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THE BALANCED BUDGET AMENDMENT: AN ECONOMIC AND CONSTITUTIONAL REVIEW

STATUS

Last year's theoretical debate concerning a constitutional amendment to require a balanced budget has become a political reality, at least in the Senate, where the Judiciary Committee is expected to vote, possibly as early as March 11, on the Fiscal Responsibility Amendment. Sponsored by Senator Dennis DeConcini (D-AZ), S.J. Resolution 126, was passed out of the Constitution Subcommittee on December 19, 1979, by a 5-2 vote.

This paper includes two separate critiques of the amendment: one from a constitutional view and one from an economic view.

The text of the amendment is as follows:

AMENDMENT

SECTION 1 [Balanced Budget]. The Congress shall adopt for each year a budget, which shall set forth the total receipts and expenditures of the United States. No budget in which expenditures exceed receipts shall be adopted, unless three-fifths of each House of Congress approve such budget by a rollcall vote directed solely to that subject. No appropriation bill shall be passed which would cause the total expenditures for any year to exceed the expenditures in the budget for such year.

SECTION 2 [No Automatic Tax Increases]. The receipts collected in any year shall not exceed, as a proportion of the national income, that collected in the prior year, unless a specific increase in such proportion has been approved by each House of Congress by a rollcall vote directed solely to that subject.

SECTION 3 [Waiver During Wartime]. The Congress may waive the provisions of Section 1 with respect to any single year in which a declaration of war is in effect.

SECTION 4 [Definitions]. Terms used in this article shall be construed in accordance with their meanings on the date on which this article was submitted to the States for ratification.

SECTION 5 [Effective Date]. This article shall take effect on the first day of January of the second calendar year beginning after its ratification.

THE POLITICAL ECONOMICS OF A BALANCED BUDGET AMENDMENT

Critics of the balanced budget amendment are capable of reciting a litany of objections, ranging from the destruction of fiscal policy to the profanation of the Constitution's elegance with such technical and short-lived jargon as "outlays," "off-budget" and "gross national product." Regardless of the validity of these charges (which will be examined in course) opponents of the proposal have failed to address the major premise behind the amendment, that Congress is not capable of directing an effective, secular fiscal policy.

Over the past century, a subtle yet dramatic shift in the aspirations, tenure, and activities of congressional representatives has occurred. To serve as a member of Congress has become a vocation for a lifetime, rather than a sojourn in national service.[1] Characteristics of the professional congressman are a shortened time horizon, due to the frequency of elections, and an extreme sensitivity to constituent service. These factors have instilled in Congress an institutional incentive to engage in deficit spending, regardless of the economic conditions.

Keynesian economic theory serves as the basis for fiscal policy. During periods of high unemployment, deficit spending is promoted as a stimulative measure. Conversely, in periods of high inflation, a budget surplus is prescribed. Congressional fiscal policies however have often defied the very theory upon which they are justified. During the past 50 years, the budget has been in deficit 42 times. Over the past twenty years, Congress has spent more than it received 19 times. The combined deficit for FYs 1978 and 1979, a period in which conventional economic theory dictated a surplus, was $76.6 billion.

These fiscal aberations demonstrate very clearly the frequent conflict between the national interest and the legislators' self interest. To illustrate, suppose that Congress receives political benefits from each additional spending program it undertakes. At the same time, the increased tax revenues needed to finance the new or expanded programs impose political costs. Theoretically, Congress should spend until the additional benefit of the last dollar spent equals the cost of raising that dollar. Should Congress spend more, the cost of the public's resistance to taxes would exceed the benefits of the recipients' appreciation.

However, if Congress spent more than the optimal, without raising taxes, the political benefits remain positive. The incentive to engage in deficit spending exists because the costs of the current shortfall, higher interest payments on the national debt and possibly inflation and less private investment, are

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1. Morris P. Fiorina, Congress, Keystone of the Washington Establishment (New Haven: Yale University Press, 1977), p. 5.

either unperceived or occur in the future, beyond the professionally myopic legislator's time horizon.

