepted by G. E. Stahl, president of the National Stripper Well Association, who claimed the regulatory burden was the same in early 1983 as when Reagan took office. "A Flurry of Candor," *OGJ*, February 7, 1983, p. 29.

[66] The worst fiscal mistake for Reagan was a record 292,000 barrels per day purchased for the reserve in 1981 at prices between $30 and $38 per barrel.

environment and budget problems, the president used his discretionary authority to reduce purchases.

Reagan reduced the Windfall Profit Tax for royalty owners and certain oil and gas categories in the Economic Recovery Tax Act of 1981. But when the tax was voided by a federal judge in 1982, the administration immediately appealed. The high court reversed the lower court's decision, preserving one of Reagan's bedrock revenue sources. A year later, scheduled decreases in the tax enacted in 1981 for newly discovered oil were postponed. The fiscal plight of the federal government overruled campaign promises and even preexisting laws.

Another sign of the times was Reagan's solution to highway finance problems: a nickel per gallon tax increase on gasoline and diesel fuel enacted in the Surface Transportation Act of 1982. Election-year politics prompted Reagan in 1984 to extend the Alaskan oil export ban to appease shipping interests, in particular labor unions involved with U.S.-flag vessels.

The failure to deregulate natural gas, reduce taxes, privatize public lands, and abolish the DOE has been blamed on Congress and the Democrat-controlled Senate in particular.[67] The interventionist positions of Senator James McClure (R-Ind.), chairman of the Senate Energy and Natural Resources Committee, have been cited.[68]

But the president demonstrated a lack of free-market commitment by embracing interventions such as synfuel subsidies, the Windfall Profit Tax, and the Strategic Petroleum Reserve. He never seriously proposed natural-gas deregulation or the termination of nondefense DOE functions. The deregulation of interstate petroleum pipelines, interstate natural-gas pipelines, and service stations was never suggested. Except on one notable occasion, vetoes were not used against activist energy legislation. Like Eisenhower, Nixon, and Ford before him, Reagan was not an ideologue in favor of free oil and gas markets despite his rhetoric and some bright moments.

Regulatory Personalities and Corruption

Regulation of oil and gas (and the general economy) in the United States has not been the product of the classic tyrant as it has been in other countries.[69] The strong traditions of private property and democratic institutions have been major impediments to the rise of such a ruler. Huey Long of Louisiana, who as governor and U.S. senator left a controversial mark on oil and gas politics, was as close to being a demagogue as any politician or regulator in the U.S. oil and gas experience.

Instead of tyrants, hundreds of legislators and regulators have shaped oil and gas intervention at all levels of government. Shades of difference have marked major figures, but one premise has been shared by all—the efficacy of government intervention in achieving economic and social objectives. As defined in chapter 1, this is the constructivist mentality.

Six categories of the constructivist mentality can be identified:

---

[67] “Heritage Foundation Hits Administration’s Energy Program,” *OGJ*, October 11, 1982, p. 61.

[68] McClure preserved DOE subsidies to home-state constituencies, proposed the Standby Petroleum Allocation Act to subsidize state farmers, and was an ardent supporter of synthetic fuel subsidies. See Doug Bandow, "The Spending Problem in Profile," *Wall Street Journal*, April 16, 1985, p. 32.

[69] The classic tyrant is described in F. A. Hayek, “Why the Worst Get on Top,” *The Road to Serfdom* (Chicago, IL: University of Chicago Press, 1944, 1976), pp. 134–52.

- *Professional regulator*, who sees intervention as a way of life and a public duty. Financial well-being is secondary to the call of state, and when regulation beckons, this individual stands ready. Harold Ickes, who presided over the industry during the New Deal and World War II, is a major example. So was Mark Requa in World War I.
- *Naive idealist*, who brings a well-meaning attitude to his regulatory tasks but becomes disillusioned with the results and either continues for want of an alternative or retires to another government position or the private sector. No doubt all major regulatory episodes have examples of this mentality, but the 1970s' energy crisis would have the most.
- *Opportunist*, who sees intervention not only as appropriate but as a means to the greater ends of power, income, and prestige. An example is Charles Owens of the Federal Energy Office, a young Turk who played a major role in oil regulation during the formative 1972–74 period. Another example is President Eisenhower by virtue of his consequential gas-bill veto.
- *Anti-industry regulator*, who combines a preference for intervention with a fundamental dislike for (or at least a deep-seated suspicion of) the industry. To this person the price of intervention is seldom too high, despite the resulting distortions. Price controllers Leon Henderson, John Kenneth Galbraith, and Chester Bowles in World War II, and Michael DiSalle and Tighe Woods during Korean conflict planning are examples. Add an element of demagoguery and President Carter and his energy czar, James Schlesinger, would be other major examples.
- *Pro-industry regulator*, who combines a propensity to intervene with a strong bias toward the industry. E. O. Thompson, longtime chairman of the Texas Railroad Commission, is an outstanding example. Many other oil-state conservation agency leaders would also qualify.
- *Pragmatic regulator*, who differs from an opportunist by beginning with a fundamental dislike of intervention but warms up to the powers at hand. The person may begin by championing intervention designed to make existing regulation more efficient and "market conforming." However, the person's actions soon are scarcely distinguishable from those of a professional regulator. The most prominent example is William Simon, who jawboned, chastised, and regulated as head of the Federal Energy Office in 1973 and 1974. As treasury secretary, Simon continued to advocate intervention, as demonstrated by his national-security finding in favor of oil tariffs in early 1975. Another example of pragmatism was James Edwards, Reagan's appointee as secretary of the Department of Energy. Edwards began with a vow to work himself out of a job by abolishing the agency but left several years later fully converted to the agency's civilian-sector (as well as military-sector) mission.

