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Why Congress Needs a New Budget Process

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Abstract

The congressional budget process has unraveled just as the federal government is approaching fiscal crisis. The breakdown not only risks severe budgetary and economic consequences, but also threatens the constitutional system itself. It enables unrestrained expansion of the public sector, undermines congressional policymaking, and encourages an undue concentration of power in the executive branch. Incremental reforms, however well considered, would likely fail to restore congressional budgeting. Instead, Congress should completely dismantle and rebuild the budget process to limit government, enhance Congress's policymaking role, restore the balance of power between the executive and legislative branches, and control the administrative state. The ultimate goal of budgeting should be to reinforce and strengthen constitutional government.

The collapse of congressional budgeting in recent years has occurred just as the government's fiscal outlook is approaching critical. If left unchecked, current trends will lead to unprecedented levels of federal spending as a share of U.S. economic output, far beyond taxpayers' historical tolerance and perhaps greater than the economy can sustain. The resulting debt would seriously hamper the nation's potential for long-term growth. These trends can be corrected only with a regular, stable, and sustained practice of budgeting. As Congress continues to

struggle with its current procedures, the prospects seem doubtful.

Yet the breakdown of the budget process threatens more than severe fiscal and economic consequences. It enables an unrestrained expansion of the public sector, undermines orderly congressional policymaking, exacerbates public frustration, and cedes undue power to the executive branch. In short, the chronic failure of congressional budgeting erodes democratic procedures and the constitutional system itself.

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The failure of Congress to produce serious budgets angers Americans and jeopardizes the economy. Many believe that one element in the gridlock is a congressional budget process that is so broken it needs to be completely replaced. We asked Visiting Fellow Patrick Louis Knudsen to discuss the principles that should form the foundation of a new Budget Act.

Selected incremental reforms might correct some of the flaws in current fiscal practices. In the past, however, such steps have proven inadequate and are unlikely now to restore a process so deeply degraded. It is time for a major redesign of congressional budgeting.

Constructing a New Budgeting Process

Congress should begin constructing a new process—one that lawmakers can and will use to produce timely, responsible, and definitive budgets. Even more important, the new process should strengthen the exercise of governing—its underlying purpose—just as the 1974 Congressional Budget Act intended. That requires procedures that reinforce the constitutional framework, treating it not as an impediment to efficient budgeting but as the fundamental platform for public policy.

Lawmakers should craft a new budget act that, in meeting its numerous practical demands, advances the following goals:

- **Limiting government.** The Constitution provides a framework for a limited government of delegated powers. The practice of budgeting is an essential means of implementing that principle, mainly by limiting spending, one of the best measures of the size and scope of government and its burden on the economy. The budget process should emphasize spending control—both in the near term and in accordance with a long-range strategy for fiscal policy—rather than allow perpetual government expansion.
- **Enhancing Congress’s constitutional role.** Budgeting, rooted in a distinctive and comprehensive vision of government, is central to Congress’s ability to establish national priorities and set a legislative agenda. The budget process should reinforce this fundamental role of the legislative branch.
- **Restoring the balance of powers.** Defining congressional priorities also is crucial to preventing undue dominance of the President over the direction of national policy. Congress’s failure to budget assertively and comprehensively encourages

the inappropriate concentration of power in the executive branch. The budget process and its components should promote the balance of powers envisioned in the Constitution.

- **Controlling the Administrative State.** Failures in congressional budgeting inevitably lead to policymaking through the bureaucracy, which includes a growing, opaque fourth branch of government shielded from oversight. The budget process should serve to restrain this domineering administrative state.

These goals may seem uncontroversial, or at least broadly agreed to, but they tend to be forgotten in the pursuit of rationalistic, technical “efficiency.” Instead, they should stand in the forefront of efforts to construct a more effective budget process. The broader aim is to strengthen budgeting as an essential act of governing, a fundamental means of exercising constitutional principles.

What the Congressional Budget Was Meant to Do

A budget is commonly seen as an instrument for determining how much to spend, how to allocate limited resources, and how to raise sufficient financing. Yet the *practice* of congressional budgeting also constitutes an essential policymaking exercise, as well as a means of constraining executive power. As renowned political scientist Aaron B. Wildavsky wrote:

Few truisms of American political thought are more hoary than this: The power of the purse is the heart of legislative authority and thus an essential check on the executive branch. An executive establishment freed from dependence for funds upon the legislature (and hence the public) would be a law unto itself and ultimately a despotism.... From the earliest days of American government, budget decisions were treated as a struggle for power.¹

Through much of the country’s early history, Congress exercised this authority without a formal budget or budget process—which the Constitution

1. Aaron B. Wildavsky, *The New Politics of the Budgetary Process*, 3rd ed. (New York: Addison-Wesley Educational Publishers Inc., 1997), p. 24.

does not require.² Department and agency heads simply took their budget requests to the appropriate committees of Congress, and the committees determined how much funding to provide. Even when Congress approved the Budget and Accounting Act of 1921—creating a consolidated executive process inspired by the Progressive Movement and modeled largely on Great Britain’s system—most lawmakers contended that legislative authority remained pre-eminent. Wildavsky notes:

The only executive aspect of that act, the House insisted, was that the president would henceforth be held responsible for the agency estimates he submitted. After that, the budget was still legislative all the way. Members of Congress could still move his proposed numbers up, down, or sideways by ignoring them entirely.³

Nevertheless, Congress also established an institutional backup by creating the General Accounting Office,⁴ replacing the Treasury Department’s role in auditing and accounting for expenditures.

For nearly 50 years, this executive budget process worked well enough, at least procedurally. It held up through the Great Depression, World War II, the Korean War, much of the Vietnam War, and the first two decades of the Cold War. In peacetime, federal spending was held at or near the level of total revenues, resulting in small deficits or even surpluses. Although wartime spending and deficits surged, the government typically returned close to fiscal balance within a few years after the crises ended.

