President Proposes, Congress Disposes—True or False?

Congress's power of the purse is one that, like other powers, has come to be heavily shared with the executive branch. The President's new budget is subject to review by Congress, but, in practice, the legislators have limited possibilities for reordering the President's priorities. Internal disarray is one reason—Congress has no equivalent of a budget bureau to assess the overall budget, only appropriations committees which do a piecemeal job. When Congress diverges from the dictates of the Office of Management and Budget (OMB), the Administration has a variety of devices for sidestepping congressional intent, ranging from a presidential veto to a simple refusal to spend the monies appropriated, a practice known as impoundment.

In the last session of Congress, for example, President Nixon twice vetoed appropriations bills containing more than he had requested for the Department of Health, Education, and Welfare (HEW). Congressional initiatives to set up a National Institute of Gerontology and a National Environmental Data System were also cut down by presidential veto. Probably the most pointed rebuff was Nixon's action on the water pollution bill, one of Congress's major legislative achievements, which provided money for waste treatment plants. The President vetoed the bill, Congress overrode the veto by overwhelming majorities of 52 to 12 in the Senate and 247 to 23 in the House, whereupon Nixon ordered that more than half of the funds—some $6 billion—authorized for the program's first 2 years be withheld.

Such high-handed behavior by the President in an area Congress feels to be its own preserve is deeply resented by many legislators. Particular fury has been generated by impoundment, a device that allows the President to kill parts of a bill without the fanfare of a full veto. Resentment over impoundment policies is believed by White House officials to have been the decisive factor in their defeat on the SST in March 1971. And impoundment promises to be a significant issue between Nixon and the 93rd Congress. Senate majority leader Mike Mansfield noted in his speech to the Senate Democratic caucus last month that impoundment is a "dubious Constitutional practice" which "denies and frustrates the explicit intention of the Legislative Branch." Similar expressions of impotent rage have been heard in the House, notably from Representative Jake Pickle (D–Texas), who complained recently: "A budget drawn up by the OMB seems to carry here the force of law. An act of Congress signed by the President does not. At this rate, we might as well sit around and make paper airplanes out of the laws we pass."

Contrary to the impression these protests might give, Nixon did not invent impoundment, which proved equally convenient for presidents Kennedy and Johnson. (Over the last decade, impoundments have run at about 6 percent of total federal outlays.) The issue has been helped to prominence now in part because of the pressure being put on Congress by institutions such as Common Cause and Ralph Nader to assert its prerogatives, including that of financial control. More important, the party difference between Nixon and the present Congress casts his use of impoundments in a more partisan context than that of his predecessors. As it happens, impoundments have fallen heavily on such Democratic causes as urban renewal and the model cities program.

The most recent list of impounded funds the OMB has made available, current to the end of fiscal 1972, shows a total of some $10.5 billion withheld. Most impoundments are only temporary in that they are eventually released, sometimes up to a year late. Others, it seems, would revert to the Treasury if impounded until their appropriations authority expired. The OMB is unable to say what percentage of impoundments are permanent.

Impoundment and Permissiveness

The constitutional issue of impoundment hinges on whether the President must or only may spend the sums appropriated by Congress. With some notable exceptions (such as the chairman of the House appropriations committee, George H. Mahon), Congress argues that he must, while the executive branch claims that appropriations are only permissive. OMB officials cite laws interpreted to mean that funds can be impounded for reasons of routine financial management (such as a project being delayed) or to combat inflation. The congressional comeback is the allegation that impoundments are made for reasons of policy. On one occasion the OMB withheld all the add-ons to the President's budget made by the House Public Works committee —a move that Congress sees as a denial of its right to set priorities.

Other impoundments include $21 million for institutional support and $9.5 million for graduate traineeships which were withheld from the National Science Foundation's 1972 budget. (Both were subsequently released, though the funds for graduate traineeships went into a general purpose fund.) Funds impounded from the NSF this year total $75 million or 9 percent of a $646 million budget. The funds, which may or may not be released before the end of the fiscal year, include $16 million withheld from the much touted R & D incentives program, and $43 million from science education.

Congress has sometimes tried to write language into a bill making it mandatory for the President to spend the full amount appropriated. Nixon vetoed one such bill, grounding his action in part on a legal memorandum drawn up by the then assistant Attorney General William H. Rehnquist, now a Supreme Court justice. But the Rehnquist memo, though useful against mandated appropriations, contained some rather unhelpful thoughts on impoundment. The memo states, in part:

> With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent. . . . It may be argued that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them.

The constitutional question of whether the President can decline to execute appropriations bills may soon reach the Supreme Court as the result of a suit filed by the state of Missouri. The suit challenges the President's right to impound highway trust funds voted by Congress. Some 23 Democratic senators have filed friend-of-court briefs supporting the state's case. But the Supreme Court, if the case gets that far, is likely to make the narrowest possible ruling in an effort to avoid, if possible, arbitrating so fundamental an issue.