Behind the major regulators is an army of lower-level bureaucrats. They generally run the gamut from idealists to careerists. Some, and sometimes many, share a notable characteristic: untested or limited competence. In a 1934 editorial inspired by a visit to Washington, D.C., veteran *National Petroleum News* editor Warren Platt concluded:

> Washington is full of failures, full of people who could not earn what they are now getting anywhere else.... There are a few bright men down there who are using their jobs as a stepping stone but the rest are simply working in a treadmill. They shirk every step they can and salve their conscience with the thought that anyway the government “owes” them a better living than they are getting.[70]

Shielded from the profit-loss statement and cushioned by civil service rules and political connections, untalented bureaucrats aggravate the inefficiency already inherent in government.

The regulatory personality is corruptible. With the power to alter profit and loss, regulators become very important to business, and business executives seek to curry favor with them. Regulators can rationalize their influenced action by the need to return favors or from a belief that what was sought by the private sector is the same course that would have been taken anyway.

While the instances of conflicts of interest, subtle favors, bribes, and rewards in the regulation of the U.S. oil and gas industry are too numerous to mention here—they are well documented in the writings of Robert Engler and others—some major examples may be mentioned.

The "Watergate" of oil and gas regulation was the Teapot Dome Scandal, in which Interior Secretary Albert Fall received financial benefits from two major producers to whom he awarded exclusive drilling rights in a Naval Petroleum Reserve. The irony of the hullabaloo was that Fall's decision was consonant with his pro-production philosophy and in response to oil drainage from adjacent private leases. Like the Case incident in 1956, which concerned wellhead natural-gas deregulation and was the second most publicized political incident in industry history, Teapot Dome was blown out of proportion by industry critics to discredit the logic of the policy action itself.

Unrecognized or neglected by the media and many historians have been three other instances of corruption, which point less toward the industry than toward the opportunism of government officials under intervention. The hot-oil war in the East Texas and Oklahoma City fields was the occasion for much public corruption. In Oklahoma, bribes for official protection of hot-oil production and transportation went to the governor's doorstep with the involvement of his nephew and proration chief Cicero Murray. Numerous employees of the Texas Railroad Commission aided hot-oil activity by looking the other way, giving protection, or altering official records. The commission, remarked federal regulator J. Howard Marshall II, “was for sale."[71]

Louisiana oil and gas politics has been rife with public-sector conflicts of interest and corruption. State officials received lucrative state-land leases in an era of noncompetitive bidding in the 1920s and 1930s. Thereafter, bribes, payoffs, and favoritism became a way of

[70] Warren C. Platt, *“Oil Suffers from Government Inefficiency,”* *NPN*, October 3, 1934, pp. 11–12.
[71] Interview with author, October 21, 1989.

life in the state. Investigative journalists have documented continued suspicious dealings into the 1980s,[72] but the full story awaits scholarly attention.

Another major episode of public corruption was gasoline rationing during World War II. The 1942–45 experiment resulted in coupon inflation by a well-organized black market, as well as coupon disappearances at government distribution centers. Arrests ranged from local police entrusted with guarding coupons to federal employees manning the ration boards.

Extraordinary Cooperation and Noncooperation

The cooperative era prior to the 1950s and the antagonistic era thereafter were summarized earlier in the chapter. Within these periods, particular instances of extraordinary cooperation and extraordinary noncooperation occurred that were important in the government-industry relationship. Each incident served to further or lessen the practical effects of government intervention.

Extraordinary Cooperation. World War I, the first government-industry partnership, was marked by extraordinary cooperation. Industry advisory groups set the tone. Beginning in mid-1917, firms sold fuel oil to the Navy at below-market prices on request. Limits to mandatory regulation led to "voluntary" regulation to freeze prices according to "the Plan." Wartime cordiality quickly soured in peacetime, however, when the Navy continued to demand large price discounts and sent warships to pressure agreement from coastal refineries. The industry was reminded that cooperation was a double-edged sword.

