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CONGRESS: THE PURSE, THE PURPOSE, AND THE POWER

*Abner J. Mikva**

The first amendment to the Constitution, Justice Hugo Black once said, was first by design, and not by happenstance; its placement signified that to the country's founders, the freedoms of speech and press and religion were of primary concern. So too article I of the Constitution, establishing the Congress of the United States, was first by design rather than by happenstance; its placement reflects the founders' intent and expectation that Congress would be the dominant branch.

To ensure that Congress would act as the first branch of government, the constitutional framers gave the legislature virtually exclusive power to control the nation's purse strings. Even then, when the nation's purse was small and the amounts in question meager, experienced participants in government knew that the power of the purse was the most far-reaching and effectual of all governmental powers. This power the Framers chose to lodge in Congress. Doubtless they knew that granting the power of the purse to Congress would have costs. Doubtless they understood that a

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Editor's Note: In accordance with Judge Mikva's wishes, numbered citations appear following this article. They cite only to authority and are not essential to comprehension of the text. See Mikva, *Goodbye to Footnotes*, 56 U. COLO. L. REV. 647 (1985).

collection of diverse individuals representing diverse interests (and divided into separate chambers as well) would less efficiently and less coherently devise fiscal policy than would a single "treasurer" or "fiscal czar." Yet they chose, for good reason, to suffer this cost and bear its risks. And in so choosing, they laid down a principle of government no less grand, although apparently more prosaic, than any other in the Constitution: the government works best—works in the most desirable, balanced, and responsive way—when the power of the purse lies in the hands of the Congress. Throughout our history, numerous events have threatened this principle. Often the President has invoked the need for efficiency and sought to reorder the constitutional allocation of power; sometimes Congress itself has done so. Yet the principle has survived and will continue to do so as long as we—judges, lawyers, and citizens alike—recognize its profound importance to our nation.

My statement that the Framers intended Congress to act as the primary governmental branch may be shocking. Most of us learned in our elementary school days that the Constitution established three branches of government with separate, distinct, and roughly equal powers. This well-known doctrine of separation of powers was popularized by Baron de Montesquieu in his treatise *Spirit of the Laws*.¹ He claimed that tyranny could best be avoided by preventing the accumulation of all powers—legislative, executive, and judicial—in the same hands. The chief proponents of the Constitution, during the debate over its adoption, relied on the celebrated Montesquieu doctrine to justify the need for the constitutional distribution of power among three branches. They argued that the separation of powers—under which Congress would manage the purse, the President would wield the sword, and the courts would exercise the power of review—would protect individual liberties in the newly formed federal government. Ambition would counteract ambition, and those who administered each branch would have the "necessary constitutional means and personal motives to resist encroachment of the others."²

Yet the Framers never expected and no doubt never intended that the three governmental branches would be truly equal. The initial popularity of Baron de Montesquieu's doctrine on these shores derived largely from the colonists' desire to establish an independent, self-sufficient, and powerful legislative branch. And even when the broader implications of that doctrine came to be understood

and embraced, the belief remained that the legislative branch would be the first among equals—that it would lead and guide the nation more powerfully than either the executive or the judiciary could. As James Madison wrote in one of the *Federalist Papers*, the legislature would “necessarily . . . predominate.”³

The decision of the Framers to grant Congress the power of the purse reflected their belief that a proper governmental system would have the legislature at its core. The Framers understood the significance of the fiscal power. Alexander Hamilton wrote in the *Federalist Papers* that “[m]oney is, with propriety, considered as the vital principle of the body politic, as that which sustains its life and motion, and enables it to perform its most important functions.”⁴ James Madison added that the power of the purse is the “most complete and effectual weapon with which any constitution can arm” a governmental branch.⁵ This weapon article I of the Constitution placed squarely in the hands of Congress. Article I, section 8 gave Congress the power “to lay and collect taxes, duties, imposts, and excises.” Article I, section 9 stated that “[n]o money shall be drawn from the Treasury, but in consequence of appropriations made by law.” The effect of these provisions, in line with the intent of those who wrote them, was to give plenary power over the nation’s purse strings to Congress. It is true that a movement to make the Secretary of the Treasury directly accountable to Congress instead of to the President ultimately went down to defeat.⁶ But the very strength of this movement serves to underscore the Framers’ deep commitment to ensuring the fiscal prerogatives of Congress. Their intent, as James Madison wrote in the *Federalist Papers*, was to guarantee that “the legislative department alone has access to the pockets of the people.”⁷

