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Marathon Man

Henry Waxman's climate change bill won't make it into law this year. That's why he's the right guy for the job.

By [Charles Homans](#)

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It's a drizzly spring evening on Capitol Hill, and an Indiana congressman has placed himself in an unenviable spot: between Representative Henry A. Waxman and the tobacco industry.

At issue tonight on the floor of the House of Representatives is a piece of legislation that Waxman, a Democrat from California, has been pursuing, Ahab-like, for a decade and a half: a bill that would place cigarettes under the regulatory authority of the Food and Drug Administration. Waxman's opponent, Republican Steve Buyer, is on the floor pressing for a more industry-friendly alternative: the creation of a new agency called the Tobacco Harm Reduction Center, which would encourage smokers to begin quitting by moving from cigarettes to, say, smokeless tobacco. "You see," Buyer explains, "it is not the nicotine that is killing people—it's the smoke! It's the smoke! It's the smoke that's killing people." Someone coughs in the back of the room. Buyer doesn't miss a beat. "I heard somebody coughing," he says. "It's the smoke! I'm telling you."

Waxman, a former smoker himself, is unfazed. He has been fighting the tobacco wars since Buyer was in law school. His bill is the end point of years of machinations aimed at battering the tobacco industry's credibility and clout, piece by piece. It was Waxman who, in 1994, hauled seven tobacco-

company CEOs before his subcommittee to testify that they did not believe nicotine to be addictive. (Their company scientists, who testified later, said otherwise.) And it was Waxman and his investigators who extracted damning internal documents, one after another, from R. J. Reynolds and Philip Morris, showing that cigarette manufacturers had knowingly concealed the hazards of what they were selling, documents that set the stage for the multibillion-dollar judgments the companies were forced to pay out a decade ago.

"This Buyer substitute is deeply flawed," Waxman says when it is his turn to speak. "It represents an inadequate response to the greatest preventable cause of disease and death in the United States." He rattles off the names of some of the organizations that support his own legislation: the American Heart and Lung Associations, the American Cancer Society, and the Campaign for Tobacco-Free Kids, among others. Buyer's amendment is whisked off the House floor to make way for (oh, the indignities of life in the minority) a resolution from a Bronx Democrat "congratulating the on-premise sign industry for its contributions to the success of small business." When a roll call is finally taken the next morning, Congress votes for Waxman's bill, Tobacco Harm Reduction Center not included, by a margin of nearly three to one. The *Washington Post* runs the story on page A2. What would've been unbelievable fifteen years ago seems unremarkable now.

Waxman's major accomplishments are often like this. His legislative campaigns unfold over spans of time beyond the patience of most lawmakers, and sometimes defy political gravity—in the 1980s, when anything smacking of Great Society liberalism was on the chopping block, Waxman managed to expand the Medicaid program twenty-four times. It is not unusual for him to spend a decade or longer advancing a single policy goal in tiny pieces, forging unusual alliances as he needs them, or simply outlasting his opponents. "It's the Ho Chi Minh approach," a despairing Republican staffer on Waxman's committee once told *National Review*. "If [victory's] not in the first year, it's in the fifth."

This year, at age sixty-nine, Waxman has the wind fully at his back for the first time since his early days in Congress a third of a century ago. In November, he won a secret-ballot election for the chairmanship of the House Energy and Commerce Committee, narrowly unseating Michigan Representative John Dingell, the eighty-two-year-old lion of the House who had held the post in every Democratic Congress since 1981. It is traditionally the third most powerful position in the House—during Dingell's tenure, 40 percent of House bills crossed his desk—and, with Ways and Means Committee Chairman Charlie Rangel hamstrung by a real estate scandal, it is now arguably second only in policymaking influence to Speaker Nancy Pelosi.

