



The Battle of the Budget

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# The Battle of the Budget

ALLEN SCHICK

In one of his last major acts as president, Richard Nixon signed the Congressional Budget and Impoundment Control Act into law on July 12, 1974. Less than one month later, he was gone from the national scene, leaving to his successor not only the litter of Watergate but also executive-legislative confrontation in many areas of American politics. This essay considers the new congressional budget process in the context of conflict between the two branches, particularly the strife that merges out of the budgetary role of the federal government.

The budget is a perennial battleground of American politics. Everybody fights. Agencies strive for more money, budget offices for more control over spending. The president announces one set of budget priorities; Congress enacts another. Within Congress, it is House versus Senate, authorizing versus appropriations committees, and spenders versus savers.

It could hardly be otherwise. With tens of billions of dollars at issue every year and with vital interests and policies hinging on the outcomes, the budget has virtually boundless potential for conflict. The budget could be a routine, settled affair only if disadvantaged interests were suppressed or if the United States possessed sufficient resources to satisfy all legitimate claimants. Because neither condition prevails, conflict is a ubiquitous aspect of budgeting.

Yet in American budgeting, almost everything gets settled. Despite the potential for open and protracted strife, the federal budget is decided each year, sometimes after little more than ritualistic disagreement, sometimes after great struggle. There are signs that budgetary warfare—in particular, conflict between the president and Congress—has escalated in recent years, and the prospect is for more tension in the future than was customary in the past. The problem is much more than the division

of legislative and executive power between the Democratic and Republican parties; it wells out of significant changes in budgeting and the larger political process it serves.

Some indicators of heightened conflict are the impoundment battles between the White House and Congress, enactment of a confirmation requirement for the director and deputy director of the president's Office of Management and Budget, counterbudget pressures from interest groups and research organizations, increased use of continuing resolutions to fund federal agencies and programs, and, most significantly, establishment of a new congressional budget process and the Congressional Budget Office. In order to appraise these developments, it is appropriate to consider the resources available for containing budget conflict and the reasons why discord has become much more widespread.

#### *How Budgetary Conflict Is Managed and Why It Is Spreading*

Settling the budget is too important to leave to chance or to only a single method of resolution. Among the factors working to abate budgetary conflict are the one-year-at-a-time approach, concentrating on inputs rather than on outcomes or results, avoiding direct determination of budget priorities, and tolerating second best—or worse—programs. All of these have been attenuated by efforts to promote “rational” long-range planning, Planning-Programming-Budgeting Systems (PPBS), and cost-benefit analysis. But two factors merit special attention because they manifest far-reaching changes in national politics. These are the opening up of federal budgeting to previously excluded groups and the loss of a fiscal increment for mitigating budget disputes.

The budget ordinarily is peacefully negotiated because the price of extended disagreement is unacceptably high to the major participants. A budget in deadlock threatens payless paydays for public employees, federal activities grinding to a halt, favored programs aborted, and new ones discarded. Almost everyone enters the budget process expecting to reach agreement, committed not to push a view beyond the point of prudent dispute. Budget makers are schooled in the necessities of accommodation. They reach agreement because they have been socialized to believe that protracted disagreement is improper. Reinforcing this attitude are the visible risks of being blamed for holding up a settlement: a bad press, pressure from affected interests, and banishment from the political mainstreams.

Of course there are exceptions. Senator Proxmire blocked transportation appropriations until the SST project was abandoned. Foreign assistance programs have been stalled in recent years because of intense divisions over America's Indochina policy. President Nixon waged a broad impoundment war in an effort to force a retreat from statutory commit-

ments. These cases attest to the vulnerability of the budget process to discord, but they also suggest the abnormality of prolonged deadlock.

As long as the cast of budget participants was limited to presidential officials and congressional appropriators, budgetary peace was comparatively easy to attain. The chosen few had stable roles and relationships. They understood that for the budget to be settled, the number of issues must be limited. They knew that old sores must not be reopened. They ruled out radical alternatives. They were comfortable with the pace of incremental change and willing to ignore big questions of national objectives and priorities.

In recent times the number and variety of budget participants has steadily expanded as the number of issues that must be confronted has increased. While it would be misleading to speak of a completely open federal budget process, the trend has been markedly in the direction of more varied participation. Three illustrations show what has happened. One is drawn from executive practice, the second from the legislative arena, and the third from outside groups.

(1) Relying on its interpretation of the Budget and Accounting Act of 1921, the Office of Management and Budget (and its predecessor, the Bureau of the Budget) long resisted congressional demands for agency budget estimates. This policy did not disadvantage the appropriations committees, because they were able to obtain the data in the course of their hearings on agency requests.<sup>1</sup> The effect, therefore, was to exclude other sectors of Congress as well as public groups, thereby permitting the insiders to maintain their privileged relationships. But during the past few years, perhaps taking a cue from the privileged position of the Joint Committee on Atomic Energy, Congress has chipped away at this wall of executive secrecy by requiring certain agencies such as the Consumer Product Safety Commission to submit their raw estimates directly to Congress at the same time that they are given to OMB. During the Ninety-third Congress, bills were introduced (S. 704 and S. 1214) to extend this requirement to all federal agencies or at least to regulatory commissions. The new Congressional Budget Office has broad powers to obtain budget data from executive agencies, and the General Accounting Office is newly authorized to establish accessible data files. In addition, a regular procedure now operates for reporting impoundment actions. In a more specialized area, pressure is building up for publication of CIA budget figures and for information on how intelligence funds are spent. Such moves entitle outsiders to timely budget data and enable them to become effective participants in the budget process.

