Control of Public Spending - Approaches to Balanced Budgets in the United States, Canada, and Europe in Comparison

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CONTROL OF PUBLIC SPENDING - APPROACHES TO BALANCED BUDGETS
IN THE UNITED STATES, CANADA, AND EUROPE IN COMPARISON

by

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BUDGETS IN THE UNITED STATES, CANADA, AND EUROPE
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To my parents
ACKNOWLEDGMENTS

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Athens, Georgia, August 1986

Peter Schaefer
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I. Introduction

A. Economic Significance of the Subject

This paper focuses on the legal aspects of the world-wide budget crisis. The economic consequences of deficits, however, threaten national and international welfare to such an extent that it is appropriate and, indeed, necessary to point out the principal qualitative (not quantitative) effects of public spending on the economy.

1. Impact of the budget deficit on the United States economy

a) domestic disturbances

Recent budget data are alarming: in fiscal year 1985 the federal budget deficit amounted to $212.3 billion, swallowing 5 percent of that year's gross national product (GNP). The national public debt, the accumulation of past deficits, exceeded the $2 trillion mark in 1985, thereby reaching about 50 percent of GNP. Even if the federal government succeeded in curbing expenditures under the pressures of the Balanced Budget and Emergency Deficit Control Act of December 1985 (PL 99-177), popularly known as Gramm-Rudman-Hollings, the deficit for fiscal year 1988 would still not drop below $100 billion and the national debt would grow in absolute numbers. Congressional leaders disagree whether tax cuts and defense buildup, on the one
hand, or uncontrollable social entitlement programs, on the other, have caused this dilemma. In any event, the President who won his first election partly because he promised to balance the budget had to admit in his 1987 budget message after five years in office:

Conditions are now in place for a sustained era of national prosperity. But, there is a major threat looming on the horizon; the Federal deficit. If this deficit is not brought under control, we risk losing all we’ve achieved - and more... The need to cut unnecessary Federal spending and improve management of necessary programs must be made a compelling guide to our policy choices. The result will be a leaner, better integrated, more streamlined Federal Government.

All theories on optimal public sector size, whether normative or factual, agree that the government may legitimately influence and regulate private market forces (1) either by means of fiscal policy (change of revenue or expenditure levels, particularly according to John Maynard Keynes' theory of deficit spending), (2) or by means of monetary policy (modification of the money supply, proposed by Milton Friedman).

However, neither of these two theories is able to define the proper size of the public sector. Regardless of abstract
disputes about the role of government in a market-oriented society, public indebtedness has reached a degree of importance that a majority of economists predicts three distinct consequences of continuing federal deficits:

1. High deficits entail high interest rates. When government borrows money to finance its deficit, it increases the demand in the credit markets. Consequently, competing private borrowers will have to pay higher interest rates to induce potential lenders to put new money on the market. Unfortunately the public hardly ever recognized that this "[p]rocess feeds on itself" in a double way. Firstly, the new deficit adds to the already existing national public debt. If the new deficit grows faster than GNP (true for the last few fiscal years), an even larger share of next year's budget will have to be spent for interest payments. Secondly, these payments again must be financed through more extensive borrowing which in return drives up the interest rate in the capital markets making deficit spending more expensive. This vicious circle, in the long run, strangles the governmental flexibility needed for corrective activity in the areas of environmental protection or investment incentives. 

"[G]iven the present and persistent size of fiscal deficits, the freedom of governments to use fiscal policy in a countercyclical sense has virtually disappeared."
"For example, CBO [Congressional Budget Office] has pointed out, that with the publicly-held federal debt at the projected fiscal year level of $2.5 trillion [realistic even under Gramm-Rudman-Hollings], a one-percentage-point change in interest rates would add $26 billion per year to the deficit."

(2) As can be easily foreseen, the process described under (1) crowds out private investment. "The government will, by its very nature, always have first claim on the financial resources available, and the private sector will have to settle for what is left." "To put this into perspective: In current dollar terms, the increase in public debt averaged just 16.4 percent of net private saving during the years 1970 to 1974, and less than 25 percent in 1979; it has skyrocketed, absorbing over 70 percent of net private saving in fiscal 1982 and more than 100 percent in fiscal 1983." Inventory, housing construction, and foreign investment represent the branches particularly affected.