Waxman is also exceptionally well wired to the executive branch. Philip Schiliro, who served as Waxman's chief of staff and virtual alter ego for more than twenty years, is now President Obama's congressional liaison, the aide most directly in charge of shepherding the president's agenda through Congress. Obama has also tapped former Waxman staffers for important deputy-level positions at the FDA and the Department of Health and Human Services, as well as lower-ranking jobs elsewhere. This is no small thing: lawmakers and presidents alike struggle to get actionable intelligence from inside federal agencies, which in turn zealously guard it to preserve a measure of autonomy. Vice President Dick Cheney made himself immensely powerful in part by placing loyalists in key positions throughout the

bureaucracy. Waxman's ears are closer to the ground than those of just about anyone else in Congress.

For the rest of this year, Waxman's agenda includes launching most of the Democrats' biggest-ticket policy items. He is one of three chairmen crafting a health care reform bill this summer. If that effort is ambitious, the project consuming his time between now and then is even more so: along with his lieutenant, Heath and Environment Subcommittee Chairman Ed Markey of Massachusetts, Waxman is the principal architect of the American Clean Energy and Security Act, the first serious attempt by Congress to tackle climate change. Drafts of the bill include everything from money for electric cars to new requirements for lightbulb manufacturers, but the heart of the proposed law is a cap-and-trade program which, if properly executed, would cut greenhouse gas emissions 20 percent by 2020. Although the legislation's ultimate fate rests in the Senate—specifically, in the hands of skittish Democrats from the Rust Belt and Appalachia—Waxman's bill will set the terms of the debate and serve as the template for the Senate's legislation. If it passes, it will mark the beginning of the most dramatic transformation of the domestic policy landscape since the passage of Social Security.

Still, despite such ambitions, the White House faces numerous competing priorities, and climate change legislation is not first among them. (This year, the big push will be for health care reform.) "I think Chairman Waxman is fighting an uphill battle," says Steven Biel, U.S. climate campaign director for Greenpeace. "He's in a position where he has to make up for a decade of not just lost policy opportunities, but of just not discussing in an informed, grown-up way the energy choices we face."

If that's the bad news, the good news is that this is the kind of uphill battle that Waxman has long specialized in fighting. What Waxman and the 136 other Democrats who voted for him in his chairman race were doing, in effect, was betting that climate change is a Henry Waxman Issue: a policy shift that seems immensely unlikely at first but, ultimately, becomes almost inevitable. Those shifts do not always happen in a year. But they do happen. And the arc of Waxman's career shows how.

The first thing you notice about Henry Waxman when he appears in the doorway of his Capitol Hill office is how little of it he occupies. At a height of five feet five inches, Waxman is one of Washington's better sight gags; his fearsome reputation on the Hill (in 2006, *Time* called Waxman "The Scariest Guy in Town") is sharply at odds with his stature and appearance. His close-trimmed mustache is bracketed by a pair of upturned nostrils and a mouth that oscillates between a rictus of concerned contemplation and a broad toothy grin, the whole package framed by his bald pate and generous ears. Hanging above the receptionist's desk in his office is a framed *Rolling Stone* illustration that depicts him as a snarling attack dog nipping at the heels of Bush, Cheney, and Condoleezza Rice. It looks like a breed of attack dog you could fit in a purse.

Most of the wall space around Waxman's own desk, which backs up against a tall window framing the dome of the Capitol, is filled with copies of bills he has passed over the course of three and a half decades in Washington, framed alongside the pens with which they were signed. Few are of recent vintage, however—Waxman has spent most of the past fifteen years in the minority party. He used those years to greater effect than many of his fellow Democrats, attaining some notoriety as an investigative bulldog on the House's Government Oversight and Reform Committee. In the 1990s, when

the committee's Republican chairman, Dan Burton, was obsessively (and clumsily) investigating Bill Clinton's campaign financing, Waxman regularly found ways to thwart him. After ascending to the committee chair himself in 2007, Waxman became one of the Bush administration's most dogged inquisitors. It was Waxman who unearthed the fact that 363 tons of shrink-wrapped \$100 bills had gone missing in Iraq, and revealed the extent of Halliburton's no-bid contracts in the country.

