

Should the Congressional Budget Act Be Repealed?
An Introductory Essay
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It has been 32 years since enactment of the Congressional Budget and Impoundment Control Act of 1974. To paraphrase former President Ronald Reagan, we might ask, “Are we better off today than we were before the Budget Act?” Obviously, it’s impossible to answer the question objectively since we have no way of retroactively measuring how different our macro-levels of spending, revenues, deficits, and debt would have been without the supposed discipline of the budget process. Perhaps the closest we can come is to look at the effects of reconciliation legislation which has been used primarily to reduce entitlement spending and increase revenues—though even that latter purpose has been distorted in recent years with the use of reconciliation to reduce taxes.

The inability of Congress this year even to adopt a final congressional budget resolution for fiscal year 2007-- some five months past the April 15 statutory deadline--tells us something about the perceived necessity on the Hill of having a budget process to begin with (we don’t hear individual members, let alone committees or the general public clamoring for a budget resolution). To deal with the prospect of no budget resolution, the House earlier this year, in a special rule for the Interior Appropriations bill, “deemed” the House-passed budget resolution to be the final version for purposes of the Budget Act if no conference report is agreed to. Moreover, in the defense supplemental appropriations bill last spring, both houses agreed to enact overall discretionary spending caps for budget enforcement purposes. Consequently, the House and Senate were able to proceed with the suballocation of that authority to their various Appropriations subcommittees.

The discretionary spending caps agreed to on an ad hoc, year-to-year basis, are the only remnants of the famed 1990 Budget Enforcement Act. Gone are the Pay-as-you-go (PAYGO) rules that required offsets for any entitlement spending increases or tax reductions. Republicans have decided that taxes should not be subject to the same discipline as entitlements on grounds that taxes are the people’s money, not subject to blackmail demands. Democrats vow to fully restore PAYGO if they regain control of Congress next year.

Notwithstanding the temporary restoration of a discretionary spending cap this year, Congress continues to limp into the new fiscal year on October 1st without a single appropriations bill signed into law. This will necessitate a continuing appropriations resolution, or “CR,” to fund the government at last year’s spending levels, until the 11 regular bills are signed into law, either separately (highly unlikely), or in an omnibus measure that combines those not acted on separately (now likely to be nine bills).

Finally, Congress is paying scant attention to the deficit, now pegged at \$296 billion for the current fiscal year—down from the \$423 billion originally projected by the Administration. Nevertheless, Congress has shown little concern about the deficit since it reappeared after a brief spurt of surpluses in the late 1990s. One indicator of its concern is what it does about deficit reduction through the reconciliation process. For fiscal year 2007, the Administration had recommended \$65 billion in net mandatory spending savings in the next five years, on top of the \$40 billion in savings enacted last year. However, the House budget resolution called for just \$6.75 billion in savings over five years, and the Senate passed budget resolution called for just \$3 billion in savings. Even those paltry amounts are unlikely to be enacted. Meanwhile, the total public debt held by the Treasury continues to mount, standing at \$8.5 trillion in the current fiscal year, and estimated to rise to \$11 trillion over the next five fiscal years.

Most people are already familiar with the dire forecasts on the future of Social Security and Medicare unless drastic steps are taken to ensue their solvency. The Social Security Trust fund will begin losing money in 2017 and is expected to be exhausted by 2040. Medicare's financial difficulties will come much sooner than Social Security's, and will be more severe. Medicare's Health Insurance Trust Fund is now expected to be exhausted in 2018 instead of 2020 as earlier estimated. Again, Congress has done little to stem this tide of red ink, and instead added the expensive new Medicare Part D prescription drug program in 2004.¹

President Bush recently announced he will renew his call for dealing with the Social Security Trust Fund problem after the election. But, if Democrats regain control of one or both houses of Congress, as some predict, it could be even more difficult to reach an accord on Social Security during the two-year run-up to the 2008 presidential election. Others argue that a return to divided party government might be the only hope for forcing a bipartisan accord on the “third rail” of politics (so named because anyone who suggests changes in the Social Security system could meet the same political fate as those who touch the electrified train rail, i.e., certain death).

