Chapter 3

Major Federal Budget Laws of the United States

JAMES L. CHAN

The federal budget, accounting for almost one quarter of the gross domestic product (GDP) of the United States, is heavily influenced by both politics (Wildavsky and Caiden, 1997) and economics (Stein, 1996). More directly, it is governed by a number of public laws that formally designate the decision makers, prescribe their roles, and in recent years, specify its targets. The purpose of this chapter is to describe the legal foundation of the federal budget in terms of the major budget laws that shape the size of the budget and direct the behavior of the participants in the budgetary process.[1]

THE CONSTITUTION AND EARLY PRACTICES

The U.S. Constitution is rather parsimonious when it comes to the nation's finances. It gives Congress the power to levy taxes and requires appropriations made by law before funds may be drawn from the Treasury. However, it does not provide a blueprint on how to exercise this legislative power, nor does it assign a formal role to the president.

With its power of the purse, Congress created a committee structure and devised rules to carry out its financial responsibilities. In the first half of the 1800s, these were handled mainly by the House Ways and Means Committee and the Senate Finance Committee. After the Civil War, both houses of Congress set up Appropriation Committees to assume jurisdiction over spending measures. That arrangement left the House Ways and Means Committee and the Senate Finance Committee to concentrate on the revenue side of federal finances, a practice that continues to the present day.

Congress enacted the Antideficiency Act in 1905-1906 to regulate budget execution. The law requires apportionment, or allocation of appropriation by time period (such as by quarter), to prevent overspending. It also prohibits government officials from incurring obligations in advance of appropriations. It is also illegal to spend in excess of appropriations or for purposes unintended by the appropriations. These injunctions remain the cardinal rule for fiscal conduct by federal government officials and employees on a daily basis.

It would not be accurate to state that the federal government did not have a budgeting system in the early days. But it was a system that allowed executive agencies to ask for funding from congressional committees. These agencies were free from the president's control or even policy guidance. This state of affairs persisted until the early 1900s, prompting President William Howard Taft to appoint a Commission on Economy and Efficiency. The Taft Commission produced a report entitled "The Need for a National Budget," which the president endorsed in a message to Congress in 1912. As we will see next, this precipitated an almost decade-long debate that eventually led to the passage of a comprehensive budget law for the federal government.[2]

LAWS CREATING THE FEDERAL BUDGET SYSTEM

Laws, including budget laws, are not made in a vacuum. That certainly was the case with the two sets of laws that largely created the budget system of the United States. Enacted some 50 years apart, they were both designed to remedy a real or perceived imbalance of power between Congress and the president. The president for over 100 years labored under a constitutional handicap: The power of the purse was clearly vested in the legislative branch. The tide turned with the passage of the Budget and Accounting Act of 1921, which tipped the balance in the president's favor so much so that Fisher (1975) characterized the 1921-1975 period as "presidential budgeting." However, it would be an exaggeration to say that an executive budget system emerged as a result of the 1921 Act, for Congress has not merely rubber-stamped the president's budget. Fundamentally, to this day the system has always worked in the manner of ' 'the president proposes; Congress disposes."

The system created by the 1921 Act, although amended in 1950, certainly stood the test of time over the following five decades. The institutional framework was sufficiently sturdy to support the ever weightier federal budget to meet ever-expanding U.S. commitments at home and abroad. It financed President Franklin Roosevelt's New Deal programs in the wake of the Great Depression as well as the massive military expenditures for World War II, the Cold War, and the Vietnam War. Crises such as these tended to increase presidential powers. Eventually, rebelling against what historian Arthur Schlesinger, Jr. (1973) calls the "imperial presidency," Congress in 1974 passed two laws that clipped the budgetary wings of the president: one creating a congressional budget process and the other curtailing the presidential power of impoundment of funds. This section describes how the pendulum of power swung, first in the direction of the president and then to Congress.

Budget and Accounting Act (1921)

Viewed from the vantage point of its seventy-seventh anniversary, the Budget and Accounting Act of 1921 retains almost a contemporary outlook. This may be due to the fact that the system and institutions it established are still functioning.[3] In essence, the act requires the president to submit a budget on behalf of the entire executive branch and provides him with the staff, the Bureau of the Budget, to carry out these responsibilities. No longer could agencies bypass the president and submit their budget requests to Congress. The president as head of the executive branch was finally given a necessary tool—the budget—to set policy priorities, coordinate actions, and enforce compliance. President Franklin Roosevelt, recognizing the value of the Bureau of the Budget, moved it from the Treasury Department to become part of the Executive Office of the President. Thirty years later, President Richard Nixon expanded the agency's scope and renamed it the Office of Management and Budget (OMB) (Fisher, 1975, pp. 36-58).