It was also Waxman who was stonewalled by Secretary of State Rice when he pressed her on pre-war intelligence on Iraq, in a hearing that still rankles him a year and a half later. "We never got Condoleezza Rice to finally talk about her statement on the uranium from Africa," Waxman says, sitting in his office on a morning in late March. "We got a complete runaround from her and her department. They said she already responded to it in her confirmation to be secretary of state—but she said nothing. The statement that she made was that if the CIA knew that it wasn't true, they never told her. She even said, 'They knew it in the bowels of the CIA that it wasn't true, but they never told us.' And then it turned out her chief deputy, Steve Hadley, was told by George Tenet himself that this wasn't true. And she never would acknowledge that." This is a man, you realize, who has learned to think in paper trails.

When Waxman delivers floor speeches or television interviews there is a relentless righteousness to his oratory, but his fervor lacks the inspirational fire of the preacher or labor organizer. He sounds more like a high school principal who has caught a couple of sixteen-year-olds smoking in the bathroom—a few minutes of it is enough to make even the biggest-government liberal think once or twice about cutting a check to Ron Paul. He is often visibly awkward with the back-slapping rituals that go along with life in Congress, and looks like he has never swung a golf club in his life.

People who know Waxman well tend to note the difference between his discomfort with political bonhomie and his private demeanor; he is shy, many of them say, and unusually attentive to others. (When the mother-in-law of his friend Norman Ornstein, the American Enterprise Institute scholar, died earlier this year, Waxman broke away from round-the-clock stimulus package negotiations to pay his respects while Ornstein was sitting shiva.) Stories about him tend to focus less on things he does than on things he *doesn't* do. Although his district, California's 30th, includes Hollywood, and Waxman is a movie buff, he has never bothered to attend the Academy Awards. ("It's such a long night," he once told *Time*. "When I watch it on TV, I can get a snack.") Although he was one of the central figures in Congress's 2005 investigations into steroid use in Major League Baseball—and had his image splashed across two pages of *ESPN* magazine for his efforts—he doesn't follow sports.

"Henry's in the middle of this whole steroids stuff, right?" says Howard Berman, a fellow California representative and a friend of Waxman's since they were college classmates. "One day he had a hearing where the [baseball] commissioner and all these baseball guys testified. And afterwards Henry told me, 'We had this hearing, and nobody covered it.' And I said, 'No one covered it? It was in every paper's sports page.' But he hadn't seen it—it had never occurred to him to read the sports page." (Since then, Waxman says, "for the first time in my life I've been regularly reading the sports section. But I do it very quickly.")

Reporters sometimes describe Waxman as lacking a sense of humor, which isn't quite right—what he lacks is the variety of wit that Washington

understands, the ability of a Barney Frank or an Alan Simpson (who once declared Waxman to be "tougher than a boiled owl") to dispense quotable one-liners on demand. Waxman instead tends toward dryness. When I press him for details of the reconciliatory dinner that he and Dingell had after his November coup, he thinks for a second, as if he's contemplating giving me some heretofore-unreported juicy detail, then replies, "Let's see ... we had fish. I think there was a white wine. There was cheese beforehand. Thinly sliced. It was really an interesting hors d'oeuvre."

Waxman seems to have come into politics more or less fully formed. Transcripts of hearings he conducted as a state assemblyman in early-'70s Sacramento on issues such as medical malpractice oversight read like they were recorded last week on Capitol Hill. He was born in East Los Angeles in 1939, and raised in Watts and West Los Angeles. His parents were both children of Jewish immigrants who had fled the 1903 pogrom in what is now Moldova. (Waxman is deeply religious and does not work on Saturdays except in emergencies.) His father was a grocer who worshipped FDR and imbued his family with a New Deal ethic of civic responsibility, one that Waxman carried with him to college at UCLA, where he was a member of the Young Democrats. He graduated in 1961 and went on to UCLA's law school, all the while staying plugged in to state Democratic politics.