(2) As late as the end of World War II, the House and Senate appro-

<sup>1</sup> The OMB policy is based on Section 206 of the Budget and Accounting Act of 1921 and is set forth in OMB Circular A-10.

priations committees had virtual monopolies on the consideration of spending legislation in Congress. Most agencies and programs operated under permanent authorizations with the result that they were not subject to annual or periodic review by the legislative committees. Backdoor spending—financing authorized outside the appropriations process—was limited in scope and applied to only a specialized portion of the federal budget.

But, during the past twenty years, a pronounced trend to annual and short-term authorizations had grown up so that an increasing number of federal agencies must go before authorizing committees (prior to and in addition to the Appropriations Committee) in order to secure funds from Congress. The programs operating under annual authorization include military procurement, construction, and research and development; foreign assistance; the Maritime Administration; NASA; and the National Science Foundation. In 1972, the State Department became the first cabinet department to be subjected to this procedure. In addition, many domestic programs, especially those providing assistance to state and local governments, have limited authorizations of two to five years' duration. By means of limited authorizations, virtually every House and Senate committee has gained some jurisdiction over budget policy.

Authorizing committees have two distinct motives for seeking annual authorizations. One is to enhance congressional (and their own) oversight of executive agencies; the other is to enable them to bolster the spending claims of a particular agency or program. The first reason invites heightened conflict between Congress and the executive branch; the second brings conflict between the authorizing and appropriating committees. A significant yardstick of this intracongressional conflict is the authorization-appropriations gap, the difference between the amount of money authorized and the amount appropriated. This gap certainly exceeds \$10 billion annually for federal domestic programs.<sup>2</sup>

Although they have been able to muscle into the budget process, the authorizing committees are at a disadvantage *vis-à-vis* their appropriating counterparts because standard authorizations cannot be spent unless funds have been actually appropriated. To redress this imbalance a number of authorizing committees have devised backdoor spending methods that authorize agencies to use funds prior to or outside the regular appropriations process. One popular type of backdoor is contract authority which permits an agency to obligate funds in advance of appropriations. The matter comes before the appropriations committees only when money is needed to liquidate the obligation, too late for them to exercise any meaningful control. Contract authority is used to finance

<sup>2</sup> See U.S. Advisory Commission on Intergovernmental Relations, *The Gap Between Federal Aid Authorization and Appropriations: Fiscal Year 1966-1970* (Washington: GPO, June 1970).

the interstate highway system, the multibillion dollar water pollution control program, and a number of smaller programs.

Another backdoor strategy is to authorize agencies to borrow funds from the Treasury or from the public. Borrowing authority in excess of \$150 billion—most of it outside the appropriations process—has been authorized since this backdoor was opened in 1932. Generally this form of backdoor is utilized for commercial type programs.

The third and most prevalent form of backdoor is a mandatory entitlement of specified payments to eligible beneficiaries. Most entitlements are open-ended: their cost depends on the varying number of claimants and amounts allowable to each, rather than on current legislative decisions. Most entitlements are also in the form of permanent appropriations that bypass the appropriations committees altogether. Even when the entitlements go through the regular appropriations process (as is the case with public assistance and veterans' benefits) the appropriations committees have no real say over the amounts that are to be spent.

Enlarging the number of budget participants through limited-term authorizations and backdoor spending has helped to intensify budget conflict. The points of access to budgetary power have multiplied and rendered it much more difficult for the traditional participants (OMB and the appropriations committees) to thwart pressures for more money. As a consequence, the federal government no longer is assured of unencumbered resources for new programs.

(3) The closure of the budget process to outside scrutiny has been abetted by its inherent complexity, the needless obscurantism of budget documents, the impenetrability of the tax laws, and the unwillingness of affected interests to invest in budget research and data. There is much truth in the observation that the House Appropriations Committee gained budgetary power by dint of long hours of hard work and expertise over the details of expenditure. On the tax side, the advantaged status of the House Ways and Means Committee was gained through a monolithic committee structure (no subcommittees), the insistence on closed rules for floor consideration of tax measures, and exclusive access to expert staffs.

For most outsiders, the budget was an intimidating document, a curtain of numbers that inhibited them from knowing what was going on. The privileged few did little to improve the understandability of the basic documents. After all, the ignorance of others augmented their own budget power. It would not be difficult to design a more informative federal budget—most states have simpler and more straightforward documents—but there was little incentive to substitute vital statistics for accounting detail. Instead, the outsiders had to settle for easy-to-read "budgets in brief" whose size was scaled down to the meager power they exercised.