The value of granting Congress plenary power over fiscal matters is no less and perhaps even more clear today than it was in 1789. First, decisions regarding taxation and expenditure should be made in our most representative of institutions. Roger Sherman said at the Constitutional Convention that “[i]n making laws regard should be had to the sense of the people who are to be bound by them, and it is more probable that a single man should mistake or betray this sense than the legislature.”⁸ In no context are Sherman’s words more true than in the context of fiscal policy. The justice, the reasonableness, even the efficacy of fiscal decisions depend upon the government’s having taken into account the diverse interests of

its citizens. No institution is more willing—no institution is better able—to consider and accommodate these interests than the legislative branch. The Framers' decision to give budgetary power to Congress rested largely on this view. Indeed, the Framers chose to delegate only to the House—the chamber most closely connected to the electorate—the right to initiate revenue bills. Clearly, the Framers believed that decisions directly affecting the pocketbooks of our people should be made by the governmental institution that is closest to them.

Perhaps even more important, Congress' power over the purse is today a necessary precondition of a balanced governmental system. As I have already suggested, the Framers contemplated that the legislature would tower above the other two branches. And Congress lived up to these expectations for many years. In the early nineteenth century, French historian Alexis de Tocqueville wrote that the "[s]truggle between President and legislature is bound to be unequal for the latter, if it sticks to its plan, is always able to overcome any resistance he can put up."⁹ Almost a century later, a then unknown political scientist at Princeton University, looking with despair at the seemingly impotent executive branch, argued that Congress was predominant "over its so-called coordinate branches."¹⁰ Woodrow Wilson concluded that the vast array of powers Congress possessed under the Constitution made it "the dominant, nay, the irresistible power of the federal system, relegating some of the chief balances of the Constitution to an insignificant role in the 'literary theory' of our institutions."¹¹ But since the scholar Wilson wrote those words, the balance of power has notably shifted. The growth and increasing complexity of government, the frequency, scale, and terror of modern war, and the emergence of the mass media have transformed the role and power of the executive branch. In this new and very different political world, Congress' control over the nation's purse strings has become even more critical than before.

I am reminded here of the close, in the mid-1970's, of the Vietnam War. For years—arguably, for decades—Congress abdicated its responsibility to resist this costly and futile foreign venture. But when the legislature finally became convinced that the war in Vietnam had to stop, it worked its will through its budgetary power. In 1974 and again in 1975, Congress refused to appropriate the more than one-half billion dollars requested by the President to

continue the war effort. The denial effectively forced the cessation of hostilities; Congress had seized the initiative in exactly the manner contemplated by the founders. Had Congress not possessed this plenary power—had the President retained any authority to raise, appropriate, or divert funds—this catastrophic war would certainly have continued. For the source of almost all congressional power—the spine and bite of legislative authority—lies in Congress' control of the nation's purse. If ever Congress loosens its hold on this source of power or if ever the President wrests it away, then, to quote the late Senator Frank Church, "the American Republic will go the way of Rome."¹² The delicate balance created by the Framers will have been destroyed.