On the other hand, this same process midwived the creation of the New Deal and the Great Society, both of which vastly expanded the size and scope of government; they spawned a large growth in the “entitlement” programs that today most threaten fiscal stability. Of note, in his reorganization plan of 1939, President Franklin D. Roosevelt moved

the Bureau of the Budget—established under the Budget and Accounting Act—from the Treasury Department to the Executive Office of the President, clearly recognizing that controlling the budget granted him significantly more control over the government itself.⁵

During this period, lawmakers did make one attempt at a congressional budget process, in the Legislative Reform Act of 1946. The budget procedures comprised just two paragraphs in the sprawling legislation, which sharply reduced the number of House and Senate committees, imposed regulations on lobbyists, expanded the Legislative Research Service (now the Congressional Research Service), and included a congressional pay raise, among numerous other changes. The bill even contained a section on remodeling caucus rooms and restaurants. “These provisions, far closer than the budget to the hearts of most members of Congress, received most of their attention,” writes Joel Havemann, editor at the *Los Angeles Times*, in his 1978 book on the budget process. “By comparison, budget reform was an afterthought.” Not surprisingly, the new procedures failed, and Congress abandoned them in 1949.⁶

Change in the 1960s. Budgeting conditions changed in the mid-1960s, with the President and Congress increasingly divided. A significant part of the problem, says Wildavsky, lay in the general unrest and uneasy politics of the period, with respect to both domestic policy and the Vietnam War:

It is not always easy to separate cause from effect, reality from symptoms. The actors in the budgetary minuet—president, congressional committees, administrators—could not indefinitely insulate their own politics from those of the real world. The ferment of the 1960s reflected long-standing dissatisfaction of groups previously excluded from the political process. Denial of voting rights and racial discrimination in a

2. The U.S. Constitution vests the authority over spending and taxation in the Congress, specifically through Article I, Section 7, Clause 1; Article I, Section 8, Clause 1; Article I, Section 8, Clause 2; Article I, Section 9, Clause 7; and Amendment XVI, which authorized the income tax. See U.S. House of Representatives, Committee on the Budget, *Compilation of Laws and Rules Relating to the Congressional Budget Process*, CP-3, August 3, 2012, <http://www.gpo.gov/fdsys/pkg/CPRT-112HPRT75001/pdf/CPRT-112HPRT75001.pdf> (accessed October 28, 2013). The Constitution does not, however, prescribe how Congress should exercise these powers.

3. Wildavsky, *The New Politics of the Budgetary Process*, p. 37.

4. The General Accounting Office was renamed the Government Accountability Office in 2004.

5. The Bureau of the Budget was renamed the Office of Management and Budget in 1970.

6. Joel Havemann, *Congress and the Budget* (Bloomington, IN: Indiana University Press, 1978), pp. 21-23.

democracy, hunger in the midst of plenty, poverty in prosperity. No less divisive issues of war and environment also took their place on the political agenda.⁷

In this atmosphere, conflicts between those who favored national defense and those who backed domestic social programs intensified. In addition, by the early 1970s, President Lyndon B. Johnson's Great Society programs were coming into fruition. This meant that major new and difficult-to-control entitlement spending started soaking up more and more resources. Entitlements began to squeeze other programs, constraining options for setting priorities and reducing flexibility in the budget. From 1965 through 1972, gross programmatic "mandatory" outlays (excluding offsetting receipts and net interest) swelled from 31.9 percent of total spending to 41.7 percent.⁸

In contrast with the aftermath of other wars and crises, there was no "peace dividend" as spending for Vietnam wound down. The expected resources already were committed to entitlement expansions, an unprecedented phenomenon. "Vietnam did not conform to the budgetary patterns of previous American wars," writes long-time budget expert Allen Schick of the University of Maryland. "Without exception, each previous war had produced a steep rise in federal spending followed by a sharp post-war decline, though to a trough well above the pre-war level. However, in no year following the Vietnam War has spending been lower than in the peak war years."⁹ Faltering economic growth also limited the revenue increases that previously had helped to absorb additional spending.

The Clash with Nixon. Dissensus over the budget then reached critical mass. In his second term, President Richard M. Nixon employed various means to seize control of what he considered a runaway bureaucracy, including "personnel shifts to

gain better control of the departments by bypassing the Cabinet; reorganization; regulation writing; and impoundment or reduction of funds, which resulted in the enervation of whole programs within the bureaucracy."¹⁰

Indeed, Nixon's zealous use of impoundment was especially maddening to Congress. Whereas previous Presidents had employed the authority to hold back money appropriated by Congress mainly as a fiscal management tool, President Nixon used it to thwart congressional policy. As Havemann explains:

Nixon used impoundments to reduce or eliminate one program after another, on grounds that only the executive branch—and most emphatically not Congress—was capable of making the difficult choices about the budget. Only the executive branch, Nixon argued, could resist the pressures of the special interests for more spending programs. Only the executive branch could recognize that continuing federal deficits would lead to runaway inflation.¹¹

President Nixon's impoundments left Congress without any means of responding. Frustrated lawmakers had no counterpart to the President's budget for judging priorities and evaluating program spending in the context of overall fiscal policy. "How could Congress weigh the advantages and disadvantages of including a particular program in the federal budget?" Havemann writes. "It had no procedure for matching expenditures to revenues or for asking whether a new housing program, for example, was more important than a new submarine."¹²

The Congressional Budget and Impoundment Control Act

Congress broke the standoff by passing the Congressional Budget and Impoundment Control Act of 1974, which President Nixon signed on July

7. Wildavsky, *The New Politics of the Budgetary Process*, pp. 67–68.

8. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2014: Historical Tables* (Washington, DC: U.S. Government Printing Office, 2013), pp. 153–154, Table 8.3, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/hist.pdf> (accessed October 28, 2013).