Congress was quite specific as to the information content of the budget "in summary and in detail": appropriations requested and proposed revenues; estimates of expenditures and receipts for the budget year and the current year; the current year's appropriations; levels of indebtedness; the past, current, and projected financial condition of the Treasury; and other information about the financial condition of the government. The president is further required to explain how he intends to handle any budget surpluses or deficits and is permitted to request supplemental appropriations. Agencies are required to comply with the president's information requests issued through the newly created Bureau of the Budget (U.S. Congress, 1921).

The act's prescription for submission of the president's budget and the information contained therein are codified in Chapter 11 of Title 31 of the United States Code. While the dates and some details have changed, the essence of the system has remained intact with some subsequent augmentations (U.S. Senate, 1993). It is remarkable that the act envisioned an integrated budget (prospective) and accounting (retrospective) information system that the federal government's principal finance agencies—Treasury, OMB, and General Accounting Office (GAO)—are still working on (Chan, 1994).

During the intervening 50 years between the 1921 and 1974 budget acts, the federal budget grew enormously as the federal government expanded functions domestically and assumed global military responsibility. It also became a major fiscal policy tool of the Keynesian revolution in economic thinking about the government's role in managing the economy. At the practical level, it would be hard to imagine how President Franklin Roosevelt could successfully undertake New Deal programs and lead the Allies to victory in World War II, had he not been able to commit the necessary budgetary as well as political resources to those tasks. The same applies to President Lyndon Johnson's execution of the figurative War on Poverty and the real war in Vietnam. By the time President Richard Nixon assumed office, the power of the modern presidency had reached its historical heights. It is therefore not surprising that Congress, frustrated by having to fund an undeclared and unpopular war and by large presidential impoundment of funds over policy differences, decided to reassert itself. It did so by passing the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), which comprises the Congressional Budget Act and the Impoundment Control Act.

Congressional Budget Act (1974)

The Congressional Budget Act of 1974 strengthened the legislature's role in the federal budget process by enabling it to produce a master budget and equipping itself with the necessary analytical capability for the task. To the existing revenue and appropriation committees, each house of Congress added a Budget Committee, and Congress as a whole gained a Congressional Budget Office (CBO). As a consequence, no longer was the presidential budget (proposal) the only game in town and the OMB the only keeper of technical expertise on the budget. If necessary, a Congress dominated by the opposition party could produce a counterbudget. Now Congress can both propose and dispose budgets.

The centerpiece of the congressional budget process is the budget resolution, which sets ceilings for budget aggregates. Procedurally, the act requires each standing committee of the House and Senate to review the president's budget proposal and recommend budget levels and legislative plans to the Budget Committee in each house. The Budget Committee then initiates the concurrent resolution on the budget (or budget resolution in short), which specifies desired levels for total receipts and for budget authority and outlays, both in total and by functional category (such as national defense, agriculture). As a direct consequence, the level of budget deficit is also set; so is debt level. The budget resolution allocates amounts of budget authority and outlays within each functional category to the committees having jurisdiction over the programs in the functions. The Appropriation Committees are required to allocate the amounts to their constituent subcommittees. Other committees may, but are not required to, make allocations to their subcommittees. The budget resolution often contains reconciliation directives instructing authorizing committees to change the permanent laws affecting taxes and other receipts as well as entitlement programs in order to meet the goals contained in the budget resolution (Schick, 1995).

Analysts differ in their assessment of the success of the 1974 Congressional Budget Act, in part because they use different criteria to judge it (e.g., Schick, 1980; Fisher, 1991, pp. 198-203). Nevertheless, there is agreement on one point: The law was not designed to reduce the federal budget deficit—and it did not. It would take a different law ten years later to address this issue explicitly. But in the early 1970s there was a more urgent matter requiring congressional action: presidential impoundment of funds.

Impoundment Control Act (1974)

Upon the completion of congressional action and the president's signature, the administration is charged with the faithful execution of the budget. To prevent overspending, the Anti-deficiency Act of 1870 requires funds to be apportioned and requires government officials to adhere closely to the provisions of appropriations. Due to the lengthy period of time between the budget proposal and actual implementation, changes in circumstances may require deviations from the budget through the impoundment of funds already appropriated by Congress.