All this has been changed by the recent publication of readable and intelligent analyses of the federal budget. One milestone was the issuance of *Counterbudget* by the National Urban Coalition in 1971; another, the annual *Setting National Priorities* series of the Brookings Institution. These publications have inspired numerous interest organizations to issue budget studies of their own each year. Shortly after the president's budget goes to Congress, the mayors, governors, county officials, and many interest groups release analyses of what the budget means for them or their clients. The various publications that offer alternatives to the president's budget have affected both the quality of budget debate and the range of participation.

Change has been even more dramatic with regard to tax policy. Stanley Surrey's political breakthrough in defining "tax expenditures" has focused public attention on the provisions of the Internal Revenue Code that benefit special interests. The Congressional Budget Act requires the president to publish tax expenditure data in his annual budget, and the 1976 budget included them. With expansion of the membership of the House Ways and Means Committee, its establishment of subcommittees, and relaxation of the closed rule, wider participation can be anticipated in the future.

In his 1960 study, *The Semisovereign People*, E. E. Schattschneider conceived of politics as a tension between the privatization and the socialization of conflict. Socialization—expansion—of the scope of conflict, he said, affects its outcome: "The first proposition is that the outcome of every conflict is determined by the *extent* to which the audience becomes involved in it. That is, the outcome of all conflict is determined by the *scope* of its contagion. The number of people involved in any conflict determines what happens." The socialization of budgetary conflict is contagious and difficult to reverse. Any increase in the number of participants is apt to mean an increase as well in the claims on the budget. Whether these pressures are in the form of demands for tax breaks, cash subsidies, or favored programs, they can be satisfied only at the expense of some group in society (if the total is thought to be fixed) or by means of "free," unencumbered resources available to the federal government (if the pie to be cut can be enlarged). If satisfaction is to come at the expense of others, budgetary conflict will rise unless the disadvantaged groups are too weak to protest or have been duped to believe that they will gain from the outcome. But with the expansion of budgetary participation, it is not likely that significant resources can be claimed without a fight.

This leads to the second important reason why budgetary conflict has escalated: the traditional means for cooling budgetary conflict no longer is conveniently available. The standard budget solution of applying incremental resources to new budget claims cannot work when the increment has already been encumbered by past commitments.

The classical method for containing budget conflict is the now familiar incremental policy described by Aaron Wildavsky in *The Politics of the Budgetary Process*. He discerned different decisional rules for the “base” and the “increment.” The base consists of the continuing costs of existing programs; the increment, funds for new and expanded programs. The base tends to be a conflict-free zone. Once a program has been established, it is generally continued in future budgets. Because past decisions are not reviewed annually, it is possible to quarantine budget conflict to the increment that deals with proposed program additions. The process of budgeting comes to be “whose ox is to be fattened,” a much more pleasant task than deciding “whose ox is to be gored.”

The budget increment can be spent in a way that mitigates conflict and encourages the participants to accommodate their claims to one another. If \$1 billion of unencumbered funds are available, budget makers can curb conflict by spreading the money among a large number of new programs rather than by allocating the increment to a single use. Moreover, the satisfaction of conflicting claims can be managed in a way that promises more ample funds in future years. Thus, many programs are funded at low start-up cost, with additional funds built into future budgets.

A *sine qua non* for this incremental budget strategy is an increment available for future use. Otherwise, new claims could be satisfied only by invading the base, by taking from agencies and programs funded in previous budgets. In federal budgeting, increments derive from three sources: economic growth, new taxes, and deficit financing. Only the first of these permits a conflict-free resolution of the annual budget process.

A major explanation for the recent escalation in budget conflict is that increments are no longer available in sufficient amounts to cover both the built-in increase in the budget and claims for new programs. Nowadays, much of the budget battle revolves around future increments. Inasmuch as the current increment is already claimed by past commitments, the various interests maneuver to gain an advance commitment of future increments. This means that when next year arrives, its normal increment has already been encumbered by past decisions, and it is necessary to buy budget peace by claiming another year’s share. The predicament thus becomes self-perpetuating.

The decade since Wildavsky’s book first appeared has experienced zig-zagging economic fortunes. During the mid-1960s, many economists projected a rosy future in which the federal government would have a “fiscal dividend” to devote to its Great Society innovations. Spurred by the instant success of the New Economics, they anticipated a future in which the normal growth of federal revenues would outstrip incremental growth in program costs. The tax cuts of 1964 had indeed produced billions of dollars in additional revenues, with personal and corporate in-



come tax collections in 1967 almost \$25 billion higher than they had been before the rates were lowered. The economy was operating at full employment, and economists were confident that they possessed "fine tuning" skills to maintain it on a productive growth path.