I do not mean to minimize or ignore the costs associated with congressional control over the national budget. In the real world—or, at the very least, in the world of government—free lunches are few and far between. Even at its best, budgetary control by the Congress is often an unwieldy and awkward process. To some extent, the difficulties of congressional action in this sphere simply mirror the difficulties of congressional action in any other. The very traits that make the American Congress so representative also make it less than perfectly efficient. In criticizing the notion of a bicameral legislature, Benjamin Franklin used a well-known parable:

Has not the famous political fable of the snake with two heads and one body some useful instruction in it? She was going to a brook to drink and, on her way, was to pass through a hedge, a twig of which opposed her direct course; one head chose to go on the right side of the hedge, the other on the left; so that time was spent in the contest, and before the decision was completed, the poor snake died of thirst.¹³

Franklin, of course, had simplified the problem. For the snake has not two heads, but hundreds. In the House of Representatives, 435 men and women, representing a wide variety of political constituencies and subscribing to a wide variety of political views, struggle each day for advantage. In the Senate, the number of representatives is smaller, but the power of each to delay and block the passage of legislation is vast. Concerted and effective action in each chamber, and in both chambers combined, is of course possible. When the congressional party is strong, when congressional

leadership is effective, and when congressional procedures are conducive to orderly and coherent decisionmaking, conflict may subside and a consensus emerge such that Congress can act with decision and dispatch. But the obstacles to effective congressional action are significant, and no commentator on (or participant in) the political process can afford to understate them.

Moreover, the hurdles that stand in the way of legislative effectiveness are at their highest when Congress attempts to make fiscal decisions. The special difficulties in this context arise first from the importance and potential impact of the decisions themselves. Every citizen cares about the size of his tax bill; every citizen wishes to reap the benefits—and, perhaps unfortunately, to avoid the costs—of governmental spending. The depth and breadth of public concern in this sphere is itself one reason for placing control over fiscal matters in the hands of Congress, the body closest and most responsive to the people. But this same public concern increases the difficulty of concerted and judicious congressional action. In this sphere, as in hardly any other, each representative is subject to intense—and usually conflicting—public pressures. Compounding these pressures is the elusiveness and complexity of the subject matter itself. When David Stockman, then the director of the Office of Management and Budget, said in 1981 that “[n]one of us really understands what’s going on with all these numbers,”¹⁴ he spoke no more than the simple truth. Of course, this problem does not afflict the legislative branch alone; remember that it was Stockman, the supposed wizard of the executive office, who made this somewhat bizarre admission. But it cannot be gainsaid that to ask 535 men and women, most of whom have no expertise in the area and all of whom are subject to parochial pressures, to agree on wise and judicious budgetary measures is to ask an extraordinarily difficult thing.

The appropriate response to these difficulties, however, is not to cede budgetary power to the executive branch, but to improve Congress’ own budgetary procedures. No set of procedures will eliminate all of the stumbling blocks to decisive and effective action by Congress in the fiscal sphere; many of these blocks are inherent in the nature of the institution and the nature of the policy field involved. But Congress can work to mitigate the inefficiencies and inadequacies of the current budgetmaking process. This solution appears somewhat unexciting; what is worse, it may appear illusory.

History, however, suggests otherwise. Notwithstanding the various obstacles to effective congressional budgeting that I have discussed, Congress has in fact substantially increased its capacity to develop responsible fiscal policy. The history of the past ten or twelve years suggests that efficacious internal reform of Congress' budgetmaking procedures is not a fool's dream, but an eminently reasonable aspiration. I make this claim even at a time when tax cuts, military spending, and high interest rates have combined to give this nation its largest budget deficit ever.

The Congressional Budget and Impoundment Control Act of 1974¹⁵ is of course the best example of a congressional reform measure that has heightened Congress' ability to perform its budgetmaking tasks. Prior to the Budget Act of 1974, Congress had no procedures to equate the spending and revenue sides of the national budget. Unlike in even the smallest business or household, no one was responsible for the so-called bottom line. The Appropriations Committee spent, the revenue committees taxed, but no mechanism was available to assess the continued impact of spending and taxing on budget surpluses or deficits. Without such a mechanism, Congress was understandably unable to formulate sensible fiscal policy. And because Congress was itself unable to develop a total budgetary policy, it became highly dependent on the executive branch's fiscal policy proposals.