The taxpayer, despite possessing a much longer time horizon, acquiesces in the deficits because the costs are diffused while benefits are concentrated. Quite simply, many believe that even considering the future costs, they are net gainers. In addition, knowing that inflation and taxes will soon rise, a rational taxpayer may be correct in demanding present in-kind and untaxable benefits.

The need for a constitutional amendment is derived not simply from the existence of an institutional flaw, but from the severe costs which that bias imposes on individuals. Certainly, a major penalty is inflation. Federal deficits, when financed by accomodative Federal Reserve policies, are inflationary. In addition, although not necessarily causative, expansionary fiscal policies, during periods of high inflation, represent an opportunity to counter inflation foregone.

A second cost is the commitment of the future resources without benefit of a future framework. To illustrate, in FY 1980, interest payments on the national debt will be $63.3 billion or 11.2 percent of total outlays. That is more than will be spent on Energy, Agriculture, Transportation, and Eduction, Training, Employment and Social Services combined. Dictated by past Congresses, the current interest expenses are in part the cost of financing past political largess. The cost of our current deficits will, in turn, be borne by future taxpayers.

A third consideration is the effect of federal deficits upon the private sector. Deficits, when financed by borrowing, increase the demand for credit and drive interest rates up. Higher interest rates may crowd the private sector out of the credit markets. The net effect of persistent secular deficits is thus a shift of resources from private investment and future consumption to present government consumption. Although difficult to estimate what might have been, the cost of lower private investment and capital formation is fewer jobs, slower productivity growth, and thus less economic growth.

THE FISCAL RESPONSIBILITY AMENDMENT (S.J. RES. 126)

The first section of the amendment requires that Congress adopt a yearly budget which establishes total receipts and expenditures. It further stipulates that a three-fifths rollcall vote in each House is needed to adopt a budge deficit. Finally, it states that no appropriations bill which would cause total expenditures to surpass the budget limit shall be passed.

In an attempt to prevent the government from expanding through inflation-induced tax increases, the proposed amendment mandates that, unless specifically increased, the proportion of tax revenues to national income must not exceed the previous year's figure.

Additional provisions permit Congress to waive the balanced budget requirement during wartime and establish the current budget terminology as binding for future interpretations. Finally, it specifies the amendment shall take effect on January 1 of the second calendar year beginning after ratification.

ANALYSIS

The intent of the proposed amendment is not to dictate yearly budget outcomes, but rather to counter the institutional bias in favor of deficit spending. For instance, since Congress' vote on the budget occurs two weeks before the fiscal year begins, changes in the economic conditions will undoubtedly alter both spending and revenues. It is quite likely, given Congress' self interest in overly optimistic economic assumptions, that deficits will continue to occur frequently. However, the size and cost of these deficits will have been severely limited by the balanced budget requirement.

Perhaps the most persistent and widespread criticism of the balanced budget amendment is that it would render Congress incapable of responding to economic events requiring a federal deficit. The more virulent opponents conjure up images of the Depression and remind us of President Hoover's insistence on a balanced budget.

The balanced budget does indeed constrain Congress' ability to engage in expansionary fiscal policies. However, it is difficult to accept the premise that an increase from 50 to 60 percent in the vote necessary for passage of a deficit will paralyze Congress' ability to spend more than it receives. Although essentially a subjective judgement, Congress' willingness, even enthusiasm, to spend in a pro-cyclical basis, suggests that increased expenditures and a deficit, justified on a countercyclical basis, will not be unachievable. For example, in 1978 and 1979, when conditions warranted a surplus, the Senate passed Second Budget Resolutions containing large deficits by votes of 63-21 and 56-18 respectively. This suggests a more realistic concern is that the three-fifths requirement might not prove rigorous enough.

SECTION 2

The proposed amendment also possesses a tax limitation provision which, in concert with the balanced budget requirement, is designed to slow the growth in government spending. Specifically, taxes as a proportion of national income could not increase unless each House directly approved such a measure by rollcall vote. As the economy expands, and national income increases, government revenues could keep pace. Should Congress wish to r ise the proportion of taxes to national income, specific tax legislation would be required.