The dividend vanished with the Vietnam war. The Johnson administration straddled a "guns and butter" policy that tolerated high military and domestic spending. But this was regarded as a temporary aberration that would be corrected once the Vietnam war ended and the "peace dividend" was realized. However, Vietnam did not conform to this expectation or to the pattern of any previous American war. Without exception, every previous war produced a steep rise in federal spending followed by a sharp decline, though to a trough well above the prewar level. This pattern is displayed in table 1. Had it been adhered to in Viet-

TABLE 1  
*Effects of War on Federal Expenditures*  
*(in thousands of dollars)*

<i>War</i>	<i>Prewar Level</i>	<i>Wartime Peak</i>	<i>Postwar Low</i>
War of 1812	\$ 8,058	\$ 34,721	\$ 15,000
Mexican War	27,767	57,281	39,543
Civil War	66,547	1,297,555	241,334
Spanish War	365,774	605,072	485,234
World War I	734,056	18,514,880	2,974,030
World War II	9,062,032	98,416,220	33,068,709
Korean war	39,617,003	74,274,257	64,569,973
Vietnam war	118,584,000	184,548,000	196,588,000

Source: Department of Commerce, *Historical Statistics of the United States* for all wars other than Vietnam. Data for the Vietnam war were drawn from *The Budget of the United States Government, Fiscal Year 1974*.

nam, there might have been a peace dividend. However, in no post-Vietnam year has spending been lower than in the peak war year. In other words, the trend has been uninterruptedly upward. The wind-down in Vietnam did not even yield a one-year drop in spending.

This phenomenon cannot be explained by blaming it on continuing high levels of defense spending. Between fiscal year 1964 (the last full pre-Vietnam year) and fiscal 1969, defense expenditures rose from \$53.6 billion to \$81.2 billion, an increase of almost \$28 billion. Even if military spending had dropped to its pre-Vietnam level (in current, not real dollars), budget outlays would have continued to rise. Thus, 1971 expenditures were \$27 billion above the 1969 level; 1973 spending was \$25 billion higher than the 1971 amount; and 1975 spending will be at least \$65 billion above the 1973 total.

This pattern is due to the advance commitment of future budget in-

crements. Between 1971 and 1975, nearly three-fourths of the total growth in the federal budget has been devoted to human resource programs. Many of these are mandatory entitlements over which Congress has little current control. The amounts spent for a particular benefit program are determined by exogenous factors, such as the number of people on social security, receiving public assistance, or applying for unemployment compensation. During the 1970s, there has been a steady rise in the number receiving benefits in major entitlement programs, as shown in table 2, accounting for much of the growth in federal expenditures. As the

TABLE 2  
*Number of Beneficiaries in Major Entitlement Programs*  
*(in thousands of persons)*

<i>Program</i>	<i>1970</i>	<i>1975</i> <i>(estimated)</i>
Unemployment insurance	5,780	14,121
Public service employment	5	284
Public assistance (AFDC)	7,258	10,995
Old-Age Survivors Insurance	22,889	28,302
Disability insurance	2,495	3,962
Supplementary security income (aged, blind, disabled)	3,034	4,465
Veterans' benefits	5,975	7,420
Food stamps	6,470	15,800
Military and civil service retirement	1,712	2,448
Disabled coal miners	—	507

Source: Congressional Research Service, *Overview of the 1976 Budget*.

beneficiary populations increase, they generate automatic rises in federal payments. Moreover, many of these programs are indexed, i.e., the level of benefits is adjusted periodically as the cost of living rises. Federal civilian and military pay is adjusted annually to maintain comparability with private salaries. Civilian and military retirement is linked to the consumer price index (CPI). Beginning in 1975, automatic increases in social security benefits are tied to the CPI. Railroad retirement, benefits for disabled coal miners, supplemental security income, food stamps, and child nutrition programs also are indexed.

As a consequence of the mandatory entitlement programs, the uncontrollable percentage of the federal budget has climbed since 1967 from 59.2 percent to an estimated 74.7 percent in the 1976 budget. During these years, total budget outlays have soared from \$158 billion to a projected \$349 billion, an increase of \$191 billion. But more than 85 percent of this increase—\$161 billion—has been accounted for by rises in uncontrollable spending. As itemized in table 3, it is apparent that most of these increases have been in mandatory entitlements.

TABLE 3  
*Uncontrollable Budget Outlays, Selected Fiscal Years 1967-76*  
*(in billions of dollars)*

	1967	1970	1973	1976 (estimated)
Payments for individuals	\$41.8	\$ 62.2	\$ 99.6	\$165.1
Net interest	10.3	14.4	17.4	26.1
Prior-year obligations	37.0	41.5	39.6	54.0
Other uncontrollables	4.7	7.6	16.5	15.6
Total uncontrollable	\$93.7	\$125.7	\$173.0	\$260.7
Percent uncontrollable	59.2	64.0	70.2	74.7

Source: *The Budget of the United States Government, Fiscal Year 1976.*

These figures show how future budget increments are consumed before Congress has an opportunity to make current budget decisions. The result is that budgetary conflict cannot be contained merely by tapping the incremental resources of the federal government. The sluggish performance of the economy has complicated the problem in partly offsetting ways. The progressivity of the tax structure produced fiscal 1975 revenues as much as \$15 billion higher because of double digit inflation in the United States. However, high unemployment costs the budget more. Fiscal 1976 revenues are projected at \$55 billion below their estimated level at full employment, while increases in entitlement claims raise federal outlays.