The Budget Act of 1974 gave Congress, for the first time, the tools necessary to establish some control over the national budget. The Act created two budget committees, one in each chamber, which were given the responsibility to develop coordinated budget proposals for the consideration of the entire House and Senate. The Act further established a timetable governing the development, presentation, amendment, and enactment of these budget proposals. Finally, the Budget Act created the Congressional Budget Office, which was designed to give Congress support in economic and budgetary matters by collecting economic data and providing technical expertise. Taken together, these provisions effected nothing less than a revolution in the way Congress controls the nation's purse strings. The new process allows members of the Congress to examine the budget as a whole document. No longer do several committees work separately on different aspects of expenditure and taxation without relating or comparing their efforts. This increased coordination allows Congress to plan fiscal policy, to conduct a

sensible debate on national priorities, and, if it so chooses, to resist the executive branch's proposals concerning expenditures and taxation. In 1976, Brock Adams, then the Chairman of the House Budget Committee, assessed the final budget resolution of the fiscal year 1977 and commented that "perhaps [its] most important aspect . . . is the fact that it contains the budget of Congress and not that of the President."¹⁶ The statement pinpoints what is the most important aspect of the Budget Act of 1974: it allowed Congress to regain effective control over the nation's budget, as the Framers had intended and as our constitutional system demands.

Of course, the congressional budgetary process continues to show some major flaws. The Budget Act has not completely prevented Congress from indeliberately accepting the President's fiscal policy proposals. In 1981, for example, the House and Senate leadership used action-forcing mechanisms to divert Congress from the route anticipated by the Budget Act and to compel precipitate decisions on each important element of the President's program for fiscal year 1982. Minnesota Congressman William Frenzel not long afterward objected that "[w]e have been voting for ghosts and shadows, based on moonbeam, smoke and rainbow dust. What we are witnessing is a deterioration of the budget process."¹⁷ Regardless of the quality of the executive proposals at issue, Congressman Frenzel's evaluation of the budgetary process appears correct. The Budget Act as enacted in 1974 was designed to be a deliberate, thoughtful process in which committees of expertise would maintain their leverage over the programs with which they were familiar. The Budget Act as acted upon in 1981 forced decisions on all of the major budget proposals before serious analysis of the President's program was possible. From one perspective, Congress responded effectively to a perceived national mandate. On the other hand, such an expeditious implementation of major social change can be dangerous. The Congress was not intended to be a quick-hit institution, but rather an institution of careful deliberation. George Washington, for example, believed that the Senate should be the "saucer" in which the coffee cools. This role appears as important in budgetary matters as elsewhere. By acting as it did in 1981, Congress abdicated its responsibility to keep tight control of the nation's purse strings, and the Budget Act of 1974 did nothing to prevent this.

On the other hand, the budget process in some years arguably has consumed far too much congressional time. The whole body

of legislative procedure by which congressional financial decisions are now made is extremely cumbersome. Theoretically, Congress is to pass each year two budget resolutions, thirteen appropriation bills, one reconciliation bill, and perhaps revenue-raising legislation. Three major committees—Budget, Appropriations, and Taxation—are involved in each decision, not to mention each authorizing committee with respect to its own programs. Because of the complexities of the subject matter and the strong passions generated by it, Congress often takes a great deal of time to jump through this set of legislative hoops. In these years, the federal purse strings have threatened to strangle congressional initiative.