Besides impoundment, there are other budgetary devices whereby congressional directives may be reinterpreted. Transfer authority, written into appropriations bills by Congress, allows a limited amount of money to be switched within an agency's budget—up to $750 million in the Defense Department. Reprogramming is a device that permits funds to be shifted from one purpose to another within the same budgetary account; the procedure is for the agency concerned to check with the chairmen of the relevant congressional committees. In fiscal year 1972, reprogramming in Defense approached $1 billion. Other sorts of money over which congressional control tends to be feeble are secret funds—whose amount is unknown but may be on the order of $10 billion a year—and deferred balances. The latter are special-purpose appropriations that may be carried over from one year to the next; if the original purpose falls through, the unexpended balance may, depending on the wording of the authorization language, be applied to new uses. In fiscal year 1971, Defense had $43 billion in unspent authority from previous years, in addition to its $71 billion budget.

Quite apart from the external mechanisms that erode the appropriations process, the process itself is none too well attuned to modern times. The persistent failure of Congress to pass appropriations bills before the beginning of the fiscal year—this year's HEW appropriation is a case in point—simply invites agencies to develop ways of circumventing Congress. The system of House and Senate appropriations subcommittees is not the ideal machinery for supervising a federal budget of present-day size and complexity. "We have no single, coordinated way in which we view the totality of our appropriations," Representative John A. Blatnik (D–Minn.) has observed. The creation of practically autonomous subcommittees within the appropriations committee has further split responsibility for total spending and overall management, he says. It remains to be seen whether the dissatisfaction of Blatnik and other congressmen will lead to any strengthening of Congress's appropriations system. The constitution may have given Congress what is called the power of the purse, but somehow the purse strings seem to lead round through the back door of the President's Office of Management and Budget.—N.W.

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Health

There are two generalizations that can be made about President Nixon's health budget for fiscal 1974. First, unless you are in an area that is one of the President's favorites—the White House calls them "high priority programs"—you will probably have less money than you did before, whether you are a research scientist or a sick person looking for medical care. Second, even if you are part of the in-crowd of the health establishment, increased funding in your field may not be as great as the Administration implies.

The President's budget for the Department of Health, Education, and Welfare (HEW) is one that reduces federal support for health delivery or service programs, sometimes to the point of extinction, and cuts basic research funds as well. Many observers see some merit in trimming some of the service programs under the Health Services and Mental Health Administration (HSMHA) and the National Institute of Mental Health (NIMH), agreeing with the President that they have either proved unsuccessful or have fulfilled their mission. Regional medical programs under HSMHA fall into the former category. They will be obliterated with little mourning. The NIMH's community mental health centers program, which will cost about $134 million in 1973, fall into the latter. The Administration maintains they have demonstrated their value and should now be supported by local governments. Within NIMH, the only programs in line for major funding increases are those dealing with addiction and drug abuse. The 1974 budget calls for an expenditure of $448 million in this area. The 1973 figure is given as $204 million. Opinions about the merits of this selective boost are mixed.

When it comes to the budget proposals for the National Institutes of Health (NIH) and, therefore, federal support of research, there are few, if any, leaders of the biomedical community who are happy with the choices that the President, through his Office of Management and Budget (OMB), has made.

Nixon's favorite, high priority programs reside within the NIH. As everybody knows, they are cancer and heart disease. Each will benefit from an increase in funds. According to OMB figures, the budget of the National Cancer Institute (NCI) will go up by $74 million to $500 million for fiscal 1974. Heart disease seems to be a lesser favorite. The allotment for the National Heart and Lung Institute (NHLI) will jump by $18 million to $265 million, again according to OMB figures. It is not exactly a staggering rise. It is, however, a big jump over the 1972 budget which was $224 million. Sickle cell anemia has also been singled out as a priority program—NIH officials are beginning to refer to them as the President's "sacred cows"—and population research will go unhurt. As for everything else . . . . According to NIH leaders, this is the first year that general research funds have suffered an absolute decrease, the first year that the emphasis on cancer and heart disease has actually cost other disciplines in dollars and cents. The President's budget is something they do not defend.

The first question anybody asks about the budget when it rolls off government printing presses at the end of January is, simply, is it up or down. Each year, the Administration, as one might expect, tries to emphasize places where its support of popular programs has grown. The press and other observers try to sort out the figures to see whether they will buy the government's analysis of itself. It is never an easy job. This year, with the health budget, it is

A QUICK LOOK AT PARTS OF THE NIH BUDGET
(The 1973 figures are from the "revised" budget for that year.) The figures given are in thousands of dollars.

Institute	1973	1974	Change
Cancer	426,093	500,000	+ 73,907
Heart	247,075	265,000	+ 17,925
Dental	40,333	38,452	− 1,881
Arthritis	139,806	133,608	− 6,198
Neurology	105,539	101,198	− 4,341
Allergy and Infectious Diseases	100,726	98,693	− 2,033
General Medical Sciences	151,587	138,573	− 13,014
Child Health	109,551	106,679	− 2,872
Eye	33,797	32,092	− 1,705
Environmental Health	25,889	25,263	− 626