Impoundment of funds refers to the administration's rescissions (i.e., cancellation) or deferral (i.e., temporary withholding within the fiscal year) of funds also appropriated by Congress. Presidents may impound funds only under limited circumstances, such as to provide for emergencies or to achieve savings. The Nixon administration impounded funds on a massive scale and in order not to carry out policy objectives sanctioned by Congress. In response, Congress passed the Impound Control Act of 1974. The act requires the president to send special messages to Congress whenever he wishes to rescind or defer appropriated funds. For a proposed rescission to be effective, both the House and Senate must approve it within 45 days of continuous session. A presidential deferral takes effect and remains so unless it is overturned by an act of Congress.[4]

In summary, the federal budget system is presently characterized by an approximate balance of power between the executive and the legislative, with each branch of government being relatively more powerful at certain stages of the process. The president enjoys the advantage of initiative afforded by the 1921 Act. This advantage, however, is countered by Congress's constitutional primacy, buttressed with its own process and staff, of having the last word on money matters. As Schick (1995, p. 32) points out, budgeting is not optional because the alternative, under the Constitution, is government shutdown. The political price of public wrath over shutdown is high enough to encourage genuine cooperation or pragmatic compromises. The 1921 and 1974 budget process statutes provide a workable institutional framework within which the executive and legislators share budget powers.[5] No matter how sound the process might be, it did not deliver the outcome some people expected: hard choices that reduced the federal budget deficits. This became the agenda for budget laws in the next decade.

LAWS TO REDUCE DEFICITS

From 1969 to 1997 the federal government has been continuously running budget deficits. By the 1970s there was already considerable concern over the streets of "uncontrollable" entitlement expenditures. However, the amounts of deficits remained relatively small until the early 1980s. By that time President Donald Reagan's twin successes in securing tax cuts and dramatic increases in military spending pushed federal budget deficits to unprecedented high levels. Congress reacted by making deficit reduction an explicit goal of budget laws, beginning with the Balanced Budget and Emergency Deficit Control Act of 1985.

Balanced Budget and Emergency Deficit Control Act (1985)

The Balanced Budget and Emergency Deficit Control Act of 1985, popularly known as the Gramm-Rudman-Hollings (GRH) Act, set out to balance the federal budget by 1991 by proposing fixed and progressively smaller deficit targets for each fiscal year from 1986 to 1990. If the projected budget deficit exceeded the specified target by more than the amount permitted, the cancellation of budget resources, called *sequestration,* is triggered. The law was amended in 1987 to extend the zero deficit target to 1993 and to transfer the responsibility of determining the sequestration trigger from the comptroller general to the director of the Office of Management and Budget. History shows, notwithstanding the threat of sequestration, the federal government continued to ran budget deficits in each of the fiscal years covered by the law (Schick, 1995, pp. 37-39).

Budget Enforcement Act (1990)

The lack of success of the 1985 and 1987 GRH laws in achieving their stated deficit reduction objective led Congress to try a different process through the Budget Enforcement Act (BEA) of 1990 (Schick, 1995, pp. 39-41). Initially set to be effective through fiscal year 1993, the effectiveness of the BEA rules has been extended several times. The chief innovation of the BEA lies in its recognition of the different nature of programs subject to annual appropriations and those sanctioned by permanent laws (Schick, 1995, p. 191). The law refers to these, respectively, as discretionary spending and direct (or mandatory) spending and uses different methods for constraining them.

Discretionary spending requires prior program authorization by legislative committees and is subject to the annual appropriation process. The operating budget of federal agencies, including employee salaries, is typically discretionary spending. The BEA sets dollar limits or "caps" on total budget and authority for discretionary programs. The caps are adjustable annually (1) for the difference between the actual inflation rates and the rates used in setting the discretionary caps and (2) for emergency appropriations. Budget resolutions allocate budget authority and outlay amounts for discretionary spending. These amounts, as explained earlier, are further subdivided by appropriation committees for their subcommittees. If the appropriations for a year provide an amount for budget authority greater than the cap on budget authority, or if the amount of outlays associated with the budget authority is greater than the caps on outlays, the BEA calls for sequestration, or across-the-board cuts by a uniform percentage of most discretionary programs.