Finally, the Budget Act appears to have had little effect in curbing federal spending. This country's spending levels may not pose quite the danger that some people believe they do. Expenditure bills bear only a portion of the responsibility for the federal debt: the nation's tax code bears the rest. And even the federal debt may not be a harbinger of doom; although the sheer size of the debt seems monstrous, the ratio of debt to income is today one-sixth of the size that it was in 1789.¹⁸ Still, the reduction of federal spending is a goal to which most Americans will subscribe. And that goal spurred congressional enactment of the Budget Act of 1974. Many members of Congress initially believed that adoption of the new procedures would work to cut federal spending, or at least to slow its increase. They believed that the haphazard methods of the past were responsible for the rate of federal spending and that when representatives became able to view the budget in its entirety, the growth of spending would naturally cease. But the Budget Act has failed to accomplish this objective. Some, it is true, have argued that Congress would have spent even more money and created an even larger deficit absent the complex procedures of the Budget Act. And some support for this claim does exist: compare the 53 billion dollar deficit of fiscal year 1977, when Congress followed carefully the Budget Act's procedures, with the 128 billion dollar deficit of fiscal year 1982, when Congress dismissed those procedures from its mind.¹⁹ But others have insisted that the Budget Act's procedures are themselves partly responsible for the continued growth of federal spending. They maintain, for example, that in order to attract sufficient votes to pass their budget resolutions, the Budget Committees often must accommodate spending interests that have been rebuffed by authorization and appro-

priations committees. In the end, the Budget Act probably has had little effect in either direction. If Congress wishes to curb federal spending dramatically, it will probably have to take some other action.

Congress, of course, attempted to take such action when it passed the Balanced Budget and Emergency Deficit Control Act,²⁰ more popularly known as Gramm-Rudman. This Act, like the Budget Act of 1974, should properly be viewed as an effort by Congress to control and discipline its own budgetary processes. The decision to set a maximum deficit amount for federal spending and to require across-the-board cuts in such spending to reach the targeted deficit level can be attacked as substantively misguided. But Congress' passage of the Act at least demonstrated a determination to retain control over its constitutional domain and an effort to exercise that control in a responsible way. Ironically, Congress overstepped its own bounds in attempting to impose self-discipline on its fiscal activities: the Supreme Court recently held that the powers vested in the Comptroller General by the Act violated the Constitution's command that Congress play no direct role in the execution of the laws.²¹ The decision effectively scrapped the Gramm-Rudman plan, but the legislators will probably agree at some point on a proposal to take its place. As is appropriate, Congress appears ready to consider with some earnestness plans to rationalize and discipline Congress' use of its fiscal powers.

The Budget Act of 1974 and the Gramm-Rudman Act represent but two legislative efforts to impose some order on Congress' budgetary activities. There are other examples as well. The public debt ceiling is a congressional attempt, albeit not a very successful one, to control the outcomes of Congress' fiscal processes. The original Budget and Accounting Act of 1921,²² although eventually leading to greatly increased executive power, began as an attempt to help the Congress order its budget activities. Finally, the creation of the General Accounting Office²³ under the control of the Congress signified a legislative desire to keep a close watch on fiscal affairs. Some of these attempts to order Congress' fiscal processes have proved less successful than their sponsors might have hoped. But taken together, they show that Congress can act to amend and improve its budgetary processes and that some such measures will meet with success.

What is perhaps even more important, however, is that the Con-

stitution's grant of fiscal power to Congress is not contingent upon such success. The recent Gramm-Rudman decision serves to support this point. Chief Justice Burger wrote for the Court: "No one can doubt that Congress and the President are confronted with fiscal and economic problems of unprecedented magnitude, but 'the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. Convenience and efficiency are not the primary objectives—or the hallmarks—of democratic government.'"²⁴ The Court, in the Gramm-Rudman case, was speaking to the legislature. But the point could be made to the executive as well. No matter how inefficient, how incoherent, or how confused congressional action on the budget may sometimes seem, the power of the purse belongs to the legislative and not to the executive branch.

This was the principle Richard Nixon ignored when he asserted as "absolutely clear" his right to impound congressionally appropriated funds.²⁵ Impoundments had occurred in American history before. President Jefferson impounded \$50,000 that Congress had appropriated for the construction of a frigate on the ground that a "favorable and peaceable turn of affairs on the Mississippi" had rendered the war ship unnecessary.²⁶ President Roosevelt impounded monies that Congress had appropriated for public works in an effort to keep funds available for the war effort. And Presidents Truman, Eisenhower, Kennedy, and Johnson also occasionally resorted to impoundment in order to meet their own policy objectives. Not until Richard Nixon's presidency, however, did the dangers of impoundment become "absolutely clear." According to the Nixon administration's own calculations, it had impounded or delayed expenditure of funds totaling over 11.8 billion dollars. The administration's figures, however, failed to include some six billion dollars appropriated by the Federal Water Pollution Prevention and Control Act;²⁷ the actual amount of funds withheld thus approached eighteen billion dollars.