Original Purposes of the Budget Act

The Congressional Budget and Impoundment Control Act of 1974 was born in the midst of a battle between the branches over deficits (relatively modest in size by today's standards) during the presidency of Richard M. Nixon. By mid-1972, with the deficit at \$23 billion, Nixon had taken to “impounding” (cancelling) funds appropriated by Congress for both policy and fiscal reasons. Stung by criticisms that it could not manage its spending habits, and resisting the President's call to impose a spending ceiling and authorize the President to cut any spending above the ceiling, Congress created a Joint Study Committee on the Budget. The Study Committee reported its recommendations in 1973, both houses passed a variation of them the same year, and, by 1974, the final congressional budget process was enacted into law—with Nixon's signature.²

Due to political and jurisdictional issues, the new process did not integrate existing units of Congress into a more coordinated budgetary system. Instead, it layered on a whole new process, including new House and Senate Budget Committees and a shared Congressional Budget Office

(CBO) to provide independent budget estimates and ongoing score keeping to Congress as a counter to the Executive Branch's Office of Management and Budget (OMB).

The Act set a timetable for key budgetary actions, bracketed initially by the adoption of two concurrent resolutions on the budget (which are not subject to presidential approval)—one in May and one just before the new fiscal year begins. The Act also provided for a possible “reconciliation bill” at the end of the process to allow for adjustments in tax or spending legislation to conform to the final resolution's budget aggregates (expenditures, revenues, deficit or surplus, and debt). Finally, the bill outlawed unilateral presidential impoundment power, replacing it with “rescission” authority to cancel funds, subject to congressional approval.

In establishing the new congressional budget process, Congress laid out “A Declaration of Purposes” (section 2) as follows: “The Congress declares that it is essential-- (1) to assure effective congressional control over the budgetary process; (2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures; (3) to provide a system of impoundment control; (4) to establish national priorities; and (5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

Implicit in these purposes are two assumptions: (1) that notwithstanding the Constitution's clear delegation to Congress of the power of the purse, the President today tends to dominate the budget-making process, and Congress, by passive acquiescence or willing abdication, now plays a secondary (or even subservient) role in budgeting; and, (2) that a new congressional budget process will enable Congress to resume its rightful role in controlling spending and taxation and in setting national priorities.

Assessing Budget Act's Success

In assessing the Congressional Budget Act 32 years later, it must be asked whether Congress has regained its rightful role under the Constitution in controlling the nation's purse strings. Some critics, such as separation of powers expert Lou Fisher argue that the budget process has had the opposite effect and has actually enabled the President to assume an even more powerful role in budgeting. In his views, and those of others, Congress would be better off in scrapping the Budget Act which is little more than a distraction, even a hindrance, to Congress forcefully asserting its fundamental powers over spending and revenues. The mechanisms of the congressional budget process actually advantage the President by allowing him to manipulate outcomes—especially through the reconciliation process.³

This may help explain why Nixon signed the act. In his signing statement, he said he was “confident that the Congress will assist me in this effort to keep spending from exceeding *my* proposed budget levels. [emphasis added] The new budget act, he added, “will permit the high level of cooperation which will be required to achieve this critical goal.”⁴ Fourteen years later, Rudolph G. Penner and Alan J. Abramson confirmed Nixon's prescience:

In some ways, the new coherence of the congressional process simplified the job of the White House because it meant that the executive could, to some extent, concentrate its lobbying efforts on affecting a single, comprehensive budget resolution or reconciliation bill instead of trying to influence a multitude of authorizing and appropriations measures.⁵

That may be a bit of an exaggeration since Presidents must still negotiate intensely on individual appropriations bills, both over the spending priorities within each as well as policy issues injected into the mix that have little or nothing to do with appropriations. Moreover, the aggregate discretionary amount in budget resolutions does not control how things will be divvied up among the appropriations subcommittees. That is something that's voted on by the House and Senate Appropriations Committees after the final budget resolution is adopted.