In 1968, Waxman ran successfully for a Beverly Hills seat in California's state assembly. (Waxman's aunt, who ran a small liberal Westside newspaper, the *LA Reporter*, was so cantankerously principled in her politics that the paper endorsed Waxman's opponent.) An observant student of policymaking, Waxman figured out early in his career that the best way to have clout as a legislator was to pick an issue, master it, and stick with it. He chose health care and made a name for himself in the assembly fighting then Governor Ronald Reagan's attempts to shrink California's Medicaid programs. As a native of smoggy L.A., he was also an early convert to environmental awareness.

In 1974, a House seat opened up in Los Angeles, and Waxman was swept into the U.S. Congress as one of a crop of reform-minded Watergate Babies. Congress was undergoing a generational transformation at the time, and the older chairmen who ran their committees and subcommittees like personal fiefdoms were becoming anachronisms within the party. Waxman's immediate predecessors had begun dismantling the existing system of committee assignments, instituting secret-ballot elections that allowed the reformers to begin ousting their elders. Waxman enjoyed the fruits of this in 1979, when he beat a North Carolina congressman of considerably longer standing for the chairmanship of the Energy and Commerce Committee's Health and Environment Subcommittee, the first time in the history of Congress that such a position had fallen to someone out of the line of seniority. His success was due in large part to a practice—controversial then, but standard now—that he had brought from California to Capitol Hill: that of doling out money from his own campaign coffers to the campaigns of needy and potentially useful Democratic colleagues. Then as now, Waxman was an ambitious and effective reformer of policy but, crucially, not of politics. While other congressmen railed against the failings of the system, decrying the influence of campaign money and the abuse of procedural loopholes, Waxman simply tried to master them.

Waxman's first major battle came in 1981, when President Reagan attempted to roll back the Clean Air Act, a piece of legislation enacted under

Nixon in 1970. Reagan had an ally in John Dingell, the new chairman of the House Energy and Commerce Committee, who, as a defender of recession-battered Detroit, had become the House's staunchest opponent of stricter emissions controls. From his subcommittee perch, Waxman played a skillful inside-outside game, using public hearings and obscure parliamentary tactics to gum up Dingell's efforts and divide his supporters, until Reagan decided the fight wasn't worth the trouble. Emboldened, Waxman embarked on a campaign to extend the Clean Air Act to encompass toxic air pollutants, urban smog, and acid rain-producing emissions from coal-fired power plants. He would spend the rest of the decade trying to pull it off.

It was a quixotic effort. Waxman was trying to force major operating changes on America's car manufacturers, the industry most cherished by Dingell, Waxman's own committee chair. He was antagonizing the utility and coal-mining industries, and with them Senate Majority Leader Robert Byrd. And while the Reagan administration had bowed out of legislative battles, it was busy weakening the federal government's regulatory apparatus wherever it could.

What Waxman had, however, was a keen grasp of the levers that were at his disposal even as a junior legislator. Because the House, unlike the Senate, tends to impose a demoralizing anonymity on its members, Waxman offered his allies a place in the spotlight: he farmed out large portions of the complex Clean Air Act legislation to like-minded congressmen on his subcommittee, tasking Minnesota's Gerry Sikorski with developing acid rain legislation and Colorado's Tim Wirth with the air toxics provisions.