9. Allen Schick, *Congress and Money: Budgeting, Spending and Taxing* (Washington, DC: Urban Institute, 1980), p. 25.

10. John A. Marini, *The Politics of Budget Control: Congress, the Presidency, and the Growth of the Administrative State* (New York: Taylor & Francis, 1992), p. 126.

11. Havemann, *Congress and the Budget*, p. 11.

12. *Ibid.*

12 (just a month before he resigned). The act had two aims: to enhance Congress's authority over fiscal policy through a more comprehensive budgeting process and to wrest power from what some termed Nixon's "imperial presidency."

While the Budget Act has not successfully controlled spending and deficits as intended, it certainly restored some of Congress's governing authority. It produced a formal congressional response to the executive budget. "With the Budget Act of 1974," writes University of Nevada–Reno political scientist John A. Marini, "Congress became a dominant force in the formulation of fiscal policy, and a major player in setting national priorities."¹³ Key elements of the new procedure were:

- **The Budget Resolution.** This was an entirely new vehicle, a unique measure that accounts for total government spending, taxes, deficits, and debt, and offers a proposed allocation of resources among major government activities. It was then, and still is, the only legislation that views the government comprehensively. Thus, it provides coherence to all of the piecemeal spending and tax bills that lawmakers consider over the course of the year. It also gives Congress a means of defining national priorities and overall fiscal policy as a true counterpart to the President's budget. Initially, the Budget Act called for two resolutions. The first, passed in the spring, would present nonbinding target levels for spending committees. The second, to be adopted by mid-September,¹⁴ would update the first for enacted legislation and changes in economic conditions. The second resolution's levels would be binding, and the measure contained a fast-track "reconciliation" procedure to ensure committees met them. The use of the second resolution was dropped in the early 1980s.
- **House and Senate Budget Committees.** As authors of the budget resolution, these two standing committees have broad jurisdiction over

the budget totals and how they are distributed among major categories and committees. In this way, the budget committees provide a means of coordinating the many piecemeal spending bills under the umbrella of the overall totals. The budget committees determine only tax and spending amounts. They cannot legislate specific policies. Those decisions remained with the committees holding program jurisdiction.

- **The Congressional Budget Office (CBO).** This new agency, part of the legislative branch, freed Congress from dependence on the Administration for fiscal and economic information and analysis, which was the situation prior to the Budget Act. While typically described as nonpartisan, its neutrality is maintained and guarded by the *bipartisan* demands of Congress. To retain its credibility and usefulness, the CBO has to satisfy both the majorities and minorities in the House and Senate that its conclusions are ideologically impartial. Nevertheless, the CBO is part of Congress, with its basic approaches and its director subject to congressional approval.¹⁵
- **Reconciliation.** As originally conceived in the Budget Act, the second budget resolution could trigger a reconciliation process to ensure that the spending and tax committees complied with its binding totals. Under the procedure, the resolution would direct one or more committees to write legislation adjusting programs in their jurisdictions to reconcile their total spending with the budget resolution levels. The legislative proposals would be reported back to the budget committees, which would package them and bring them to the floor as a way of completing the overall budget.¹⁶ Although the procedure remains largely the same today (absent the second budget resolution), the role of reconciliation has changed considerably; it is now a principal means of adopting changes in entitlement programs and sometimes tax policies.

13. Marini, *The Politics of Budget Control*, p. 11.

14. Havemann, *Congress and the Budget*, p. 35.

15. "The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties." Congressional Budget Act of 1974, 2 U.S. Code § 601(a)(2).

16. Havemann, *Congress and the Budget*, pp. 36–37.

To allow more time for these procedures, the Budget Act also moved the start of the fiscal year (FY) from July 1 to October 1.

These elements, forming the core of the new process, were added to existing procedures for authorizing, appropriating, and taxing. Taken together, they enabled Congress to budget independently and comprehensively. Wildavsky summarizes:

Congress would look at programs, think about totals, choose a relationship between spending and revenue, and bring the two together. Entitlement spending would be confronted while considering the totals... [E]ntitlements might be adjusted during reconciliation. The budget resolutions would enable congressional majorities to respond directly to the president's budget, asserting their own functional priorities and fiscal goals.¹⁷

Thus, the Budget Act was more than a new procedure for managing fiscal policy. By bolstering Congress's power of the purse, it was designed to strengthen the legislature's constitutional role as the policymaking branch of government.

How and Why the 1974 Process Has Broken Down

On several occasions, the process created by the Congressional Budget Act seemed to be unraveling, and it was amended numerous times to accommodate extraordinary conditions. For example, by 1985, its procedures seemed inadequate to gain control of growing deficits, so Congress added a new enforcement regime with the Balanced Budget and Emergency Deficit Control Act (Gramm–Rudman–Hollings¹⁸). In 1990, the restraints in that law threatened automatic spending cuts that lawmakers judged unacceptably deep, so after lengthy negotiations at Andrews Air Force Base, Congress and President George H. W. Bush arranged a new set of deficit reduction policies under the Budget Enforcement Act.

Although these amendments sometimes provided breathing room or avoided crises, they seem only

to have papered over widening cracks in the system. Breakdowns continued and worsened. In the past several years, the collapse of orderly congressional budgeting has been all but total, and the practice seems nearly irrecoverable. Among the problems:

- Lawmakers no longer miss budget deadlines; they breach them deliberately and regularly, obliterating any notion of a fiscal year as the government runs on a series of temporary spending measures.
- Omnibus legislation has replaced the separate appropriations required under the regular order, and these massive bills typically offer few policy changes, largely maintaining the status quo.
- The entitlement crisis looms ever closer, yet remains unaddressed.
- Even the budget resolution itself—a key instrument of the congressional process—has become optional and nearly irrelevant. Since FY 1999, Congress has failed to adopt a resolution on seven occasions (and this year would make it eight). According to the professional associations concerned with the legislative process: “The device that was created to give Congress an equal voice in setting overall fiscal policy is increasingly just a hit and miss proposition.... This represents not only a failure of Congress to follow its legislative mandate; it also suggests that the budget committees may lack enough power to make adoption of the budget resolution the imperative it was intended to be.”¹⁹

Budget analyst Maya C. MacGuineas in 2012 summarized the situation in testimony to the House Rules Committee:

Our budget process is just not working. Deadlines exist in name only; appropriations continuously fall behind schedule leading to unwanted mini and omnibus legislation, and gimmicks are regularly employed. And these problems only exist for the small portion of the budget that lawmakers

17. Wildavsky, *The New Politics of the Budgetary Process*, pp. 79–80.

18. The legislation's main authors were Senators Phil Gramm (R-TX), Warren B. Rudman (R-NH), and Ernest F. Hollings (D-SC).