(3) Deficits do not necessarily stimulate inflation. But in the face of mounting interest rates and dropping domestic investment - if not offset by higher private saving or foreign capital influx - the Federal Reserve will be tempted to "monetize" the debt by purchasing Treasury securities, thereby increasing the supply of bank reserves and money. This monetary ease inevitably entails a higher inflation rate. Fighting the negative consequences of permanent
deficits, therefore, is only a choice among several evils, not between good and bad. This was different during the stagflation (high unemployment plus high inflation) in 1979/1980, when further fueling inflation could be justified as a measure against double-digit unemployment rates. "When used to stimulate a depressed economy, monetary policy is unlikely to have inflationary consequences. When used to provide the liquidity to offset heavy credit-market demands in a strong, debt-driven business expansion [like nowadays], however, the inflationary potential of monetary policy does not take long to make its unwelcome appearance."

Whatever the steps taken to mitigate the negative impacts of persistent deficits will be, they will have to be paid either by inflation or by reduced investment which will hamper the growth of capital stocks and innovative activities, thereby diminishing future economic growth. The reality of 1986, however, seems to disprove these nice theories: despite skyrocketing deficits over the last years, all "negative" economic indicators are down: interest rates, inflation, and unemployment. So why care about the deficit?

There are two aspects frequently neglected — one of quality, the other of time — which reveal the real threat of public deficits and debts:

1. Roughly 50 percent of the federal budget deficit is not temporary but structural. "Structural" means uninfluenced...
by cyclical fluctuations, usually at an assumed unemployment rate of six percent. "This allows one to isolate the extent to which budget deficits are a result of an underlying imbalance between tax and spending policies, independent of the state of the economy." "[S]ince a continually rising portion of the projected deficits is structural, more rapid economic expansion will not eliminate the bulk of the projected deficits." Hence, the United States economy cannot simply grow its way out of the deficit.

(2) The second phenomenon may be denominated the "generation fraud" or the dangers of "fiscal illusion". Even a public deficit is not without restraints. Three possible limits can be conceived: the deficit may become intolerable

(a) politically-psychologically,

(b) economically, because the deficit cannot be "monetized" any more lest inflation rates should explode, or

(c) practically, as soon as the government cannot borrow enough money to repay even the interest on its debt.

Once one of these limits has been reached, some future taxpayer will have to compensate for today's deficits. This "undesirable intergenerational redistribution of wealth" is mainly caused by the fact that taxpayers tend to underestimate their future tax burden. Government can raise revenue on four different avenues:

(a) tax increases,

(b) relaxed monetary policy,
(c) foreign borrowing, and
(d) domestic borrowing.

The first and the second avenues are temporarily blocked. On Feb. 5, 1986, in his fiscal 1987 budget message to Congress, the President made clear that he would veto any tax increases. The Fed's chairman, Paul Volcker, seems not inclined to abandon his mix of loose fiscal but tight monetary policy lest inflation should reoccur. The third avenue has been an easy way out only as long as the American interest rates have substantially exceeded those of the United States' major trading partners. Therefore domestic borrowing offered the only feasible avenue for financing the debt. In contrast to private sector borrowing, loans given to the administration are price inelastic - governments can afford higher interest rates because they have no profit margin - and not increasing productivity.

At this point supporters of deficit spending argue that government consumes and invests, for instance in bridges, roads, power plants etc., thus enhancing business infrastructure and productivity. This growth, they assert, also benefits future generations. The objection is true: "[D]ebt is the appropriate financing mechanism for government investment." But its premises are wrong: "Currently, the deficit of the U.S. government is almost entirely the result of financing public consumption... The public investment part of the federal budget is
Although tax increases, on the one hand, and deficit spending, on the other, may result in different short term impacts on the economy, in the long run — according to the Ricardian "equivalence theorem" — tax finance and debt finance are basically equivalent. Deficit spending now will harm future taxpayers. We are not entitled to a "free lunch" at the expense of our children, unless we fund investments in the future like transportation routes and research facilities. These are — with the exception of military research — precisely the areas proposed for cuts in the President's fiscal 1987 budget.

b) foreign trade imbalances

The United States economy forms part of an increasingly interdependent system of international trade relations. Ten cents of every dollar are earned by imports and exports. The dollar plays an important role as the major world currency for international transactions and store of value. Therefore American internal fiscal and monetary policy decisions resulting from a federal deficit of over $200 billion have an ever increasing impact on the trade with other nations.