Periodic reductions in federal tax rates have contributed to the loss of a fiscal dividend. Since 1964, cumulative reductions in taxes have produced an annual revenue loss well in excess of \$50 billion, prior to the tax reductions enacted in March 1975 for antirecession purposes. The combination of spiraling expenditures, lowered tax rates, and revenue shortfalls because of economic sluggishness has resulted in chronic budget deficits. Between 1970 and 1974, annual deficits averaged almost \$15 billion; in 1975 and 1976, the budget deficits are expected to total more than \$100 billion.

Deficit spending has been a "safety valve," making it possible to avoid or at any rate to postpone the harsh choice of program cutbacks or tax increases. Thus it is a convenient conflict abatement strategy provided that the main parties are willing to accept the political onus of high deficits. Acceptance of the "unified budget" form in 1968 made it possible to offset some of the red ink in the administrative budget with trust fund surpluses. Undoubtedly, the presidential switch to the full employment budget concept for fiscal 1972 was also intended to make the projected deficit more palatable. It was a short-term accommodation to budget realities rather than a genuine conversion to new economic doctrine. The Nixon administration never abandoned its unease over

ballooning expenditures and high deficits. In 1972 and 1973 it took two actions that heated up the battle of the budget, provoked direct confrontation between the executive and legislative branches, and led to enactment of the Congressional Budget and Impoundment Control Act of 1974. One action was unilateral impoundment of funds appropriated by Congress; the other was to demand that Congress give the president discretion to hold fiscal 1973 spending to \$250 billion.

### *The Impoundment War*

The impoundment of funds by President Nixon was a reaction to the loss of normal budget increments and chronic budget deficits. The president saw his way to gain some increased financial elbow room for things he wanted by cutting into the base of many domestic programs that he did not favor.

Impoundment is not a new practice—some historians trace it as far back as 1803 when President Jefferson did not spend funds appropriated for gunboats—but until recent times, impoundments were generally used only for routine purposes or for defense-related reasons. The common ingredient of all impoundments is the failure of the executive branch to use funds appropriated by Congress. Many of them are non-controversial, involve no deviation from legislative policy, and represent only the savings made possible by efficient operations or the prudent reservation of funds for contingencies. These routine impoundments are authorized by the Antideficiency Act, which was initially passed to deter federal agencies from spending at a rate that would compel deficiency appropriations.

In recent years, however, impoundments have become increasingly controversial because funds have been withheld in order to substitute executive policies for those established by Congress. Policy impoundments were first imposed on a large scale during World War II when President Roosevelt curtailed public works spending on the ground that the resources were needed for the war effort. During the 1950s and 1960s successive presidents refused to spend money appropriated by Congress for particular weapons systems. These executive-legislative confrontations involved the president's constitutional role as commander in chief and were limited to a narrow range of issues. During the Vietnam war, President Johnson introduced a broader use of impoundments when he ordered the deferral of billions of dollars of spending in an effort to restrain the overheating economy. Johnson's actions were taken in consultation with congressional leaders and did not provide a confrontation between the two branches.

Following the 1972 elections, President Nixon embarked on large-scale impoundments in programs that he wanted to terminate or curtail.

The impoundments—predominantly for policy purposes—totaled in excess of \$18 billion, double the amount officially reported by the administration and far above the comparable action of any previous president. The justifications that he advanced centered on his responsibility to manage the economy and to abide by the statutory debt limit imposed by Congress. However, the impoundments were not applied across the board to all programs. Defense programs were spared all but routine reserves while dozens of domestic programs sustained deep cuts. Half of the \$18 billion authorized by Congress for water treatment facilities was impounded. A moratorium was imposed on subsidized housing programs, disaster relief was abruptly curtailed, and rural and community development activities were suspended. Almost \$2 billion appropriated for the Departments of Labor and HEW was withheld. Among the agriculture programs ticketed for elimination or curtailment were rural environmental assistance, rural electrification, water and sewer grants, emergency farm loans, and the water bank program.

Dozens of unprecedented court suits were brought during 1973 and 1974 to compel the release of impounded funds. Most were decided against the administration, but the decisions generally rested on particular statutory provisions without passing on the constitutional power of the president. On February 18, 1975, the U.S. Supreme Court issued its first rulings in impoundment suits. A unanimous Court in *Train v. City of New York* held that the Environmental Protection Agency had exceeded its authority in refusing to allot the full amounts authorized by Congress in the Federal Water Control Act Amendments of 1972. The Court's ruling was based entirely on its reading of the language of the 1972 act. Though it did not reach the constitutional issue, the decision is nevertheless bound to have an impact on executive-legislative relations.

While the impoundment litigation was proceeding through the courts, Congress was considering a number of anti-impoundment bills. In 1974 it passed the Impoundment Control Act, a compromise version, as part of the congressional budget reform enacted that year. This act established a procedure for detailed congressional review and control of impoundments. It also amended the Antideficiency Act to limit the purposes for which funds may be placed in reserve. Under the revised law, funds may be reserved only for contingencies or when they no longer are needed because of changed requirements or efficiency of operations.

The 1974 law divides impoundments into two categories—rescissions and deferrals—and applies different procedures to each. Rescissions may be proposed when the president does not anticipate any future need for the funds or when the withheld funds would lapse if not obligated before the end of the fiscal year. Deferrals are to be proposed when the president anticipates future but not current use of the funds. He may not propose the deferral of one-year money or of funds that would expire by the end

of the fiscal year. Nor may he propose a deferral beyond the current fiscal year.