But a big deal is certainly made of the extent to which Congress's overall spending ceiling differs from the President's budget. And certainly the reconciliation process does focus energies on a single vehicle that involves important tradeoffs between new tax and entitlement recommendations by the President, versus those recommended by the tax and authorizing committees of Congress.

But the discretion mentioned above that is left to the appropriating, tax and entitlement committees on the suballocation of discretionary spending in spending caps, and the designation of new revenue or mandatory program savings under reconciliation instructions, does call into question just how much Congress as an institution or its individual houses, are really making deliberative and conscious decisions about national priorities. The fact is that since the deficit crises of the early 1980s, the concentration has been more on the size of the projected deficit than on what mix of program cuts or tax increases would best serve the national interest. The question of what needs should continue to be addressed, notwithstanding severe budgetary constraints, seldom gets the discussion it should in congressional budget debates. Congress tends to pay more attention to how to achieve necessary savings in a manner that least offends its most important voting constituencies.

If you asked the average Member of Congress what aspects of the Budget Process are most important to preserve, if any, most would point to the discipline of discretionary spending ceilings. Few would argue that the overall process gives Congress an upper hand over the executive on spending or tax matters; that it enables Congress to set its own priorities (Congress only tinkers at the margins of the President's budget); or that it somehow forces the Administration to provide Congress with more budget or program information (the appropriators are still in the best position to obtain such necessary information given their ultimate power over the purse strings—regardless of whether a budget resolution has been fully activated).

The other thing that Members might mention (at least majority party members), is that the budget process allows for an early input by the ruling party in Congress, through its leaders, on matters the majority party caucus wishes to impress on its appropriators and authorizers. These usually do not translate into vast differences with the President (regardless of party), on overall

spending priorities, but rather are seen in special emphases here and there that are central to the party's policy orientations and political platforms. Ironing out these understandings up front enables the ruling party to avoid messy differences and gridlock later in the year.

If one pressed members on whether they really thought the budget process was responsible for spending restraint and holding down deficits, some would argue yes on the basis of spending cap enforcement. But, the more knowledgeable would at least raise some doubts given all the games that are played with budgeting, especially in the area of "emergency spending" for wars, natural disasters, or economic crises, in which non-emergency items are lumped with emergency items to exempt them from the spending ceilings and deficit caps. When one considers how much emergency spending is taking place today with the wars in Afghanistan and Iraq, and disasters like Hurricanes Katrina and Rita, it is not surprising that everyone wants to catch a free ride on that train in order to avoid suffering any budgetary consequences.

Conclusions

Should the Budget Act be repealed? As evidenced from the above discussion, there are plenty of reasons to do so. It is achieving few if any of its original purposes of controlling spending, making conscious determinations about appropriate levels of taxes and spending, setting national spending priorities, or forcing the Executive Branch to be more forthcoming with Congress about the administration of federal agencies and programs. It almost seems like a useless appendage, and Congress is learning this year (once again) it can walk without the aid of a budget resolution crutch. The Budget Act seemed superfluous to many during the late 1990s when the Treasury was briefly running a surplus (fiscal years 1998-2001), and it suffered in importance and attention as a consequence.

But, even when deficits reappeared in fiscal year 2002 and continued to grow, there did not seem to be widespread interest in Congress in reviving the process and making it once again a meaningful device for dealing with the deficit. It's as if a whole new generation has come to Congress without understanding why a budget process existed in the first place or how to use it to accomplish individual and collective fiscal and policy goals.