19. Paul L. Posner et al., “Strengthening the Federal Budget Process,” *Memos to National Leaders*, July 11, 2012, <http://www.memostoleaders.org/sites/default/files/RevisedBudgetFinal.pdf> (accessed October 28, 2013).

annually mark up and decide. The vast majority of our spending and tax policies are on autopilot, leading to a system where our national priorities are neither fully thought out nor fully funded.²⁰

An added problem has been the polarization of the political system. As Professor Paul L. Posner of George Mason University states:

Budgeting ... has been transformed into a series of litmus tests on the fealty of Members of Congress to key constituencies and ideologies. Under such a political system, agreement is harder to come by—and delays are far more likely.²¹

These disputes are not a trivial matter or the result of “bickering” or stepped-up campaigning. Instead, they reflect, to a large extent, deep and fundamental differences about the proper role of government. The budget is a legitimate forum for a debate over these differing views, but the gridlock has made it especially difficult for concerned lawmakers to tackle the indispensable task of controlling spending.

Apart from these aspects of the general political and fiscal environment, several other specific factors have contributed to the breakdown in budget practices.

More, Not Better, Budgeting. A fundamental problem with the Budget Act is that it made an already complicated process more complex. Instead of restructuring budgetary procedures from the ground up, it merely added new elements, such as the budget resolution.²² Even at the time, lawmakers worried that “instead of creating a budget, the new procedures might merely create more budgeting.”²³

Since then, of course, Congress has applied more changes, including Gramm–Rudman–Hollings, the Budget Enforcement Act, the Statutory Pay-As-You-Go Act of 2010, and the Budget Control Act of 2011. In each case, specific historical or political conditions gave rise to these measures, but the new regimes have become part of the permanent process.²⁴

The new procedures also were “layered on top of an already redundant committee structure,” notes the Brookings Institution’s Alice M. Rivlin, the CBO’s first director. That challenge remains today, with authorizing and appropriating activities divided, creating an excessive number of steps in implementing all spending and tax decisions.²⁵ Hoover Institution scholar John F. Cogan has argued that distributing budgetary decisions among numerous committees has contributed to uncontrolled spending.²⁶

Of course, streamlining this process would require restructuring Congress itself—a probably worthwhile task that would encounter stiff resistance from lawmakers settled in current power structures. Nevertheless, the problem, broader than the budget process itself, needs to be acknowledged.

Inadequate Incentives for Budgeting. Just as history is the product of human choices and actions, the success or failure of any legislative procedure, including the budget process, depends on the Members of Congress themselves. “No process will work well,” says Rivlin, “unless the participants in the process want it to work.”²⁷

That said, the existing process lacks institutional incentives to encourage regular budgeting. In practice, little in the budget process compels lawmakers to follow the regular order as written in law. For instance, after May 15 the House can begin

20. Maya C. MacGuineas, testimony in hearing, *H.R. 114, The Biennial Budgeting and Appropriations Act of 2011*, Subcommittee on Legislative and Budget Process, Committee on Rules, U.S. House of Representatives, 112th Cong., 2nd Sess., <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg72889/html/CHRG-112hhrg72889.htm> (accessed October 28, 2013).

21. Paul L. Posner, statement before the Committee on the Budget, U.S. Senate, October 12, 2011, p. 4, http://www.budget.senate.gov/democratic/index.cfm/files/serve?File_id=cdde09ec-6dfa-48e7-9949-3071d08154c4 (accessed October 28, 2013).

22. Wildavsky, *The New Politics of the Budgetary Process*, p. 79.

23. *Ibid.*, p. 80.

24. See U.S. House of Representatives, *Compilation of Laws and Rules Relating to the Congressional Budget Process*.

25. Alice M. Rivlin, testimony to the Committee on the Budget, U.S. House of Representatives, September 21, 2011, http://budget.house.gov/uploadedfiles/rivlin_testimony9212011.pdf (accessed October 28, 2013).

26. John F. Cogan, “Federal Budget Deficits: What’s Wrong with the Congressional Budget Process,” Stanford University, Hoover Institution, 1992.

27. Rivlin, testimony to the Committee on the Budget.

considering appropriations bills without a budget resolution, and the Senate can do so merely by waiving a Budget Act point of order with a simple majority. Lawmakers have learned they can simply “deem” discretionary spending levels—even different levels in the House and Senate—and then hastily resolve their differences in a rush of end-of-year legislating. They have fabricated procedures to facilitate spending and tax bills and have made the fiscal year irrelevant through the deliberate use of continuing resolutions to buy time as needed. While these failures of orderly budgeting appear to have no immediate consequences, the damage is real. Each year without a budget resolution means further delay in addressing the ever-growing problem of entitlement spending. The longer this pattern continues, the larger the problem becomes, and the more difficult and wrenching the required solutions eventually will be.