The link between taxes, spending, and economic growth adroitly constrains spending without destroying the taxpayer's ability to influence the size of government. For instance, Congress can increase its capacity to spend through simple majority votes. However, the vote must be on a tax increase. Through formal establishment of the expenditure tax parity, the balanced budget amendment gives the taxpayer a greater voice in the federal budget. Since the public has been more resistant to tax increases than spending increases, as the deficits of the past years attest, S.J. Resolution 126 might be expected to slow the growth in government.

In spite of the implicit spending restraint, the balanced budget amendment is criticized by advocates of a direct constitutional limit on federal outlays as being directed at the wrong target. It is charged that the problem is not the deficit, but rather the size of government. Various alternatives to the balanced budget amendment would link either total spending or the growth in spending to the G.N.P. or changes in the G.N.P.

According to Milton Friedman, co-author of the National Tax Limitation Committee's amendment, S. 56 and H.R. 395, the "fundamental defect (of our system) is that we have no means whereby the public at large ever gets to vote on the budget of the government."[2] Using this criterion, the balanced budget is an alternative superior to the spending limit. Under S.J. Resolution 126, the public possesses the ability to determine total spending either through spending or tax avenues. In contrast, spending limits mechanically set the level of expenditures. The removal of total expenditures from the province of Congress also effectively removes it from the public's hands.

Section Two of the amendment does, however, contain a flaw which could prove hazardous. Unlike Section One, which requires a balanced budget prior to the start of the fiscal year, the second provision mandates a strict proportionality between taxes and national income at the end of the year.

The purpose of the section is to create an informal tax indexation. The government would not be permitted to expand by spending unlegislated tax increases brought about by inflation. Its effect, however, could be much more far-reaching. Since Congress, in preparing its budget, must rely on assumptions concerning both revenue outlays and national income, it is quite possible that the strict proportionality might be exceeded.

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2. Milton Friedman, "The Limitations of Tax Limitation," Policy Review, Summer 1978, p. 9.

Because the exact relationship would not be known until the conclusion of the fiscal year, Congress would have to take retroactive steps to remedy the discrepancy.

Should tax receipts be too high, Congress must either cut taxes or expressly vote a tax increase. A tax cut poses a problem. Given Congress' propensity to engage in deficit spending, it is quite likely that the excess receipts will have been spent. Therefore, a post-fiscal-year tax cut would require a cut in monies already spent, possibly even those attributable to erroneous economic assumptions. An alternative might be to accompany a tax cut with a third budget resolution permitting a deficit. Such an adjustment, taking place months after the completion of the fiscal year would undoubtedly try the credibility of the budget process.

The final option might be to vote to raise the proportion of revenues to national income after the fact. It should be noted that the new proportion becomes the basis for the next year's tax level. A series of such remedial adjustments could very well raise taxes substantially.

A possible alternative to Section 2 might be to require Congress to establish the desired proportion of receipts to national income at the time it votes on the budget. Again, it is likely that, due to erroneous assumptions, the exact proportion will be exceeded. However, if changes in the proportion are tied to Congress' decisions, and not the actual outcomes, it would be possible to avoid the ratcheting effect. For instance, if the desired proportion of receipts to national income is 30 percent, and the actual is 31 percent, it is conceivable that under Section 2 Congress will vote to raise the ratio to 31 percent. Since it occurs after the fact, such a vote might lose some of the desired political effect.

If Congress were required to vote on the desired ratio, it could be possible to tie changes in the proportion to explict ex-ante votes. If, in the above example, the actual exceeded the desired, the government might keep the excess receipts, but the proper ratio for the next budget would remain 30 percent, not 31 percent. Should Congress wish to raise the proportion, it would have to vote explicitly on such an action during the budget process and before the start of the fiscal year.

CONCLUSION

The economic ills associated with the persistent budget deficits, while indeed costly, are merely symptoms of a basic flaw in our political institutions. The remedy therefore is not an economic policy but rather an institutional measure designed to counteract Congress' professional incentive toward deficit spending.