The assistance that oil firms favoring proration gave state and federal authorities in the hot-oil fight in East Texas represented extraordinary cooperation. Private groups such as the Texas Petroleum Council and the Texas Bankers Association were effectively quasi-governmental institutions. Some of the same companies lent executives to state vigilante groups to combat gasoline tax evasion to control gasoline price wars.

Major companies provided the government with extraordinary cooperation in World War II, which increased the effectiveness of intervention in oil markets. During the 1940–41 neutral period when tanker diversions left fuel supplies tight on the East Coast, area majors contributed $250,000 to a fuel-conservation advertising campaign that showcased oil czar Harold Ickes. Such courtesy helped legitimize the government as the caretaker of supply and demand and deflected attention from regulatory factors that were responsible for the predicament. Near the end of the war, major companies underwrote advertisements chastising black-market gasoline coupons. This action, challenging a quasi-market response to government distortion of the market, again sanctified government intervention—specifically price and allocation controls.

In the postwar period, extraordinary cooperation created major problems. Rising prices caused by expansionary monetary policy led President Truman to request that the high-visibility oil sector hold the line on price increases. Oil prices held artificially low during the war needed to reach their market level, but several majors complied with Truman's request, which aggravated a tight supply situation. The result was a narrow escape from winter fuel-oil shortages for homes and industry, thanks to shareholder-financed loss sales by the majors

[72] Thomas Petzinger Jr., and George Getschow, "Oil's Legacy: In Louisiana, Big Oil Is Cozy with Officials and Benefit Is Mutual," *Wall Street Journal,* October 22, 1984, pp. 1, 22–23.

involved. Full pricing in defiance of Truman would have averted the near crisis, but fearing punitive action, the companies took the path of least resistance.

The major companies' extraordinary cooperation in the 1970s was no doubt defensive politics, given the antagonism of legislators and the public toward the industry. Conservation campaigns by the majors drew attention away from the fundamental causes of the energy problems. They also complemented the biased media coverage of the energy crisis that emphasized reduced demand as the elixir for attaining supply and price normalcy.

Mobil Oil promoted government mass transit as a solution. When the Council on Wage and Price Stability accused the company of violating “voluntary" guidelines on noncontrolled products in 1979, Mobil consented to a $30-million settlement rather than, in the words of Chairman Raw leigh Warner, be "responsible for bringing the whole Council ... down".[73] That was the peak of extraordinary cooperation that preceded a market-versus-government showdown.

Extraordinary Noncooperation. Despite the pervasiveness of cooperation, there were crosscurrents of resistance to intervention that reduced its effectiveness by delaying or avoiding regulation or reducing public support for intervention. Some actions were legal, others not.

Legal circumventions included the Iowa plan to escape chain-store taxation, the “Brownsville loop" to qualify crude-oil imports under the overland exemption during the MOIP, and tie-in sales and processing agreements to circumvent price ceilings under the EPAA. Illegal strategies against regulation included those of the oil-well torpedo moonlighters in the nineteenth century, hot-oil producers and refiners in the 1930s, and crude-tier miscertifiers under the EPAA. Service-station dealers in World War II, who accepted cash as their only “ration ticket," also defied the law. Motor-fuel bootlegging to escape gasoline taxes over the last six decades has been the most common illegal free-market activity.

Civil disobedience against government policies and priorities was a major form of extraordinary noncooperation. Examples include “slackers" who drove their cars on Sunday during World War I despite government requests not to. Noncompliance with voluntary import quotas during 1955–58 and voluntary oil allocation during 1972–73 were other displays of noncooperation.

Price and allocation controls from 1971 to 1981 attracted resistance and legal challenges. During Phase IV, dealers refused to prominently post price and octane stickers sponsored by the Cost of Living Council. The National Council of Petroleum Retailers refused to distribute information forms from the Cost of Living Council to its 165,000 members. Buy-sell requirements under the EPAA were resisted and challenged in court by Gulf Oil, provoking the ire of the head of the Federal Energy Office, William Simon. Gulf also balked at the opening entitlements list in January 1975.

Over 200 court challenges to the EPAA, open disobedience of gasoline price controls by a Maryland dealer before the national press, and resistance to DOE audits after decontrol by

[73] Quoted in Charles Koch, “Will Businessmen Be the Death of Free Enterprise?”, p. 10.

more than three-fourths of the firms involved, showed another facet of an industry accustomed to being on the other side of intervention.

Summary

The interplay of the perceived self-interest of businesspeople and government officials gives rise to government intervention in markets. Such intervention has a political side in addition to an economic side. Intervention is political, wholly outside the spontaneous order of the market economy.

The outstanding characteristic of intervention in the U.S. oil and gas market has been the preponderance of industry initiatives for market interference (offensive politics). This has been truer in the present century than during the nineteenth century.

Not surprisingly, the beneficiaries of interventionism have not been consumers but specific industry segments and their political supporters. Free-market policy reform, discussed in the next and final chapter, would both discourage political opportunism and elevate the sovereignty of consumers.