Further, even if lawmakers could agree to the needed policy reforms, the disuse of regular budgeting might leave Congress with no systematic means of adopting them. Consequently, the government would continue running headlong on its unsustainable fiscal course. This could lead to what University of Rochester political scientist David M. Primo fears will be “a staggering level of government debt that will necessitate massive interest payments each year or, in the extreme, more severe consequences, such as a debt default or ‘monetization of the debt’ (i.e., the printing of money to pay off the debt, which will produce significant inflation).”²⁸ These looming hazards seem insufficiently urgent, however, to force Congress to restore a regular and vigorous practice of budgeting.

Lack of Real Limits. For most of America’s history, through the Truman and Eisenhower Administrations, an unwritten conviction about balancing budgets effectively limited government spending. Nobel Laureate James M. Buchanan explained:

Politicians prior to World War II would have considered it to be immoral (to be a sin) to spend more than they were willing to generate in tax revenues, except during periods of extreme and temporary emergency. To spend borrowed funds on ordinary items for public consumption was, quite simply, beyond the pale of acceptable political behavior. There were basic moral constraints in place; there was no need for an explicit fiscal rule in the written constitution.²⁹

By the time the Congressional Budget Act was adopted, however, this commitment had faded. Instead, Keynesian macroeconomic theory took hold as a premise of fiscal policy, displacing the classical view of public finance and tolerating—even encouraging—willful deficit spending. “In this vision,” wrote Buchanan, “any constraint on the exercise of governmental discretion in setting rates of taxes and spending could only reduce the efficacy of the macroeconomic enterprise.”³⁰

The Keynesian doctrine gave politicians a rationale to do what they wanted anyway: spend.³¹ “All internal incentives worked to raise expenditures.... More money made it easier to settle internal quarrels. The price of policy change was program expansion.”³²

To this day, there is no common *political* consensus within Congress about the proper limit on spending. The Budget Act calls for ceilings on annual appropriations in the budget resolution, and Congress has at times applied statutory caps on discretionary spending, including the current limits under the Budget Control Act. These are only temporary measures, however, which can be readily breached through emergency and supplemental spending bills or through gimmicks such as changes in mandatory programs (CHIMPs). Meanwhile, there are no constraints on aggregate entitlement spending, the largest share of the budget.

28. David M. Primo, “Making Budget Rules Work,” George Mason University, Mercatus Center *Working Paper* No. 10-62, September 2010, p. 6, http://mercatus.org/sites/default/files/publication/Making%20Budget%20Rules%20Work.Primo_9.28.10.pdf (accessed October 28, 2013).

29. James M. Buchanan, “Clarifying Confusion About the Balanced Budget Amendment,” *National Tax Journal*, Vol. 48, No. 3 (September 1995), p. 347, [http://ntj.tax.org/wwtax%5Cntjrec.nsf/68F7F882CD48D258852567EF0057A8A5/\\$FILE/v48n3347.pdf](http://ntj.tax.org/wwtax%5Cntjrec.nsf/68F7F882CD48D258852567EF0057A8A5/$FILE/v48n3347.pdf) (accessed October 28, 2013).

30. *Ibid.*, p. 347.

31. Wildavsky, *The New Politics of the Budgetary Process*, p. 70.

32. *Ibid.*, pp. 83-84.

The Growth of Entitlements. Entitlement spending's growing share of the budget is a massive problem unto itself. When the Budget Act was adopted in 1974, net programmatic mandatory outlays (excluding interest) were just shy of 41 percent of total spending, while discretionary outlays were about 51 percent. Today entitlement spending totals nearly 60 percent of the budget, while appropriations are about 34 percent.³³ The automatic growth of entitlements increasingly limits the extent to which policymakers determine priorities across all the government's activities.

A group of former CBO directors and other budget experts noted:

[T]he allocation of limited resources across the full spectrum of national priorities—including the rapidly growing entitlement programs—is rarely addressed. The president and Congress do not have to decide the relative importance of supporting retirement income or medical care for the elderly versus investing in education, infrastructure, and research or meeting national defense or homeland security needs.³⁴

The main problem with entitlements lies in their construction. Whereas discretionary funds are appropriated annually and the amounts are expressly determined by Congress, entitlements operate on what are effectively permanent authorizations and spend whatever is needed to meet their demands. They constitute, in effect, “autopilot spending,” and there is no limit on their aggregate levels. Their design makes entitlements difficult to restrain because their spending totals result from factors outside Congress's control, including inflation, case-loads, and the changing costs of services.

As former CBO Director Rudolf G. Penner testified to Congress:

Part of the problem is that Social Security, Medicare and Medicaid, along with some less

important health programs, are open-ended. That is to say, they are not subject to a budget. The law defines an eligible population and the benefits to which they are entitled and then we pay for everyone who shows up. A lot more people are showing up these days as baby boomers retire in larger and larger numbers.³⁵

Entitlement spending can be restrained only by changing the underlying laws, such as benefit levels and eligibility requirements, and even then the outcomes can only be estimated. As a result, the budget is increasingly dominated by spending that grows inexorably by default and is outside regular congressional controls.

Related to entitlement spending is the controversial subject of “tax expenditures”: the hundreds of billions of dollars in credits, deductions, exclusions, exemptions, and preferential rates that have proliferated in the tax code and that in many instances function as proxies for direct subsidies. Analysts differ on which tax breaks are akin to direct spending and which are legitimate features of a pro-growth tax code (e.g., steps to eliminate the double taxation of savings). In fact, these provisions do not increase spending (except for refundable credits that do result in higher outlays), but they do often distort tax burdens.

Moreover, the most questionable special tax breaks resemble entitlements inasmuch as they are open-ended, available to anyone who qualifies, operate on automatic pilot, and affect the overall fiscal outlook. To the extent they seek to provide selective financial assistance, manipulate behavior, or promote government-approved “investments,” they represent an expansion in the size and scope of government not reflected in the regular spending totals.³⁶

Changing Committee Roles. Prior to 1974, congressional committees typically sought to control the Administration by restricting agencies' spending authority, usually to something below their

33. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2014: Historical Tables*, pp. 153–154, Table 8.3.

