

So... this is Nixon's fault?

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The Budget Act was written to solve one tricky problem from the '70s—and caused a much, much bigger crisis.

Anyone watching Congress trying to negotiate the U.S. budget might wonder who could possibly have designed such a process. Thanks to an endlessly complicated scheme of resolutions and committees, Washington every year cycles through a charade of planning, followed by brinksmanship over spending, followed by shutdown threats and debt-ceiling showdowns and some kind of after-deadline scramble to prevent a globally humiliating default.

How did we get this system?

The surprising answer is that the American budget process was born as a thoughtful reform.

The Budget Act was written 40 years ago, and was supposed to fix a few big problems—in particular one caused by President Richard Nixon.

The president had been antagonizing Congress by blaming it for budget deficits and inflation. John Ehrlichman, a top Nixon adviser, loudly denounced the “credit-card Congress,” and likened it to a derelict relative who impoverished a family by running up bills. Nixon upped the pressure by telling Congress to spend no more than \$250 billion, and by threatening to veto appropriations bills that exceeded this cap.

More dramatically, Nixon also used a power he had as president: He impounded—simply refused to spend—funds appropriated by Congress.

Presidents since the founding had done this, including Lyndon Johnson. It seldom was a big deal, so long as the amounts were small, the rationales for impoundment were sound, and appropriators were consulted. Nixon, however, didn't keep it small: He impounded tens of billions of dollars, often to gut programs he did not like. Gallingly, Caspar Weinberger, his deputy director of the Office of Management and Budget, told Congress the Constitution empowered the president to decide whether to spend money. All of which precipitated a constitutional crisis, since the Constitution gives Congress the power of the purse.

The architects of the 1974 Congressional Budget and Impoundment Control Act thought they had fixed the nation's pocketbook, starting by limiting the power of Nixon to disrupt it. And in a way, it worked. But it also turned into a powerful lesson about unintended consequences, and the risks of assuming too much of Congress.

LOOKING BACK ON that moment in Washington history, Rep. Bill Archer (R-Texas), a budget hawk who served in the House from 1971 to 2001, later remarked: "The culture then was that the president has too much power. We don't like the president. The president is abusing his power.... The idea was that we're going to take power away from the president and constitute it within the Congress."

To take back control of the budget, Congress formed a new committee in 1972, held hearing after hearing, and produced a 4,600-page record of testimony and reports. Less than two years later, a new budgeting scheme became law: the CBA, for short, passed on July 12, 1974, with little dissent. Nixon, mired in Watergate and a month from resigning, signed the legislation.

The budgeting process the CBA replaced was vague and little understood outside of Congress. The president would send Congress a budget, which would pass appropriations acts in response. The process was dominated by powerful committee chairmen. Appropriations often were late, and supplemental spending bills were passed ad hoc. Pork-barrel projects were many. Nixon trolled Congress for this "hoary and traditional" appropriations process, which failed to "consider the total financial picture when it votes on a particular spending bill."

By comparison, the 43-page CBA mandated a rational—if complicated—process. New budget committees in both the House and Senate, assisted by the newly created nonpartisan Congressional Budget Office, would actually plan according to data. The committees receive spending and revenue data from the president's budget, CBO reports, and the "views and estimates" of the various committees that authorize government spending. The budget committees then are to report a spending resolution that Congress as a whole adopts. This would be, officially, the budget; thereafter, the appropriations committees can move bills to spend the portions of the budget authority allocated to them. As initially enacted, the CBA required a second budget resolution to update the budget as

needed—say, if tax revenues didn't come in as projected. The entire process would start in February and conclude in September before the new fiscal year commenced. The intended result: a federal spending program that came in on time and within budget.

Instead, the very first budget resolution arrived a month late in 1975 and proposed higher spending than President Gerald Ford had requested. It augured the fiscal future.

To its credit, the CBA did fix the main problem it set out to solve: it curbed excessive presidential impoundments. No president can do what Nixon did. Title X of the act limits when and how an executive can not spend funds. And it created the much-needed office of the CBO, which helpfully brought nonpartisan brains to the budget process. Today, CBO cost estimates—known as “scores”—helpfully serve as a price tag on new legislation.

But in all other respects, the CBA has failed. Congress has run deficits 36 of the 40 years since adopting it. The national debt is \$18 trillion, and it has tripled as a percentage of GDP since 1974.

Since the enactment of the Congressional Budget and Impoundment Control Act, Congress has adopted a budget resolution on time only six times. It blows the deadline by an average of nearly 40 days. Congress virtually never passes the 12 appropriations bills by the CBA's deadline, and often passes none at all. Instead, chamber leaders rush through omnibus spending bills and continuing resolutions whose contents are unknown to most legislators.

Ignominiously, the budgeting process established by the CBA—that guideline document written by both chambers—has devolved into a time-sucking, deceptive messaging exercise based upon dubious or outright bogus assumptions. The FY2016 budget that the GOP boasted about in April is a case in point. It balances the budget in part by claiming that its tax reforms would generate \$1 trillion in revenue. The budget also assumes Obamacare will be abolished, that roaring economic growth will boost tax revenues; it dodges budget caps by slipping \$94 billion in defense spending into an “Overseas Contingency Operations” fund, and uses a cost-shuffling gimmick called “CHIMPS” (changes in mandatory spending programs) to claim illusory savings that are then spent on other government initiatives.