Unlike discretionary spending, spending for most entitlement programs is direct or mandatory in the sense that it is provided for in the substantive laws authorizing the benefits to individuals or organizations meeting specified criteria. Examples include unemployment insurance payments, Medicare payments to the elderly, and Medicaid payments to the poor. By design, Congress exempts these programs from the scrutiny of the annual appropriation process. The BEA does not prohibit spending increases for any program; it does, however, insist that such increases be deficit neutral. That is, the increases must be "paid for" by decreases in some other program or by raising revenues. This compensatory mechanism is described as pay-as-you-go (PAYGO). Similar trade-off requirements apply to revenues: Legislation decreasing one type of revenue must be fully offset by increases in other revenue sources.

It appears that the BEA, reinforced by political leadership and facilitated by favorable economic conditions, has had a measure of success in reducing the federal budget deficit. The experience with GRH and BEA shows that budget deficits are reduced by political will, not by setting unrealistic goals. The threat of sequestration was not credible because Congress could—and did—undo the GRH Act's fixed deficit reduction targets. These were replaced by BEA's discretionary caps and PAYGO procedures. The more flexible and discerning approach of the BEA probably contributed to its successful implementation. The larger explanation may lie in the public's heightened sense of the approaching day of reckoning. When the electorate elevated deficit reduction to a priority, both Democrats and Republicans found the incentive to reach agreement to aim for zero deficit by the year 2002. However, a budget surplus was achieved in 1997, and the debate has shifted to how to use the surplus.

CONCLUSION

There are two types of federal budget laws. The Budget and Accounting Act of 1921 and the Congressional Budget Act of 1974 are examples of *process-oriented* budget laws. These laws designate the players, assign their roles, and specify the rules of the budgetary game so that the president and Congress can reach compromises more or less in time to keep the government functioning each fiscal year. Their specific provisions reflect the political consensus regarding the proper sharing of the power of the purse. By and large, these laws have succeeded in erecting a relatively stable institutional framework for proposing and approving the federal budget. When disputes arise, the federal judiciary stands ready to settle them. The *outcome-oriented* laws, designed to achieve deficit reduction, have had less predictable and successful results. In view of the complex interactive relationship between the federal budget and the economy, lower budget deficits could not be preordained by law. Even if foresight were Possible, a budget law that built on political consensus, as in the case of the Budget Enforcement Act of 1990, would stand a greater chance of success than one—like the Gramm-Rudman-Hollings Act—that tried to dictate numerical outcomes.

In view of legislators' specialty in lawmaking, it is hardly surprising that Congress has attempted to solve the nation's budget problems by stocking the government's legal arsenal with more statutes. An "anomaly of controls without control" has arisen, observes

Schick (1995, p. 189). This chapter has argued that the pre-1980 laws sought *budgetary control*, while the post-1980 laws aimed at *controlling the budget.* Budgetary control is an intragovernmental compliance issue susceptible to legal resolution. Controlling the budget in a mixed economy, on the other hand, is much more difficult and complex. Much depends on favorable economic conditions and a conducive political climate. For, in the final analysis, the federal budget is not merely a legal constraint; it is the nation's blueprint for resolving conflicting values.

NOTES

1. Budget laws are to be distinguished from laws containing budgets, such as appropriation acts and laws that, by providing for entitlements, have budgetary implications. Furthermore, to some extent, what is considered a major budget law is a matter of judgment. I have sought guidance from two authoritative sources—see U.S. Office of Management and Budget (OMB), *The Budget System and Concepts* (1996); and U.S. Senate, Committee on the Budget, *Budget Process Law Annotated* (1993). The OMB's listing of principal budget laws, interestingly, omits the 1921 Budget and Accounting Act, which I regard as fundamental; and it includes the Federal Credit Reform Act of 1990, which seems to be too topical to warrant the designation "major" in the historical context. Parliamentary rules of the House and Senate that govern congressional budgetary deliberations are outside the purview of this chapter; so are presidential executive orders and OMB circulars on budget matters.

2. This section has drawn from Schick (1995, pp. 33-36). Fisher (1975) is a valuable reference source for this period, especially on the events leading to the 1921 Budget and Accounting Act.

3. Besides the Bureau of the Budget (later renamed Office of Budget and Management), the act also created the General Accounting Office, headed by the comptroller general of the United States (Trask, 1996). Given their positions in the system, it was inevitable that these agencies would be involved in the constitutional conflicts between Congress and the president in budgetary matters discussed by Fisher (1975, 1991).

4. For a detailed analysis of presidential impoundment and other issues surrounding budget execution, read Fisher (1991, pp. 196-198; 1975).

5. Refer to Fisher (1991, ch. 7) on the politics of sharing budget power.

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