34. Stuart M. Butler et al., “Taking Back Our Fiscal Future,” The Brookings Institution and The Heritage Foundation, April 2008, p. 5, <http://www.heritage.org/research/reports/2008/03/taking-back-our-fiscal-future>.

35. Rudolph G. Penner, testimony before the Committee on the Budget, U.S. House of Representatives, September 21, 2011, p. 3, <http://www.urban.org/publications/901451.html> (accessed October 29, 2013).

36. See Donald B. Marron, “Spending in Disguise,” *National Affairs*, Summer 2011, <http://www.nationalaffairs.com/publications/detail/spending-in-disguise> (accessed October 30, 2013).

requests. The culture of Congress was to restrain the Administration. Ironically, the Congressional Budget Act transformed these committees into advocates for *higher* spending precisely by creating the budget committees to impose limits. Says Wildavsky: “The appropriations committees withdrew from their previous positions as guardians of the treasury.”³⁷

This happened because the newly created budget committees had to maintain collegial relations with spending and tax committees to survive. Consequently, they often had to “subordinate themselves to the widespread desires for higher spending.”³⁸

In other words, the budget committees had to take over minding resources, but their powers were limited by their need for consensus. “Like all others who wish to be influential,” says Wildavsky, “budget committees could afford to lose only a few times, for if it becomes obvious the budget committees are likely to lose, no one will pay attention to them.”³⁹

The Limitations of Budget Estimates. The Congressional Budget Office was to be an impartial umpire evaluating budgetary consequences. Over time, however, lawmakers have come to treat CBO figures—which are only estimates—as an all-but-sacred measure of spending and deficit effects and have at times contorted legislative proposals to “fit” their requirements.

It is important to recognize that the CBO’s rules and practices are determined by law or by agreement with the House and Senate Budget Committees and the Office of Management and Budget. Indeed, the budget committees are the official scorekeepers for Congress. “In principle,” writes former Acting CBO Director Donald B. Marron, “they can decide to use cost estimates that differ from the scores prepared by the CBO. In practice, this is very rare, so CBO scores are usually the official ones.”⁴⁰ Still, Congress is ultimately accountable for the estimates it employs.

These rules and practices can raise significant problems. A well-known example is the “baseline”—the yardstick against which the CBO evaluates the effects of policy proposals—codified in Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.⁴¹ It requires the CBO to project spending and tax revenue that would result under the provisions of “current law”—including changes in law, however unrealistic, that are scheduled to occur.

Consequently, the CBO baseline projects sharp reductions in Medicare physicians’ reimbursements each year as required under current law, even though Congress has repeatedly rejected these cuts. Similarly, the baseline estimates over the past decade have projected huge revenue increases from the scheduled expiration of tax relief policies enacted in 2001 and 2002, although no one ever expected all of those policies to expire at once. This created an Orwellian twist in which simply extending existing tax policies was presented as a huge new tax “cut” and corresponding deficit increase.⁴² Thus, the rules have “the unfortunate side effect of creating a budget baseline that may differ from a reasonable expectation of future policy.”⁴³ The CBO has tried to compensate by presenting “alternative” baselines incorporating more likely policy choices, but these efforts have regrettably done little to relieve the confusion that the baseline projections can create.

Another problem is the budget window. The CBO’s estimates customarily project spending and revenue effects for the first 10 years of any legislative proposal, including a budget resolution itself. With federal spending in the trillions of dollars, and with the myriad programmatic and economic fluctuations that can occur even in the span of a year or two, the accuracy of CBO figures is highly uncertain, and this uncertainty would increase if the window were extended. On the other hand, CBO estimates often are criticized for being too short-sighted and setting up perverse incentives. By focusing on the first

37. Wildavsky, *The New Politics of the Budgetary Process*, pp. 13-14.

38. *Ibid.*, p. 83.

39. *Ibid.*, p. 84.

40. Donald B. Marron, “Understanding CBO Health Cost Estimates,” Heritage Foundation *Backgrounder* No. 2298, July 15, 2009, <http://www.heritage.org/research/reports/2009/07/understanding-cbo-health-cost-estimates>.

41. The provision expired at the end of FY 2002, but was restored under Section 104 of the Budget Control Act of 2011.

42. This year’s “fiscal cliff” agreement ended the problem by making its tax policies permanent.

43. Marron, “Understanding CBO Health Cost Estimates.”

10 years, projections ignore the longer-term effects of policy proposals, particularly from entitlements, where the design of a law can—often consciously—cause an explosion of spending beyond the 10-year window. Indeed, lawmakers commonly phase in program expansions, deliberately limiting the spending and deficit impact of the first decade, but backloading the much larger effects into subsequent years.

The Need for a New Budget Act

Clearly, it is imperative for Congress to restore a regular practice of budgeting. Lawmakers will need it to have any chance of managing the daunting fiscal challenges ahead—challenges that will only worsen if left unaddressed.

Budgeting is equally important in the practice of governing. “[T]he budget is much more than a matter of dollars,” writes Schick. “It finances federal programs and agencies and is a vital means of establishing and pursuing national priorities.”⁴⁴

The collapse of budgeting is both a symptom and a cause of a general breakdown in governing. A dysfunctional Congress fails to budget, and that failure in turn exacerbates the broader legislative dysfunction. Moreover, a tolerance for inept budgetary practices may spill over into other legislation, further weakening Congress as a policymaking body, which can lead to an unhealthy imbalance in the balance of powers. Thus, the failure of budgeting has broader and more disturbing consequences for the constitutional system itself, and restoring the practice may be key to revitalizing the institution of Congress. A range of procedural reforms of the budget process have been proposed to correct specific problems in existing procedures. Many have been around for decades, and most would merely adjust the current process in hopes of making it more effective, efficient, and enforceable. In isolation and as a limited solution they are perhaps worthy of consideration. On the other hand, they would likely only repeat the past pattern of adding layers of new or revised practices that further complicate a broken process. The deeply degraded state of congressional budgeting strongly suggests a need to start from a clean slate. As Rivlin declared to Congress: “Process reform is normally incremental, but the time for incremental

reforms in the budget process is over. The Congress should blow it up and start from first principles.”⁴⁵