The balanced budget concept, and specifically the Fiscal Responsibility Amendment, addresses the deficiency quite directly. S.J. Resolution 126 is politically and economically neutral. The government may spend as much or as little as the taxpayers are willing to finance. Such an approach is entirely consistent with the system of checks and balances inherent within the Constitution. Furthermore, the proposed amendment does not prevent Congress from engaging in deficit spending; it merely raises an institutional barrier, the super majority vote, to counteract Congress' economic and political myopia.

The pending amendment, it should be noted, will not cure inflation nor ensure private sector prosperity. In fact, it quite likely will not halt deficit spending. The intent of the amendment is simply to make deficit spending more politically costly.

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DOES A BALANCED BUDGET FIT INTO THE AMERICAN CONSTITUTIONAL SCHEME?

"Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions." So said Alexander Hamilton in Federalist Paper 30. The Framers of the Constitution and the Federalists (Hamilton, Madison, and Jay), who assigned themselves the task of persuading the American public of the need for the new Constitution, realized that the inability of the Articles of Confederation to provide the national government with a sure and stable source of income was a major reason for the convening of the Constitutional Convention.

The perennially unbalanced national budget is a result of the now institutionalized dichotomy between governmental revenue and expenditures. For nearly fifty years, Congress has regarded its power to spend funds as a function separate and distinct from its power to raise funds from taxation. The gargantuan national debt, now approaching a trillion dollars, is the product of this division of congressional attention. Since 1931, there have been only seven fiscal years in which revenues exceeded expenditures.

The Senate Judiciary Committee will soon vote on a proposed constitutional amendment that would require national expenditures to equal national tax revenues each year. Does such an idea fit into the principles of the Constitution? And should a balanced national budget be institutionalized as a permanent principle of American government?

Section 8 of Article I of the Constitution gives Congress the power "to make all laws...necessary and proper." By means of this law-making authority, Congress is given exclusive power over spending in Section 9 of Article I: "no money shall be drawn from the treasury, but in consequence of appropriations made by law." Likewise, Congress has exclusive authority over taxation by way of Section 8 of Article I: "The Congress shall have the power to lay and collect taxes, duties, imposts, and excises." The same clause gives Congress the power to "provide for the common defense and general welfare of the United States." Following that is the long enumeration of specific powers of Congress for the purposes of which Congress may pass laws and appropriate monies. As can be seen, the congressional authority to tax is brief and unspecified whereas the constitutional purposes for which Congress may spend are many and specific.

The contemporary Congress spends monies for governmental purposes and programs undreamed of by the Framers of the Constitution or the authors of the Federalist Papers. These purposes of governmental spending have been justified under the congressional authority to provide for "the general welfare."

The two principal authors of the Federalist Papers, Hamilton and Madison, did not agree about the scope of the general welfare clause, and this debate was continued throughout American history until finally resolved, or at least laid to rest, by the Supreme Court.

In Federalist 41, Madison makes a very plain case that the general welfare clause was not intended to be a blank check to Congress "to exercise every power which may be alleged to be necessary for the common defence or general welfare." Madison maintains that a presumed open-ended authority for Congress to initiate any governmental program or to exercise any power "to legislate in all cases whatsoever" is quite obviously contradicted by the enumeration of congressional powers in Article I, Section 8. "For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power?" The general welfare clause, Madison maintains, is "explained and qualified" by the "enumeration of particulars." In fact, more general powers of legislation, and therefore of taxation and appropriation, were granted by the existing Articles of Confederation, and the new Constitution intends to restrict such powers of Congress.