The Nixon administration used a variety of arguments to explain its impoundment of legislative appropriations that exceeded the President's budgetary requests. Most frequently, President Nixon simply pointed to evidence of fiscal irresponsibility by Congress. If the legislators could not do their job, he suggested, then the President could do it for them. Sometimes, the Nixon administration

buttressed this claim with arguments that had a more legal ring. Then Deputy Attorney General Sneed, for example, testified that "[t]he exercise of [the impoundment] authority by the President to promote fiscal stability . . . is in the great tradition of checks and balances upon which our Constitution is based."²⁸ Attorney General Richard Kleindienst and Office of Management and Budget Deputy Director Casper Weinberger claimed that the power to impound funds was implicit in the provisions of article II, which endows the President with executive authority.²⁹ A somewhat more limited argument posited that when the President's budget contained a request to rescind certain funds, he need not spend those funds until Congress had had an opportunity to consider his request. Finally, the Nixon administration contended that, in general, an appropriations bill was merely an authorization to spend, setting an upper but not a lower limit.

Neither the courts nor Congress was much impressed. Most of the Nixon administration's impoundments reached the courts, and in that forum the administration suffered virtually complete defeat. By 1974, the plaintiffs had overturned impoundments in more than fifty cases, whereas the courts had upheld the President in only four. One case concerning impoundment, *Train v. City of New York*,³⁰ reached the Supreme Court. In 1975, the Court decided that the Clean Water Act, notwithstanding ambiguities in its language and legislative history, did not permit the President to withhold any of the funds provided by Congress.³¹ Although the decision turned essentially on issues of statutory interpretation, the opinion underscored the important constitutional principles involved—most notably, the authority of Congress to mandate spending and the responsibility of the President to carry out the laws.

Meanwhile, Congress responded to the threat that the impoundments posed to its fiscal authority. Title X of the Budget and Impoundment Control Act of 1974 established a set of procedures to govern all presidential efforts to withhold funds. The title required that the President submit a special message to Congress whenever he proposed to withhold appropriated monies. A proposal to rescind funds—that is, to eliminate funding completely—required the approval of each house of Congress within forty-five days. A proposal to defer the expenditure of funds to another year remained in effect unless disapproved by either house. At approximately the same time, the House Judiciary Committee seriously

considered, but ultimately rejected, a proposal to list President Nixon's impoundment policies as one of the grounds for his impeachment.

The response of the courts and Congress was clearly proper in light of the nature of the executive action involved. To the extent that the President can impound congressionally appropriated funds, he is able to deny Congress power to fulfill its constitutional responsibilities. As the House Report to the Impoundment Control Act stated, "legislative decisions have no meaning if they can be unilaterally abrogated by executive impoundments."³² The Constitution, of course, grants to the President the responsibility and authority to execute the laws. But this provision defeats rather than supports the case for impoundment. An appropriations act constitutes a law that the President must faithfully execute. And as the Supreme Court wrote in *Kendall v. United States ex rel. Stokes*,³³ "[t]o contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution and entirely inadmissible."³⁴ The Constitution does not require that the President be a mere clerk, and his power to execute the laws must necessarily involve some discretion. But to imply from this discretion a power as great as impoundment is to allow the exception to swallow the rule and to ignore the basic tenor of the Constitution.

The denial of the power to impound hardly renders the executive impotent in the budgetary process. The President may (and invariably does) present a comprehensive set of budget proposals to Congress. He may use his position as leader of the party to try to push these proposals through the legislative body. He may use his unparalleled access to the media—his "bully pulpit," so to speak—to sway the public's mind and thus to force Congress' hand. And he may veto, subject to congressional override, any piece of legislation that he believes inconsistent with the public good. The President may not, however, take upon himself any other or additional powers. When he does so, he flouts the intent of the Framers that Congress control the power of the purse. He upsets the delicate compromises and intricate bargains that form the heart of the legislative process. And he subverts the role and function of Congress within our carefully balanced constitutional structure.