What a New Budget Process Needs to Achieve

The first principles of budgeting lie in the Constitution. If budgeting truly is governing, then the budget process must not only be practical and efficient, but must also reinforce the constitutional framework of the federal government, as the 1974 Budget Act intended but now fails to do. Although constitutional principles, such as the separation of powers, may complicate budget practices, they are not an impediment to effective budgeting. They are the conditions under which legislating takes place, and budgeting is a legislative process. As Rivlin reminded Congress in her testimony:

Countries with Westminster-type parliamentary systems do not consume as much time, energy, or rhetoric in making budgets as we do. The results may not be better, but the process is far more efficient.... But our Constitution was not designed for efficiency. On the contrary, coming off a revolution against a king they perceived as dictatorial, the Founding Fathers designed a system of checks and balances that disperses power and slows the decision-making process, sometimes to the point of gridlock.⁴⁶

These arrangements are essential to protecting the rights and freedoms that the Constitution was meant to secure. The budget process should not merely accommodate itself to them, but should aggressively pursue and advance them. Certainly, the process should promote regular, systematic budgeting. It should effectively control spending, especially in the government’s entitlement programs. To the extent possible, it should simplify procedures so that Congress can complete its budget work in a timely fashion. It should provide some means of recognizing the long-term effects of important policy changes.

At the same time, while seeking procedures that make the process more effective, efficient, and enforceable, policymakers need to remain focused

44. Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3rd ed. (Washington, DC: Brookings Institution Press, 2007), p. 2.

45. Rivlin, testimony to the Committee on the Budget.

46. *Ibid.*

on the ultimate goal of budgeting: to reinforce and strengthen constitutional government.

Limiting Government. If the Constitution was intended to provide a framework for a limited government of delegated powers, a practice of budgeting aimed at limiting spending is one of the best ways to achieve it.

Spending is how government does what it does. It is the reason government taxes and borrows. Hence, spending is the root cause of every other fiscal consequence. Total spending also is one of the best measures of the size and scope of government and of its burden on the economy.⁴⁷ “In a fundamental sense,” writes Schick, “the federal government is what it spends.”⁴⁸

Controlling spending is therefore a principal means of limiting government and should be a focus of the budget process. Measures such as spending caps reinforce the effort, especially if applied to mandatory as well as discretionary spending.

Explicit budget ceilings for entitlements—especially Medicare, Medicaid, and Social Security—also would help to limit their growth in future decades and promote continuing reassessment of the programs. The analysts and former budget officials with Washington’s major research centers argue:

The three major entitlement programs should be budgeted for longer periods (for example, 30 years) but be subjected to review every five years. These five-year reviews would allow reconsideration of the trade-offs between entitlement spending and other purposes and might cause adjustment in benefits, premiums, taxes, or all three.⁴⁹

Of course, spending caps by themselves would not restrain entitlement spending, which results from underlying authorizing legislation. If soundly enforced, however, they could compel Congress to

make the needed changes in entitlement policies.

Enforcing budget disciplines is another critical, although challenging, element. Primo notes: “Congress has extraordinary leeway to write budget rules, even statutory ones, and then choose to ignore them. It is the proverbial judge, jury, and executioner.”⁵⁰ This might be addressed in part by requiring supermajority votes for emergency spending. Various triggers and points of order could help to support fiscal policy goals.⁵¹ Another recommendation calls for strengthening the budget committees by including House and Senate leaders and committee chairmen in their membership. The risk is that this might transform the budget panels into another forum for promoting the spending desires of other committees or the leadership (which would need to be deterred with rigorous spending limits).⁵²

The main point is to recognize that spending is a fundamental expression of the size, scope, and nature of government. To limit spending is to limit government itself and to validate the principle that “budgeting is governing.”

Another important step would be substantially simplifying and improving the tax code. That includes removing as many as possible of the tax expenditures that distort the code and economic behavior. Congress should trade them for lower rates, while retaining only those that are fully justified. Taxes are intended to raise revenue to finance government spending with the minimum impact on growth. They should not be extensively used to influence behavior or manipulate economic decisions. In removing these measures, however, lawmakers should remember that they are revenue provisions. Therefore, their elimination should be offset with commensurate tax reductions elsewhere, especially in marginal tax rates. Otherwise, tax simplification only becomes an indirect means of promoting larger government.

47. See Douglas J. Holtz-Eakin, testimony in hearing, *Economic Effects of Long-Term Federal Obligations*, Committee on the Budget, U.S. House of Representatives, 108th Cong., 1st Sess., July 24, 2003, <http://www.gpo.gov/fdsys/pkg/CHRG-108hrg88592/html/CHRG-108hrg88592.htm> (accessed October 30, 2013).

48. Schick, *The Federal Budget*, p. 2.

49. Butler et al., “Taking Back Our Fiscal Future,” p. 6.

50. Primo, “Making Budget Rules Work,” p. 11.

51. Posner et al., “Strengthening the Federal Budget Process,” and Butler et al., “Taking Back Our Fiscal Future.”

52. Peterson-Pew Commission on Budget Reform, “Getting Back in the Black,” November 2010, http://budgetreform.org/sites/default/files/Getting_Back_in_the_Black.pdf (accessed October 30, 2013).

Enhancing Congress’s Constitutional Role.

The budget process should not be seen as merely mechanical. It should support Congress’s constitutional role as the policymaking institution of the federal government. Ideas do have consequences. Therefore, it is important that the budget resolution—the only legislative vehicle that views the government comprehensively—define the priorities guiding its allocation of resources. It also should reflect the delegation of powers between the national and state governments as envisioned in the Constitution. Embracing these principles gives meaning to the budget resolution as an instrument for governing, and provides coherence to the spending and tax bills that follow.