Hamilton, in Federalist 30 and 34, had another view. He too spoke of the contemporary problem of the Congress under the Articles of Confederation being unable to raise a sufficient amount of taxes in order to provide for the common good and the general welfare. But Hamilton saw "a general power of taxation" in the Constitution so that Congress could provide for the "pecuniary wants of the Union." And since the wants of the future, the "future exigencies of the Union," could not be divined or accurately prophesied, the power of Congress to tax for future purposes must be left unrestricted: "Its future necessities admit not of calculation or limitation; and upon the principle, more than once adverted to, the power of making provision for them as they arise ought to be equally unconfined....There ought to be a capacity to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible to safely limit that capacity." The Hamiltonian view was largely followed by Congress throughout the nineteeth century in that congressional appropriations were never limited to the strict enumeration of powers in Section 8 of Article I. The passage of the Sixteenth Amendment instituting the national income tax was the most significant event in the history of the congressional taxing power, and, therefore, by implication in the congressionl appropriations power. The dramatic increase in revenues prompted Congress to initiate new areas of governmental appropriations.

Until well into the Twentieth Century, the Supreme Court had been reluctant to define the scope of the general welfare clause and its relation to the enumerated powers of Congress. But as tax revenues and congressional spending rose, it became obvious that the power of the purse was undergoing a change of kind. The New Deal began another quantum leap in government spending. And finally the Supreme Court decided a case, United States v. Butler (297 U.S. 1. 1936), in which it definitively construed the general welfare clause according to Hamiltonian precepts. On constitutional grounds, the Court struck down the Agriculture Adjustment Act, ruling that the Act's coercive federal regulation of farm production and prices invaded the reserved powers of the states.

The Court stated that the scope of the general welfare clause was "the great and controlling question in the case." In considering the historic argument between Madison and Hamilton on the issue, the Court endorsed Hamilton's view as "the correct one." The Court said that the enumeration of powers in Section 8 did not limit the power to appropriate for the general welfare. Instead, the power was limited by its own terms, that is, spending by Congress must at all times be for general, as distinguished from local, welfare. And, the Court concluded, it was up to Congress to decide whether a proposed end was indeed general.

These constitutional conclusions by the Supreme Court have been regarded as the definitive settlement of the matter and have, in effect, closed the debate. In Helvering v. Davis, a case decided only the next year, the Supreme Court was already stating that the case was closed: "Congress may spend money in aid of the general welfare. There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. United States v. Butler supra....The discretion belongs to Congress....This is now familiar law."

But are spending and taxation connected by the terms of the Constitution itself? The Butler Court seemed to assume such a connection in its discussion of the general welfare clause. The Court rejected the argument that the congressional authority to provide for the general welfare was an independent power. "The view that the clause grants power to provide for the general welfare, independently of the taxing power, has never been authoritatively accepted." Such a construction would make the power of the national government unlimited. Instead, the power to spend for the general welfare must be taken together with the immediately preceding constitutional clause, the power to "lay and collect taxes," that is to say, taxing is for the purpose of spending, and spending must be for the general welfare. The power to appropriate must be as broad, and no broader, as the power to tax; and vice versa, the power to tax must be as broad, and not broader, as the power to appropriate. One power is measured by the other, and, it could be said, one power balances the other. So, the key to any kind of balance of the two would be the decisions about how much revenue to take in from taxation and how much to spend through appropriations. These are decisions of Congress.

Does the victorious Hamiltonian position, which has been unchallenged since the Butler case, imply that Congress at its discretion, may spend for any object? Hamilton's essays in the Federalist Papers show that his advocacy of a broad power of spending for the general welfare was based on the clause of the

Constitution immediately preceding the general welfare clause, that is, the congressional power to provide for the "common defence." What does Hamilton have in mind when he vigorously argues that the power to tax and spend must be able to account for "future necessities" and "emergencies"? In Federalist 30, Hamilton uses the sudden outbreak of war as the example of the emergency which calls for already established broad powers of spending. A government with restricted fiscal powers would be unable to guarantee loans necessary to conduct the war. Forced to redirect funds customarily appropriated for domestic purposes, the national government would then cripple the internal affairs of the country.