For both rescissions and deferrals, the president must transmit a special message to Congress, with a copy to the comptroller general, providing certain required information concerning his action. In the case of rescissions, the funds must be released unless Congress positively approves the action (by means of a rescission bill) within forty-five days of continuous sessions after the president's notification. In the case of deferrals, the withholding may continue unless it is disapproved by either the House or the Senate—the legislative veto technique. If either body adopts a disapproval resolution, the president must release the funds.

The new law gives the comptroller general responsibility for overseeing implementation of the impoundment controls. The comptroller general must inform Congress if the president has failed to report an impoundment or if an action has been improperly classified (for example, if a rescission has been listed as a deferral). In addition, the comptroller general is to review the facts, legal authority, and probable effect of each proposed rescission or deferral and submit his findings to Congress. Finally, the comptroller general is authorized to bring suit to enforce the new impoundment procedures.

In spite of this detailed routine for handling impoundment issues, it is unlikely that the new law will spell an end to conflict in this area. During the first months of experience under the law, several disputes erupted between Congress and the president and within the legislative branch. One issue was whether the new law applies to impoundments executed prior to July 12, 1974, the date of enactment. The administration's claim that only postenactment actions are covered is likely to be challenged in the courts. A second dispute was over the status of certain impoundments. The president reported the withholding of Section 235 housing funds as a deferral, but the comptroller general ruled that it should have been classified as a rescission. When the president persisted, the comptroller general in April 1975 sued before the federal district court for the District of Columbia to compel a reclassification. A third dispute related to jurisdiction over impoundment measures. A struggle between the Senate Appropriations and Budget committees was resolved only by establishing a complicated procedure giving each committee part of the action.

These procedural questions relate directly to issues of policy and the extent to which Congress will use the new controls to override presidential impoundments. The Impoundment Control Act has the capability to expand or curtail presidential power, depending on congressional disposition of rescission and deferred proposals. If Congress were to accede to presidential impoundment requests, the new law would have the effect of enlarging presidential control over spending. But if Congress

were to reject most proposals, the net effect would be a contraction of the president's ability to impound funds.

The early returns strongly indicate a hard line by Congress, particularly insofar as rescissions are concerned. Between September 1974 and February 1975, President Ford proposed about eighty rescissions, totaling almost \$2.5 billion. These were consolidated into three bills that rescinded less than 15 percent of the amounts the president had proposed. Most of the approved rescissions involved routine savings rather than policy issues. As of June 1975, Congress had rejected most presidential attempts to use impoundments as a means of cutting back domestic programs that Congress had established.

With regard to deferrals, the pattern is less clear because there is no time limit for congressional action. The 150 deferrals reported through April 1975 under the new law involve \$25 billion in federal funds, but most of these are associated with water pollution programs (\$9 billion) and highway assistance (\$11 billion). The president unilaterally has released substantial sums for these two programs, and additional amounts are likely to be forthcoming because of court order and congressional action. During the first months of the Ninety-fourth Congress, resolutions disapproving certain policy deferrals advanced in the House and the Senate. As in the case of rescissions, Congress seemed hesitant to grant the president authority to impound for policy reasons.

If the impoundment route is restricted to routine business, a president who wants to confront Congress on budget policy will have to rely on his veto power. During his first months in office, President Ford made extensive use of vetoes, particularly on matters relating to federal expenditures. Rather than ending, the battle of the budget might only shift to a different stage.

### *The Congressional Budget Process*

Future battles will be waged under a new set of ground rules adopted by Congress in the Congressional Budget Act of 1974.<sup>3</sup> This act establishes procedures designed to ensure congressional determination of national budget policies and priorities. The act does not eliminate any existing procedures for the authorization of programs and the appropriation of funds—a new congressional budget process is added to these—but it is likely to have a significant impact on the way Congress makes program and financial decisions. Nor does the legislation directly alter the executive budget process (except with regard to certain submissions and the budget timetable), but it is likely to generate major changes in legislative-executive fiscal relations.

<sup>3</sup> P.L. 93-344. Titles I-IX of the act are designated the Congressional Budget Act; Title X is the Impoundment Control Act.

The new law was born in conflict: first between the president and Congress, then between different interests within Congress. It all began on July 26, 1972, when President Nixon demanded that Congress impose a \$250 billion limitation on outlays for the 1973 fiscal year which had just begun.<sup>4</sup> The president wanted unrestrained discretion to hold spending within that limit, and administration spokesmen refused to specify in advance which programs would be cut. The president castigated the “hoary and traditional procedure of the Congress, which now permits action on the various spending programs as if they were unrelated and independent actions.” From the start, spending control was framed as a president versus Congress campaign issue.