As mentioned earlier, domestic public borrowing to finance the deficit raises internal interest rates. This fact triggers a chain reaction: higher interest rates in the United States capital markets attract foreign investors and lenders. The rising demand for dollars improves the exchange
rate against other currencies. Thus American products become less competitive in foreign markets. As a consequence, the deficit harms the export sector of the United States economy and led to a historical record balance-of-payments disequilibrium.

In his economic report transmitted to Congress on Feb. 6, 1986, President Reagan acknowledged the futility of protectionist measures. He therefore suggested a $300 million trade war chest to provide low-interest loans and grants - known as mixed credits - to potential foreign purchasers of American products. Hopefully a new GATT round will interrupt this circle of retaliations and counter-retaliations.

Secondly, besides the alarming trade deficit of $148.5 billion in 1985, persistent deficits might evoke an international crisis of trust in the American economy: "Unfortunately, in recent years foreign borrowing has often been used to finance current or unproductive expenditures. If foreign financing and levels of international indebtedness are high, they may eventually threaten external confidence in the country, especially when the borrowing finances unproductive expenditure." Needless to say, this failure to invest rather than to consume the borrowed money again shifts the burden of endangered growth to future generations.
2. Impact of the United States budget deficit on the world economy

Although mitigated by the recent drop of domestic interest rates, deficit spending does not only drain domestic but also international loan markets. "[S]ince world incomes are generally below U.S. incomes, that lost capital does have a high social value (higher than the crowded-out capital in the United States)." The question arises "[w]hether it is economically and politically appropriate, or even feasible, for the richest country in a capital-short world to expect others to so finance its budget deficit."

The recent oil price drop has aggravated this dilemma. Oil exporting countries receive lower returns from their sales. Hence, their ability to inject new funds into the already feeble world capital market has shrunk. Oil importing nations admittedly pay a smaller oil bill now, but the developing countries among them do not dispose of the necessary financial reserves to become competitive in a drying out world credit market.

It would be oversimplistic, however, merely to blame the United States for its budget and trade deficits. An equation always has two sides: a negative American balance-of-payments meant a positive balance for many of the United States' major trading partners, for example the Federal Republic of Germany. These countries were enabled to increase their economic growth and thereby to reduce not
only their trade but also their budget deficits. Given these interdependencies, a worldwide "[u]nanimous vote for fiscal rectitude" helps little to solve the problem. For this reason one may agree with Mr. de Larosière who proposed that transnational organizations like the International Monetary Fund (IMF) should more thoroughly study "[t]he international compatibility of fiscal deficits."

Countries with a huge trade surplus, like West Germany or Japan, should therefore try to rebalance the United States trade deficit. This would strengthen the American export industry, raise tax revenues, reduce the budget deficit and thus stabilize the world-wide financial and monetary system.

International cooperation is a public good that requires mutual responsibility. The United States, in 1985 an international net debtor for the first time since World War I, should cut its budget deficit for three reasons relevant to world-wide prosperity and development:
a) International credit markets would lower their interest rates because of decreased demand and thereby permit more affordable loans to developing countries.
b) Already deeply indebted foreign countries, especially those in the Third World, could more easily repay their loans under a lower general level of interest rates.
c) The United States budget would regain the necessary flexibility to promote investment programs in Third World countries. Thus it would increase the productivity,
competitiveness, and finally the export chances of these countries. Making export profits is, in my eyes, the only realistic way in which the Third and Fourth World can pay back its debts.

The United States, however, can not shoulder the entire burden. The European Community and Japan should open their markets until the distorting United States trade deficit is alleviated. Finally, the advanced developing countries, like South Korea or some OPEC members, should play a bigger role in international decision-making and aid. "With size comes responsibility; it is time that the rights and responsibilities of the advanced developing countries be adjusted to the realities of the world economy."