The same dangers lurk in any decision by Congress to hand over powers to the executive branch. Throughout our history, both Pres-

idents and members of Congress have proposed that Congress yield some significant part of its budgetary authority to the executive office. On occasion, these proposals have urged nothing less than an executive budget. During the debate on the Budget and Accounting Act of 1921, for example, a serious attempt was made to institute such a budget.³⁵ Although the alternative proposals differed in detail, most required a two-thirds majority vote for the passage of any expenditure to which the President objected. One proposal allowed Congress to increase the amounts requested in the President's budget only by means of separate legislation, thus subjecting each budgetary increase to the President's veto power. This proposal differs little from another frequently urged amendment to our governmental system—the line item veto. Since 1873, when Ulysses Grant first proposed the idea, over 150 legislative proposals have called for Congress to give to the President the ability to veto individual parts of a bill. Congress has thus far rejected such proposals; with any luck, it always will.

For regardless of whether Congress yields budgetary authority or the President usurps it, the threat to our constitutional order is the same. In our governmental system, the legislature does and must have plenary power over the budget. The power of the purse is the strength of the Congress; take that away, and all else will fall. Is Congress' management of the budget inefficient? Surely it is; the workings of democratic institutions always are. Is it cumbersome? Of course it is; getting a majority of 535 political prima donnas to agree on anything is a difficult task. But if we wish to live in a pluralistic and free society, we will strive to ensure that Congress retains exclusive control of the nation's purse. Only in that event will the delicate balance of our constitutional structure be preserved.

ENDNOTES

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³ *Id.* at 350.

⁴ *THE FEDERALIST* No. 30, at 188 (A. Hamilton) (J. Cooke ed. 1961).

⁵ *THE FEDERALIST* No. 58, at 394 (J. Madison) (J. Cooke ed. 1961).

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⁷ THE FEDERALIST No. 48, at 334 (J. Madison) (J. Cooke ed. 1961).

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¹⁷ Boston Globe, June 6, 1982, at A33.

¹⁸ 2 BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES 1104 (1975); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1986, at 305 (1985) [hereinafter STATISTICAL ABSTRACT].

¹⁹ STATISTICAL ABSTRACT, *supra* note 19, at 305.

²⁰ 2 U.S.C. §§ 901-22 (Supp. III 1985).

²¹ *Bowsher v. Synar*, 106 S. Ct. 3181 (1986).

²² 31 U.S.C. §§ 1-28 (1976), *reenacted as* 31 U.S.C. §§ 701, 1101-14 (1982).

²³ 31 U.S.C. §§ 702-78 (1982 & Supp. III 1985).

²⁴ *Bowsher*, 106 S. Ct. at 3193-94.

²⁵ N.Y. Times, Feb. 1, 1973, at 20, col. 6.

²⁶ 8 ANNALS OF CONG. 14 (1983).

²⁷ 33 U.S.C. §§ 1251-1376 (1982).

²⁸ *Impoundment of Appropriated Funds by the President: Hearings Before Senate Government Operations and Judiciary Comms.*, 93d Cong., 1st Sess. 363 (1973).

²⁹ *See Hearings on Executive Impoundment of Appropriated Funds Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 95 (1971) (statement of OMB Deputy Director Casper Weinberger); N.Y. Times, Apr. 6, 1973, at 16, col. 3 (quoting Richard Kleindienst).

³⁰ 420 U.S. 356 (1975).

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³² H.R. REP. No. 93-658, 93d Cong., 1st Sess. 16 (1973), *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 3462-63.

³³ 27 U.S. (12 Pet.) 524 (1838).

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³⁵ *See* 61 CONG. REC. 662, 980-89, 1851-59 (1921).