Although the \$250 billion ceiling was not very controversial—budget battles usually relate to the details rather than the aggregates—there was considerable disagreement over how it should be implemented. The House Ways and Means Committee reported a provision (as a rider to debt limit legislation) authorizing the president “notwithstanding the provisions of any other law” to reserve such amounts as may be necessary to maintain the \$250 billion limit. But on the House floor, Chairman George Mahon of the Appropriations Committee deplored presidential discretion as a dangerous transfer “of legislative authority to the executive branch.” He offered an amendment to direct the president to propose specific cuts which would take effect only if approved by Congress. Mahon’s substitute was defeated by a vote of 167-216, and the House then passed the bill by a vote of 221-163.

The bill next moved to the Senate, where it again emerged from committee with full authority for the president to reduce spending in accord with his preferences. However, the Senate adopted a floor amendment requiring proportional reductions in programs and barring cuts of more than 10 percent in any activity or item. In conference, the requirement that program cuts be proportional was deleted, and the president was given authority to reduce individual programs by as much as 20 percent. The House approved the conference report on October 17, 1972, the day before adjournment for the elections, but on the same day the Senate rejected it by a vote of 39-27. After a second conference, with no time for deliberation, this phase of the battle of the budget was resolved by incorporating contradictory elements into the same law. One provision established a \$250 billion ceiling for fiscal 1973; the next provided that one day after the bill became law, the spending limitation would cease to have effect and any action taken pursuant to the limitation would be null and void.

With Congress and the president deadlocked, the next phase in the perennial budget battle involved dissension within Congress. As part

<sup>4</sup> *Weekly Compilation of Presidential Documents* 8 (1972), p. 1176.



of the legislation containing the self-destructing limitation, Congress established the Joint Study Committee on Budget Control consisting of thirty-two members. Twenty-eight of the positions were allocated to House and Senate members of the appropriations and tax committees. The task of the joint committee was to devise new spending control procedures for Congress, and in April 1973 it issued a report recommending the creation of a congressional budget process. Anchoring this process would be new House and Senate budget committees, two-thirds of whose members plus the chairman would come from the Appropriations, House Ways and Means, and Senate Finance committees. This recommendation provoked protest in liberal quarters, such as the Democratic Study Group, which feared a conservative takeover of the congressional budget process. Controversy also raged over numerous features of the new process, such as the status of the congressional budget, floor procedures, and tax policy.

During fifteen months of consideration by two Senate committees, a House committee, and a conference committee, the budget reform legislation was revamped in numerous important details. Many of the changes were designed to open up the new process to broad congressional participation and to prevent any group within Congress from gaining one-sided advantage.

Budget committees have been established in the House and the Senate and are given jurisdiction over the congressional budget process. The committees are to report at least two budget resolutions each year—one in the spring prior to congressional action on tax and spending legislation, the other in the fall after action on budget-related measures has been completed.

The House Budget Committee has twenty-five members, selected according to a statutory formula: five each from the House Appropriations and Ways and Means committees, thirteen from other standing committees, and one each from the majority and minority leaderships. Appointments to the committee are to be made without regard to seniority, and no member may serve on the committee for more than four years during any ten-year period. Brock Adams of Washington became the House Budget Committee chairman, at the start of the Ninety-fourth Congress. The Senate Budget Committee has sixteen members, selected by regular party process, and the Senate rule limiting senators to no more than two major committees will apply to the Budget Committee when the Ninety-fifth Congress convenes in 1977. This means a much wider sharing of committee power in the Senate than would have been possible if a quota system had been adopted for Budget Committee assignments. Edmund Muskie of Maine was named the first chairman.

The new law established the Congressional Budget Office (CBO) as an informational and analytic arm of Congress. CBO is empowered to secure budget data from executive agencies and is expected to provide Congress

with alternatives to the president's budget. The act opens CBO's services to all committees and members of Congress, in contrast to the Joint Study Committee's proposal to make the staff's assistance available only to the budget committees. But the act arrays CBO's duties according to four orders of priority, ranging from the budget committees to the membership at large. Yet the overall effect will be to enhance the budget competence of congressmen who do not serve on budget-related committees and to make them more independent not only of the executive branch but also of the tax and appropriating committees. By joint appointment of the speaker and president pro tempore, on recommendation of the two new chairmen, Alice M. Rivlin was named the first CBO director. She had been an HEW assistant secretary and a Brookings Institution staff member and was the author of *Systematic Thinking for Social Action*.

The budget committees are to report the first budget resolution to their respective Houses by April 15 of each year, and a full month is allowed for floor action and any necessary conference prior to the May 15 adoption date. A significant innovation is that preparation of the first budget resolution is to be guided by reports from each standing committee of the House and the Senate concerning budget matters within its jurisdiction. This novel arrangement formally recognizes that budget legislation affects all congressional committees and should not be confined to the few that have specific tax or appropriations jurisdiction.

The first resolution is to set the appropriate levels of total new budget authority and outlays, federal revenues, public debt, and budget surplus or deficit. Total new budget authority and outlays are to be allocated among the major budget functions (such as national defense, veterans' benefits, and income security), with further subdivisions for each function to be included in Budget Committee reports or, optionally, in the resolution itself. Congress is thus given an opportunity explicitly to set budget priorities in a context that forces it to assess the relative value of defense versus health, health versus revenue sharing, and so on. The process thus has enormous potential for inducing more budget conflict, for Congress no longer will have the convenience of avoiding priority fights.