Waxman also learned how to look for alliances across party lines. On matters of air pollution, politicians were divided more frequently by region and industry than by party, and Waxman often made common cause against Dingell with moderate northeastern Republicans. (Waxman applied this approach even more creatively to public health issues, attracting Republican supporters for a bill funding AIDS treatment at a time when it was still considered a "gay disease," by focusing attention on the issue of pediatric AIDS rather than the epidemic's adult victims.) And, while a lackluster stage player, Waxman was a masterful director. In December 1984, when an explosion at a Union Carbide chemical plant in Bhopal, India, killed 2,000 people, he held a field hearing near a similar facility in West Virginia to highlight the risks of the chemicals he was seeking to regulate in his clean air legislation.

Eventually, Waxman fashioned a congressional power center to rival Dingell's, with an intensely loyal and knowledgeable staff that understood tiny technical details and how they mattered. A decisive win came in 1987, when the House considered a bill that would relax standards for urban smog. Industry-friendly members like Dingell and Pennsylvania's John Murtha confidently predicted that they'd win. Instead they lost by nearly a hundred votes. A year later, the election of the more environmentally minded George H. W. Bush gave sympathetic Republicans the cover they needed to vote with Waxman. Dingell realized it was time to make a deal. In 1990, Waxman's Clean Air Act reauthorization passed the House and Senate.

The most novel facet of the legislation was its answer to the question of what to do about acid rain, one of the most high-profile environmental concerns of the era. Fixing the problem required major reductions in the pollutants released by coal-fired power plants. In 1988, Daniel J. Dudek, an economist

working for the Environmental Defense Fund, had hit upon an elegant free-market solution: utilities would be granted a certain number of emissions allowances, allowances that could then be traded if they didn't need to use them. It was called "cap and trade." Bush loved the idea, and Waxman borrowed it.

The utilities protested. A study by the Edison Electric Institute claimed that the acid rain provisions would add \$5.5 billion annually to consumers' electrical bills. The result turned out to be something quite different: as of 2006, nationwide electricity rates had actually dropped below their 1990 levels, while the costs to utilities, according to the EPA, were a quarter of what industry had predicted. Sulfur dioxide emissions, meanwhile, have dropped by 46 percent since 1990. The legislation's success is one of the principal reasons that a similar system has become the preferred paradigm for drafting climate change legislation.

On April 22, Waxman's committee began its public rollout of the climate change bill, calling three cabinet officials—EPA Administrator Lisa Jackson, Energy Secretary Steven Chu, and Transportation Secretary Ray LaHood—to the Hill for a hearing. An hour before the doors to the committee room in the Rayburn House Office Building opened, the line to get in was nearly a hundred people long, snaking the full length of the corridor. "They should've held this at RFK," an energy trade publication reporter said as he squeezed in next to me in the press section inside.

From the chairman's seat, Waxman welcomed his colleagues. "Nearly forty years ago," he said, "this committee passed the original Clean Air Act." Twenty years later, in 1990, it had passed Waxman's reauthorization. "We have a similar opportunity and responsibility this year."

But as the assembled congressmen took turns questioning the administration officials, it was clear how much things had changed. The moderate Republicans of 1990 were gone, their seats filled by energy hard-liners hand-picked by Newt Gingrich and Tom DeLay. Texas Representative Joe Barton, the committee's ranking Republican, zeroed in on Chu, trying to stump the Nobel laureate by demanding an explanation of how oil ended up under the Arctic Circle. (The answer Barton was looking for apparently had something to do with it once being warm up there.) The other Republicans followed suit. "I think this is the largest assault on democracy and freedom in this country that I've ever experienced," fumed Illinois Representative John Shimkus.

Because support from Republicans will be almost nonexistent, Waxman's success will hinge even more than it did in 1990 on his ability to win over reluctant Democrats: House colleagues and senators from places like West Virginia and Michigan with regional concerns about things like utility bills and auto manufacturers—and, in many cases, a nervous eye on the 2010 elections. The fine print of Waxman's legislation is intended to placate such worries. It is heavily influenced by the U.S. Climate Action Partnership, a coalition of environmental groups and corporations that in January put out a blueprint for climate change legislation, including a cap-and-trade framework. The plan's signatories—who include not just the Natural Resources Defense Council but also Ford, Duke Energy, and the mining conglomerate Rio Tinto—are calculating that those who are on board early have the best chance of influencing the shape of laws to come.