To be clear, Republicans are not the only ones guilty of fiscal legerdemain. Former Rep. David Obey, (D-Wis.), who served two stints as chairman of the House Appropriations Committee, remarked in 1982: “Under the existing conditions the only kind of budget resolution you can pass today is one that lies. We did it under Carter, we have done it under Reagan, and we are going to do it under every president for as long as any of us are here, unless we change the system, because you cannot get members under the existing system to face up to what the real numbers do. You always end up having phony economic assumptions and all kinds of phony numbers on estimating.”

THE CBA WAS a serious attempt to reform federal budgeting, but in hindsight there were

any number of reasons it was doomed to fail—and they offer a powerful window into the gap between what we expect of Congress, and what it can actually get done.

Some of these reasons are procedural. The CBA mandates a baroque budget-producing process that the legislature must complete in a little over 70 weekdays and which can easily be tripped up. And the budget resolution can be adopted by a simple majority of both chambers, but appropriations acts, as budget guru Stan Collender points out, need 60 or more votes in the Senate *and* a presidential signature. This difference encourages politicized budget resolutions that only occasionally get enacted into actual taxing and spending policies.

Budgeting, at bottom, is about making tough choices, and the CBA doesn't empower the budget committees to make them. Making a budget resolution acceptable to Congress means the budget committees must placate the appropriators and every other legislator who has taxing and spending preferences. The budget committees also have no control over the costs of entitlements, which account for 70 percent of federal spending.

In a bigger sense, you could say the CBA's flaws are the flaws of democracy. Its most basic conceit is the supposition that 535 legislators could decide annually the nation's spending priorities, and commit themselves to it. The CBA threw out the old president-led and appropriator-controlled system, replacing it with a less hierarchical, more inclusive process. As such, it invited more conflict among legislators, and created more access points for proliferating interest groups. The CBA also wrongly presumed public pressure would curb Congress from running up deficits.

Critically, the law fails to unify the three portions of the budgetary process. When it was working on the CBA, the Joint Study Committee on Budget Control advocated a budget process with a trigger. If Congress failed to adopt a budget on time, the president's budget would serve as the budget resolution. Appropriators then could go ahead and appropriate. Instead, CBA's budget process is an uncoordinated hurly-burly. Each year, the president issues his budget, which Congress is free to ignore (Nothing in the CBA requires legislators to do anything with the president's budget). Then Congress may or may not produce its own budget. The budget resolution is not a straitjacket. It is little more than a guide, and its enforcement mechanisms can be dodged to permit additional spending. Eventually, appropriators or leadership will move spending bills. It is the very antithesis of rational fiscal planning.

Over the years, Congress has made various repair efforts. Sensibly, it got rid of the CBA's demand that Congress pass a second budget resolution each autumn. As deficits got worse in the 1980s and 1990s, Congress tried bigger fixes: the 1985 Gramm-Rudman-Hollings Act, which set decreasing annual deficit targets, and the 1990 Budget Enforcement Act, which

toughened enforcement of deficit reduction. In desperation, Congress effectively resurrected Nixon's old impoundment power by establishing a line item veto (1996) to permit the president to zero out programs. The Supreme Court promptly struck it down.

None of these efforts fundamentally changed the budget process set by the CBA, but remarkably, Congress may have stumbled onto a model for a more workable Congressional Budget Act. The 2011 Budget Control Act came after Republicans refused to raise the debt ceiling without budget cuts. The BCA is less than 30 pages in length, and its provisions are far easier to understand and obey than the CBA and its budget resolution.

The BCA is potent policy that packed a big trigger. A joint committee had to report a plan for cutting the federal deficit by \$1.5 trillion over 10 years. If the committee (popularly known as the "super committee") failed to report—which it didn't do—or if Congress did not approve this plan under expedited procedures, the BCA's \$1.2 trillion in automatic cuts ("sequestration") would kick in. The statute also provided a joint executive-legislative process to increase the debt ceiling.

Today, the Budget Control Act, slightly modified, remains the law of the land. Effectively, it supplanted the CBA by taking from Congress' hands the CBA's annual question, "How much should we spend?" The BCA locks in annual spending levels that Congress cannot exceed without passing a law. The sequester was never even supposed to go into effect—it was supposed to be so appalling that nobody would allow it to happen. Instead, Congress proved unable to steer around it, and now sequestration is doing what the Congressional Budget Act never did: controlling spending and deficits.

Forty years after the Congressional Budget Act, we find ourselves in a strange place. Clearly, allowing a president to thwart Congress' spending decisions willy-nilly was a problem. Few today would trust Congress enough to return to the pre-CBA, leave-it-to-the-appropriators approach. Sticking with the CBA's byzantine process would be nuts. Four decades of failed budgeting shows that the CBA should be blown up. Yet, nearly everyone on Capitol Hill hates the BCA's sequestration. Its cuts are not rationally apportioned among spending priorities. It chops spending across the board, with half falling on defense and the rest on non-defense. Failed, wasteful programs get nicked the same as smart ones.

Any effort to improve the federal budget process is going to have to find a middle road between the CBA and the BCA. A better budget process would give the president and Congress skins in the budget game, and force their hands to make hard decisions. Annual spending caps are effective, but they cannot be set too stringently. *Pace Dick Cheney*, deficits do matter, so budgeting should empower both tax and entitlement policy reform. Congress needs to participate in budgeting decisions, but plainly the CBA has asked too much of it.

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