The first budget resolution will function as a guideline for Congress when it takes up individual revenue, spending, and debt bills. Congress will be permitted to consider and adopt legislation not in accord with its own budget resolution, but by means of a scorekeeping procedure, it will be constantly informed of the effects of its actions on the congressional budget. Because this and subsequent budget determinations will be in the form of concurrent resolutions, they will not have the force of law, nor will they directly limit actual federal expenditures. Their sole effect will be to guide or restrain Congress in its actions on budget-related legislation.

Following adoption of the initial budget resolution, appropriation

bills will proceed through Congress in much the same manner as before. The bills will be taken up individually, but it is contemplated that floor action will be completed shortly after Labor Day, or earlier if possible. The fiscal calendar is to be shifted to an October 1-September 30 cycle, thereby giving Congress three additional months within which to complete the myriad steps of its budget process.

A second budget resolution is to be adopted by September 15. It may retain or revise the levels set in the first resolution. The second resolution can set into motion a reconciliation process in which the amounts in the various tax and spending bills are brought into alignment with the congressional budget. By means of its second resolution, Congress can direct the appropriations committees to report legislation adjusting appropriations or the House Ways and Means and Senate Finance committees to report changes in the tax laws. Changes recommended by various committees pursuant to the second budget resolution are to be reported in a reconciliation bill (or resolution, in some cases) whose enactment is scheduled by September 25, only a few days before the new fiscal year is to commence.

It is at the reconciliation stage that the budget process will be most vulnerable to deep conflicts. The potential divisions within Congress are numerous: between those who seek reconciliation by adjusting tax rates and those who prefer to change spending legislation, between those who prefer one set of spending priorities and those who favor another, and between those who support one level of overall spending and those who want more spending for particular programs. All budgetary conflicts will converge at the reconciliation stage, and this new and untested procedure might not be able to bear the burdens cast upon it. Of course, reconciliation can become nothing more than the ratification of all congressional decisions made in the course of the year. Congress will have the option of mending its fences by limiting the potency of its new budget process.

With enactment of the reconciliation bill, the congressional budget process will be completed. At this point, Congress may not consider any revenue or spending legislation that would breach any of the levels specified in the second resolution. It will be out of order to vote on a supplemental appropriation if it would cause spending to rise above the levels of the second resolution or on a bill to reduce revenues below the budget totals. However, Congress may adopt a new budget resolution adjusting any of the amounts any time during the fiscal year.

An important purpose of the 1974 act is to bring backdoor spending under tighter appropriations control. New contract or borrowing authority is to be available only to the extent provided in appropriations. These forms of legislation will become standard authorizations funded through appropriation measures. Legislation providing new en-

itlements cannot be considered until the first budget resolution has been adopted and cannot take effect until the next fiscal year starts, thus subjecting them to the discipline of the congressional budget process. If an entitlement exceeds the allocations in the latest budget resolution, it will be referred to the Appropriations Committee (under a fifteen-day time limit) for review and possible amendment. The new procedures do not apply to existing backdoor spending nor to social security programs, most trust funds, and certain other types of expenditures.

### *The Fight Goes On*

The budget scene will not be quieted by the new enactment. As a bundle of compromises, the Congressional Budget Act papered over many of the divisions within Congress over budget policy and budget power. The backdoor spending provisions were one such compromise, balancing the claims of the appropriations committees against the spending interests of the authorizing committees. What emerged was a mixed package, new jurisdiction for appropriations, but with major exceptions and all existing backdoors protected. The appropriations committees also wrestled with the authorizing committees regarding the timetable of the new congressional process. The 1974 law establishes a May 15 deadline for the reporting of authorizing legislation. The authorizing committees preferred no deadline at all; the appropriations committees wanted it applied to the enactment stage.

The format of the budget resolution was a compromise between those who wanted early ceilings on spending and those who preferred that the resolution serve only as a target. By providing for spending allocations by major function, the new law resolved the conflict between those who insisted that the resolution deal only with budget aggregates and those who wanted decisions made by appropriation categories.

The new process will enlarge the potential for conflict within Congress, because it both expands the range of participation and moves Congress in the direction of forced choices. The socialization of conflict will be facilitated by the placement of new budget committees in the process, the new role of authorizing committees in staking budget claims, and the spreading of budget competence to all committees and members. The congressional budget process will be much more open than the tax and appropriations procedures have been.

Making explicit matters that had been veiled will also fuel the budget wars. Priorities will have to be decided; the parts of the budget will have to be consistent with the whole; Congress will have to go on record as regards the budget surplus or deficit; tax expenditures will be publicly displayed; the costs of legislation and its impact on the congressional budget will be identified.

But Congress will not allow itself to be deadlocked by the new process. Procedural roadblocks will be brushed aside if they threaten legislative paralysis or thwart a determined majority. Congress will sooner change its budget process than permit itself to be stalled by the rigors of budgeting. The congressional budget process will prosper only if it proves workable within the legislative arena. The verdict is yet to come, but it will be favorable if Congress succeeds in managing budget conflict while giving full expression to the many interests operative in the legislative process.