In the next essay, Federalist 31, Hamilton again argues that the "general powers of taxation" are necessary for the purpose of being able to respond to "national exigencies." Such exigencies are "the national defense and securing the public purse against foreign or domestic violence." In Number 34, Hamilton argues that "the objects that will require a federal provision in respect to revenue" are "circumscribed within very moderate bounds." But, "future contingencies" may happen. And again, Hamilton uses the example of war as the reason for the national government's authority over a general power of taxation and spending. For a government able "to maintain those establishments which, for some time to come, would suffice in time of peace" would not be able to so provide "for the protection of the community against invasions of the public peace by foreign war or domestic convulsions."

Thus, Hamilton, the advocate of discretionary spending powers, saw the financing of war as the primary and dominant reason for such power. He argued for strong fiscal authority for the purpose of responding to emergencies. Massive, permanent, and far-flung domestic expenditures were not implied by the terms of the Constitution according to the Hamiltonian view:

> What are the chief sources of expenses in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answer plainly is, wars and rebellions; the support of those institutions which are necessary to guard the body politic against those two most mortal diseases of society. The expenses arising from those institutions which are relative to the mere domestic police of a state, to the support of its legislative, executive, and judicial departments, with their different appendages, and to the encouragement of agriculture and manufactures (which will comprehend almost all the objects of state expenditure), are insignificant in comparison with those which relate to the national defence. (Federalist 34)

In addition to war, Hamilton foresaw the prompt payment of any public debts as the other major expense of government. Yet, again, he thought that any future debts incurred by the national government would be caused by any future wars. In Federalist 41, Madison also saw any governmental debts as being for the sake of war: "the power of buying and borrowing money being the sinew of that which is to be exerted in the national defense."

Overall, Hamilton maintained that "frugality and economy... become the modest simplicity of republican government." (No. 34) The power of taxation must be broad and adequate but only "as far as the resources of the community will permit." (No. 30) "Every power ought to be in proportion to its object" (No. 30), meaning in the context of the essay, that taxation ought to be in proportion to the object of spending. But did Hamilton regard the converse as equally valid, that is, should spending be in proportion to taxation? Seemingly, he did. "Future necessities (i.e., expenditures) admit not of calculation or limitation, therefore, the power (i.e., taxation) of making provision for them as they arise ought to be equally unconfined." Nevertheless, "in the usual progress of things, the necessities of a nation, in every state of its existence, will be found at least equal to its resources." (No. 30) And, in the next essay, Hamilton lays down the principle that the power of taxation ought always be limited by "the exigencies of the nation and the resources of the community."

SPECIAL INTERESTS AND FACTIONS

Federalists 10 and 51 are Madison's famous discourses about political factions and the necessity of controlling them for the sake of well-ordered government. Indeed, these essays are Madison's definition of the kind of government the Constitutional Convention developed. A reading of all of Madison's contributions to the Federalist Papers indicates that he did not consider any principle more important than the ability of government "to break and control the violence of faction." (No. 10) Madison defined a faction as "a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the whole." (No. 10) The causes of factions (today we call them special interests) are "sown in the nature of man," and, therefore, government could not presume to control the causes but, instead, must seek everywhere and at all times to control and contain the effects of faction. By definition, individual factions do not "cooperate for their common good" but seek their mutually exclusive interests. Madison's solution, and his solution is the foundation of the American Constitutional system, was to incorporate special interests into the governmental process in order to control them. Thus, "the regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government." This is the reason for two of the most important foundations of the Constitution: the selection of a republican, representative form of government rather than a purely democratic one, and the fact that the American republic will be a large, extensive one with a large electorate. The first foundation controls factions by "passing them through the medium of a chosen body of citizens." The second controls factions because when you "extend the sphere... you take in a greater variety of parties and interests," thereby forcing each faction to compete against the multitude of all other factions.

In Federalist 51, Madison uses the same idea when he explains the fundamental basis of the "compound" system of checks and balances proposed by the Constitution. Power will be divided between "two distinct governments," the state governments and the national government. This divison will be compounded by subdividing "the portion" of power allotted to each level of government "among distinct and separate departments," forming what we now call the tri-partite organization of government.