The industrial players in USCAP wanted "some certainty as they start to make investments," Waxman says. "And I think that is going to be very, very helpful, when you look at what USCAP has done in preparing the way for a lot of industries who in the 1980s would've joined together to fight *anything*." Waxman has borrowed his negotiating tools from USCAP, leaving open the question of how exactly the emissions allowances will be allocated—how many will be auctioned off, and how many will be given away. The proposal would also include a system of emissions offsets, which would allow federal regulators to count carbon-absorbing resources like forests against the pollution limits.

While such flexibility is the greatest strength of Waxman's plan, however, it's also its greatest weakness. The bill's wiggle room improves its chances of passing Waxman's committee and later the Senate—but, if abused, could also gut the bill of its effectiveness. "The [draft] bill includes two billion tons of offsets, which is far too many," Greenpeace's Steven Biel says. "You could meet the requirements under this cap with no emissions reductions at all for twenty years or more." There is also the cautionary tale of Europe, where a poorly conceived emissions-trading system did little to reduce actual emissions in its first several years while saddling industries with copious red tape.

Ultimately, the biggest obstacle to Waxman's goals is the fact that climate change is exactly the kind of problem that Congress is least well calibrated to confront: a threat of existential scale but unclear contours, where all short-term incentives point in the wrong direction. Gallup's most recent poll found that while a majority of Americans believe that media's portrayal of climate change is accurate or understated, 41 percent believe it is exaggerated, the highest percentage in more than a decade of polling. Among the eight environmental concerns the pollsters asked about, global warming ranks dead last, and only 38 percent of Americans believe it is a serious threat.

In many respects, where climate change is now looks a lot like where tobacco was in the early '90s. Public opinion was cautiously on Waxman's side then, narrowly favoring limits on smoking and regulation of the industry. Waxman spent the next fifteen years patiently battling to shift the political consensus, leveraging broad but shallow popular support against a small but determined opposition. But if the fight over climate change looks too much like the fight over tobacco, we're in trouble, because here are the brutal facts: The 2007 report of the Intergovernmental Panel on Climate Change—the gold standard of conservative risk assessment—advises that governments start curbing emissions no later than three years from now. Delaying any further will undermine what may be the final chance to stabilize temperatures below a level that will otherwise become catastrophic within the next century. Most climatologists believe that if moderately ambitious targets on the order of Waxman's bill are not met by 2020, we will be helpless to stop warming trends before they hit a tipping point, beyond which there is nothing we can do. Officials and staffers close to the negotiating process admit that digging in and fighting for fifteen years is not an option this time around.

If we are lucky—and it's a frighteningly large "if"—Waxman's fight on climate change is nearing its endgame, requiring not a decade of low-boil persistence but, rather, a couple of years of tenacious negotiating. Passing his energy bill into law will be harder than getting pollution legislation on the books twenty years ago, but it will also be similar—and a chance for Waxman to prove that, even after fifteen years in the wilderness, he still

knows not only how to make a deal, but how to make the right one.

"Waxman is a very skilled legislator," a former Dingell committee staffer says. "Ultimately, I don't think he would sacrifice his fundamental principles just for the sake of getting a bill. I think he would prefer no bill to a bad bill."

"Most members are more interested in getting to 'yes' than in what that 'yes' is actually about," says Daniel Weiss, the director of climate strategy for the Center for American Progress, who worked closely with Waxman's staff as a lobbyist for the Sierra Club in the '80s. "Henry, to paraphrase Kenny Rogers, knows when to hold them and when to fold them. He knows when to retreat and fight another day." And as Steve Buyer could tell you, Henry Waxman's defeats are rarely actual defeats—they're just battles he hasn't finished fighting yet.