Before chucking the whole Budget Act, however, Congress might well consider what the alternative would be? Is it realistic (or even desirable) to expect a return to a process in which all-powerful appropriations and tax committees call the shots? In an era of increasingly powerful parties, isn't it more likely that the party leadership would supplant the Budget Committees in setting the framework, timetables, and even the details, for major tax and spending decisions? How would such a party-government approach affect minority party attitudes and behavior? How would individual members, regardless of party, react to more top-down directives on important macro- and micro-economic policymaking?

The above are all important questions that must be asked and debated before making any radical departures from what is admittedly a failing (if not failed) budget process. The time may not

be right or ripe for throwing the Budget Act out with the bath water, but it couldn't be more right for forcing members to confront the failures of the process and its sources. I suspect that one of the results of such a debate would be a "Pogo moment" of recognition: "We have met the enemy and they are us."

As former CBO Director Rudolph Penner put it many years ago about Congress's failure to deal with deficits: "The process is not the problem; the problem is the problem." That is not to say the current process will work just fine once members determine to make it work. If they are to make it work, once they recognize their own culpability and develop a will to change things, they must make it theirs—they must own it. And that won't happen with the current crop of members—only 24 of whom served in the House prior to 1980, and only nine of whom were in the House when the Budget Act was enacted in 1974.

The 110th Congress that will be sworn-in on January 3, 2007, must make it one of its top priorities to revisit the Budget Act and debate it thoroughly, in committee and on the House and Senate floors. Another House-Senate Joint Study Committee on the Budget might be the appropriate starting point for public hearings and deliberations, but it should not be dominated by the old bulls and budgeteers. It is more important that it represent a broad cross-section of members from all classes and committees, with special emphasis on the more recent arrivals in Congress.

Members must reformulate for themselves what they expect from a budget process and how best to achieve those purposes. Call it "zero-based budget process-making." It might even be useful to introduce a comparative perspective by looking at how various state legislatures handle their budgets today. But, in the final analysis, what is most important is that a new process emerge that has the interest, support, and dedication of a super-majority of members from both parties, that it be easy to understand, and that it be practicable and effective.

It may well be that a majority will conclude, after extensive exploration and deliberation on the subject, that Congress would be better off without any formal budget process, though any such conclusion should be accompanied by some understanding and agreement on what informal processes would likely replace it. I am inclined to agree with the old saw that, "If Congress did not have a budget process, it would have to invent one." And it would be much better for Congress to be the inventor of the new process than simply to let it evolve, willy-nilly, into something that could be much worse than anything we now have.

If necessity is the mother of invention, then the inventive process must be driven by the necessity for the First Branch of Government to regain its preeminence over core revenue and expenditure decisions. As James Madison put it in the Federalist No. 58: "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure." The next Congress has an opportunity to reaffirm the wisdom of those words by reclaiming its power over the government's purse strings with rational and workable budget reforms.

Endnotes

1. "Status of the Social Security and Medicare Programs; A Summary of the 2006 Annual Reports," Social Security and Medicare Trust Fund Advisory Committees, May 2, 2006, accessed at: <<http://www.ssa.gov/OACT/TRSUM/trsummary.html> > on September 11, 2006.
2. For a more detailed account of the evolution of the budget process, see Don Wolfensberger, "Deficit Politics and the Process Problem: Some Personal Reflections," Congress Project Seminar, Introductory Essay, September 22, 2003, accessed at: <<http://www.wilsoncenter.org/events/docs/deficitintro.doc>>, on Sept. 11, 2006.
3. Fisher, Louis, *Congressional Abdication on War and Spending* (College Station: Texas A&M University Press, 2000), 115-162.
4. Nixon, Richard M., Statement About the Congressional Budget and Impoundment Control Act of 1974, July 12, 1974, in *Public Papers of the Presidents of the United States: Richard Nixon, 1974*.
5. Penner, Rudolph G. And Alan J. Abramson, *Broken Purse Strings: Congressional Budgeting, 1974 to 1988* (Washington, D.C.: The Urban Institute Press, 1988), 45.