And what is the purpose of dual governments and the tri-partite organization of each? In effect, government itself will be divided into what amounts to factions so that "its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." No governmental department, that is, no governmental faction, will be able to accrue excessive power because the other departments would serve as constant checks on such ambitions "by giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the other." "Ambition must be made to counteract ambition." If so, both private factions and the governmental departments will neutralize the others of their kind so that no single one of them will accumulate excessive and dangerous power. The government will be able to control the governed and any and all factions of the governed. And also, the government will be able to control itself and any and all factions or divisions of itself.

CONCLUSION

Insofar as the word "budget" means a plan for the coordination of revenues and expenditures, it must be said that the national government has no budget now. Throughout three-quarters of the republic's history, spending and taxing were roughly the measure of each other -- although there was no constitutional requirement that this be so. In the last fifty years, the division of the two, although beginning modestly, has grown to the point that these two most fundamental constitutional powers of Congress are completely separate and distinct.

With passage of the Congressional Budget and Impoundment Control Act of 1974, Congress attempted to bind itself by force of law to a coordination of national spending and taxing. The law mandates no balancing of the budget, but merely requires the Congress to pass a resolution early each year setting taxing and spending targets and then attempt to keep the subsequent appropriations process under the ceilings. Congress has not only never passed a budget resolution with equal spending and taxing ceilings, but has never even finished the appropriation process at the targeted spending ceiling. The Budget Act, a law binding Congress, is not really in fact a law since Congress, the law-making and law-repealing body, has complete discretion to make new laws, or, as is the case for the Budget Act, to violate the spirit of the law. The binding force of the Budget Act is voluntary on Congress. This is obvious according to our governmental scheme since no law, but only the Constitution, can bind Congress.

Madison's plan to multiply the number of special interests in order to set them competing against one another, thereby preventing any one or few of them from gaining too much power or too much money, has obviously failed with regard to the appropriation process. In fact, the opposite effect has happened in that the congressional tendency over the last fifty years has been to approve funding of all new proposals rather than none of them. The American scheme of constitutional government, designed to control the public effects of special interests, has turned into a system by which special interests can succeed. Special interests have proliferated, as Madison foresaw, but government has adapted into a means for serving these interests rather than a means for controlling them. Private factions have proliferated on their own. A multitude of these have won public vindication in that Congress has ordered that the factions become publicly funded institutions of government with enforcement powers to perpetrate their causes throughout the body politic. In a response of both cause and effect, the Congress has expanded its own organization in order to serve and fund these interests. (There are now more subcommittees than senators in the Senate --- and more the 150 subcommittees in the House.)

Thus, spending factions have triple incarnations, two of which are government institutions. On the other hand, there are no tax factions; taxes have no constituency. The result is more spending than income -- yearly budget deficits.

With the proliferation of the parts of government and the accompanying addition of appropriations to fund these parts, what has been ignored is the whole, or, in Madison's words: "the permanent and aggregate interests of the whole." The balanced budget amendment proposes that the two processes be made to measure each other, that single taxes and single appropriations be always related to the whole, and, in fact, to require that the congressional fiscal process become a budgetary process for the first time.

As the political system exists now, a proposal to appropriate for a specific object or tax from a specific source succeeds or fails on its own merits. A balanced budget as the overweening principle of Congress' fiscal authority would qualify each, individual funding or taxing decision by requiring that no part breach the whole. As such, a Madisonian element would be introduced into the fiscal powers of Congress for the first time. With the whole defined, the different factions would be forced to compete against each other for their parts of the whole. Currently, a faction need contend only with the discretion of the subcommittee that was created for the purpose of serving it in the first place.

Amending the Constitution to require that Congress always "balance" its fiscal decisions would be adding a political, rather than an economic, principle to the Constitution. A balanced budget implies neither a raising nor a lowering of either taxes or spending. It implies no decision about how much of the private wealth of the country the Congress may expropriate for governmental purposes. It contains no limitations of Congress' power to spend for the general welfare. It is based on no economic formulas. It merely proposes a unity: that appropriations be made to measure taxes and that taxes be made to measure appropriations.

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