The budget process also should promote the *practice* of budgeting. It should compel Congress to exercise this fundamental governing responsibility. One option is to bolster prohibitions against considering spending legislation until a budget resolution is in place. Policymakers should consider eliminating the loopholes that allow the House to consider appropriations after May 15 in the absence of a budget resolution and that allow the Senate to waive the prohibition against their consideration with a simple majority vote. Another suggestion has been to prohibit the use of continuing resolutions, arguably to force Congress to complete spending bills on time and under the regular order. The outcomes of such measures might be difficult to predict. For example, they might promote greater use of bloated omnibus spending bills. If such hazards could be prevented, reforms such as these would at least boost incentives for Congress to complete budget resolutions and regular spending bills. The aim would be to promote the practice of regular budgeting and to remove options for avoiding it.

Restoring the Balance of Powers. Another side of the constitutional question is the matter of balancing the authority of Congress and the executive branch. The Budget Act made the budget a *concurrent* resolution, independent of the President, for a reason. The President still prepares his budget—an expression of his own vision of governing, his own priorities and policy proposals—completely independently of Congress. The President also must sign or veto the spending and tax bills that implement the congressional budget. Through veto messages, he

can encourage—but not compel—changes in those measures. The Congressional Budget Act sought to create a true counterpart to the President’s agenda; this is still necessary to maintain the balance of powers. When Congress fails to conduct its own regular budget procedures, it cedes to the Administration more control over budgetary decisions through its execution of spending and tax policies. This is especially true with entitlements and their effectively permanent authorizations. Because they are not subject to regular congressional review, this major portion of the budget is arguably controlled by the Administration and its regulatory apparatus.

The congressional budget should be a true counterpart to the President’s budget, exercising Congress’s role as a coequal branch of government. The budget should assertively define the allocation of resources in a way that aligns with Congress’s and the public’s vision of national priorities. Congress also should periodically review all spending programs, including entitlements. Such oversight is a critical obligation of the legislature.

Controlling the Administrative State. A huge expansion of the executive branch bureaucracy has accompanied the growth of the federal government’s role in American society during the 20th century. The Progressive impulses that promoted this trend relied largely on policy “experts” shielded from political influence. In their regulatory capacities, these bureaucrats have come to assume authorities of all three branches of government: legislative, executive, and judicial. Thus, America’s constitutional government has increasingly become an administrative state largely run by unelected career government employees. Writes Joseph Postell of the University of Colorado at Colorado Springs:

Whether the regulatory agencies are “executive agencies,” executive departments,” “federal departments,” or “independent regulatory commissions” is irrelevant. In whatever form they may take, the myriad agencies and departments that make up this administrative state operate as a “fourth branch” of government that typically combines the powers of the other three and makes policy with little regard for the rights and opinions of citizens.⁵³

53. Joseph Postell, “From Administrative State to Constitutional Government,” Heritage Foundation *Special Report* No. 116, December 7, 2012, p. 5, <http://www.heritage.org/research/reports/2012/12/from-administrative-state-to-constitutional-government>.

This domineering bureaucracy threatens the constitutional system. Indeed, most of the laws passed by Congress simply authorize bureaucrats to devise regulations that will control Americans' lives.⁵⁴ One way for Congress to address the problem is to take firmer control of the regulatory process.⁵⁵ Another is through budgeting. "Since it has the power of the purse," writes Postell, "Congress funds the administrative state, providing financial support that the bureaucracy values highly. As a result of Congress's substantial powers, agencies and departments listen carefully when Congress speaks to them."⁵⁶

The budget is a vital instrument for managing the vast administrative state. Who controls the budget controls the bureaucracy.

Conclusion

If budgeting truly is governing, then congressional budget reform may call for restructuring in the legislative branch itself. "Reforming the budget process will be next to impossible unless Congress is willing to revamp the whole committee structure with respect to activities that impact the budget," says Rivlin.⁵⁷ Although many consider such an effort all but impossible, it should be acknowledged as a potentially necessary step: To the extent the collapse of budgeting is a symptom of Congress's broader dysfunction, restoring one may entail revitalizing both.

That said, however Congress approaches budget process reform, three considerations should prevail.

The first is that lawmakers simply must recommit themselves to budgeting. Even the most skillfully crafted procedure cannot function unless legislators want it to work.

Second is the need for regular, consistent budget practices to address the government's looming fiscal challenges. Long-term fiscal stability demands that Congress make fundamental choices concerning the size, scope, and role of the federal government and then to recast major programs and policies as needed. Says MacGuineas: "[W]e need to change our spending and tax policies, and the sooner we get a plan to do so in place, the better it will be for the fiscal and economic health of the country."⁵⁸ Still, even if lawmakers can agree to the necessary policy changes, Congress will need a means of implementing them. That will require a budget process that is effective, efficient, and enforceable—one that lawmakers can and will use.

Third, in constructing these procedures, policymakers should remain focused on the broader, more fundamental role of budgeting as an exercise of constitutional government. The principles of the Constitution should be seen not as an impediment to budgeting, but as the basic platform for public policy that the budget is intended to sustain. The budget process should reinforce and strengthen the constitutional system, enhance Congress's role as a policymaking institution, and advance the ideas and values that informed the Founders' vision. Then, the practice of budgeting truly can fulfill its principal role as an essential act of governing.

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54. Jonathan Turley, "The Rise of the Fourth Branch," *The Washington Post*, May 26, 2013, http://articles.washingtonpost.com/2013-05-24/opinions/39495251_1_federal-agencies-federal-government-fourth-branch (accessed October 30, 2013).

55. Postell, *From Administrative State to Constitutional Government*, pp. 25–26.

56. *Ibid.*, p. 25.

57. Rivlin, testimony to the Committee on the Budget.

58. MacGuineas, testimony in hearing.