B. Delimitation and Description of the Subject

1. Non-legal aspects of the budget crisis

Having established the far-reaching economic consequences of federal deficits and the national debt, we may move directly to the core of the thesis: the legal aspects involved in controlling public expenditure. This narrowed approach, however, skips four different, though equally budget-relevant research disciplines: accounting, political science, taxation, and, surprisingly enough, psychology. Budget analysis, therefore, should become a subject of interdisciplinary concern. Despite its limited size, this legal thesis will consequently allude to non-legal issues.
wherever necessary or helpful to clarify or classify the virtual questions of law. Some of the aspects within the four above mentioned areas are, however, of such a central importance for the understanding of the budget crisis that I want to highlight them now, at the outset of the thesis:

a) accounting

Although despised by some as a system of meticulous calculation, rational and transparent accounting procedures are crucial to efficient budgeting and thereby to reducing public expenditures: "The effectiveness of budget administration depends to very considerable extent upon the ability of the accounting system to produce data that are current and correct and that have pertinence and meaning as guides to making decisions about programs and their costs." Public fiscal responsibility consists of both decision-making and of implementing and auditing these decisions. Accounting helps to fulfil both tasks. It furnishes not only the essential data base for administrative programs but also guarantees an efficient and - through auditing - controllable execution of these programs.

This interrelation between budgeting and accounting implies several practical problems: To what extent must budgeting and accounting processes be compatible in order to advance pragmatic administrative planning? Should "off-budget" agencies and public enterprises be subject to
b) political science

According to V.O. Key, Jr., the basic budgeting problem culminates in a simple question: "On what basis shall it be decided to allocate x dollars to activity A instead of activity B?" Hence, the budget, although following legal rules during its implementation, expresses political, not legal choices. It reflects what a political majority thinks "bring[s] the maximum return in social utility." It also permits a majority of legislators to authorize programs whose financial burden must equally be carried by the out-voted minority of sometimes 49 percent. Finally, it enables strong pressure groups and constituencies to induce deficit-boosting "pork barrel" spending. In the words of A. Premchand, "the budget represents a central vehicle through which policies are converted into actions."

c) taxation

Obviously there are two ways to balance the budget: curbing spending or increasing revenue by means of higher taxation. Until 1974, when the Congressional Budget and Impoundment Control Act (PL 93-344) was passed, Congress had
regarded these two sides of the budget as totally separate and unrelated. The 1974 Act forces the Legislature to adjust at least the totals of revenue and expenditure. But the links between taxes and outlays are more subtle, as the term "tax expenditure" indicates. These indirect subsidies in the form of tax exemptions and deductions for certain groups of taxpayers cost the Treasury billions of dollars every year. Because they benefit identifiable groups, all plans to abolish them encounter severe opposition from lobbyists. A less progressive, flatter tax-rate would largely eliminate the justification of these tax loop-holes, thus straightening the tax codes and relieving the revenue side of the budget from individual interests. Progressive tax-rates, however, should not be entirely leveled, since pure flat tax-rates carry the risks of an ever broadening tax-base and of distributive consequences to the detriment of the poor.

For the third time it cannot be left unmentioned that steadily growing public deficits burden future taxpayers who do not profit from present consumptive governmental spending. A mere structural tax reform will not suffice, if deficits continue to increase; higher tax-rates will become inevitable.

Given all these negative implications - the controversy about the impact of a structural tax reform, presidential resistance to increase tax-rates, and the burden on future
generations, spending cuts appear as the most simple and politically feasible tax reform. Is it not easier to stop giving than to start taking?

d) psychology

The budget deficit touches aspects in mass and individual psychology, too.

Firstly, the deficit, by its simple existence, may raise inflationary expectations, because many people believe that part of the debt will be "monetized." If this anticipated inflation were to occur, the government would have to restrain the monetary supply, thus making it harder to finance the debt by partial "monetization." Secondly, the citizen might wonder, why he or she should live up to his/her budget, if the administration fails to do so. Mounting private debt and bankruptcies will follow.

The individual legislator, finally, must choose between personal priorities (reelection, "pork barrel") and national priorities (reducing the deficit). What will he/she do in the election months of fall 1986, if the United States Supreme Court invalidates Gramm-Rudmann-Hollings in July 1986, thus forcing Congress to make the hard choices on its own?

2. Focus and goal of analysis

This thesis seeks to develop procedural and substantive legal rules which restrain public spending and help to
balance indebted national budgets. The following analysis will emphasize constitutional, statutory and administrative procedures to cut the deficit of the federal government of the United States. Other market-oriented, federal systems of government like Canada, the Federal Republic of Germany, and Switzerland, as well as the 50 member states of the United States face similar problems of limiting their annual deficits and their aggregated national debts. A chapter on foreign and state anti-deficit measures will therefore try to suggest comparative balanced-budget approaches which the United States government could adopt in order to accelerate its expenditure curbing efforts or to profit from lessons other countries have already learned.

Controlling public spending implicates three distinct questions of separation of powers:

(1) "intrainstitutional" division of powers: Are the present internal organizational structures of the two political branches of government – the Legislature and the Executive – capable of managing the budget crisis or are the internal forces of either branch neutralizing or even hindering themselves in the process of deficit cutting?

(2) "interinstitutional" separation of powers: This second aspect deals with the classical theory of checks and balances: What degree of separation between Congress and the President is constitutionally mandated and what degree of
cooperation among these two branches is constitutionally permitted in order to resolve the budget dilemma?

(3) "extraconstitutional" separation of powers: The will of the American people is represented through three branches of government which are directly (Congress and the President) or indirectly (the federal judiciary) accountable to democratic majority voting as laid down in Art. I, II, and III of the Federal Constitution. Besides some independent regulatory agencies like the Federal Reserve Board, there is another institution operating outside the constitutional framework of separation of powers: lobbying. To what extent have well organized, pragmatic interest groups contributed to the "pro-spending bias in the budgetary process?" What can be done to relieve legislators and the chief executive from the pressures of reelection gifts to the local and national constituencies?

Formulated provocingly, one could therefore ask

a) whether the budget deficit symptomizes a disorganized Congress and/or Executive (intrainstitutional aspect),

b) whether it will or already has disturbed the balance of power between the two political branches of government (interinstitutional question), or

c) whether it indicates the high-water mark of the age of lobbying (extraconstitutional aspect)?

Before chapter V. addresses these issues in detail, chapters II. - IV. are designed to provide some background
information about the constitutional foundation, the historic development, the concepts, and the basic functioning of federal budgeting in the United States.
II. Constitutional Foundation and Historical Development of the Federal Budget Process

A. The Constitutional Provisions

The "informal American fiscal constitution" comprises few provisions about the federal taxing power (Art. I, sec. 8, cl. 1; Amend. XVI) and its limits (Art. I, sec. 8, cl. 1; Art. I, sec. 9, cl. 4 and 5). "The constitutional provisions on federal expenditures and on state taxing and spending are even sparser." The American system of public finance is shaped by fiscal realities rather than by constitutionally prescribed procedures. In stark contrast to this pragmatic attitude, the Basic Law of the Federal Republic of Germany includes a whole chapter on federal, state, and intergovernmental fiscal responsibilities, listing no less than 14 articles. Being more detailed and explicit, however, the German approach is also more vulnerable to amendments and might even hamper development when fiscal flexibility is needed.

But "sparse" does not mean silent. The United States Constitution does contain two provisions of substantive and procedural importance for the scope and means of federal budgeting.
1. The federal spending power, Art. I, sec. 8, cl. 1

According to this provision, "[t]he Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States..." The clause permits three possible interpretations:

a) Congress may undertake anything it deems appropriate to further the general welfare.

b) Congress may only appropriate money to provide for the general welfare.

c) Congress may appropriate money only insofar as required by funding its enumerated legislative powers under Art. I, sec. 8, cl. 2-18.

The first construction has never been taken seriously. Justice Story, in his commentaries, cites the main reasons for this rejection:

If the clause... is construed to be an independent and substantive grant of power, it... renders wholly unimportant and unnecessary the subsequent enumeration of specific powers... Under such circumstances, the constitution would practically create an unlimited national government.

Story himself espoused Alexander Hamilton's position which favored the second interpretation, whereas Madison supported the third. The controversy was finally resolved
in the landmark case of United States v. Butler decided in 1936. In joining Hamilton's view, a 6 to 3 majority declared:

While... the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of sec. 8 which bestow and define the legislative powers of Congress. It results that the power of Congress to authorize expenditure of public money for public purposes is not limited by the direct grants of legislative power found in the Constitution.

In other words, the spending power "[i]s as broad as the power to tax," not broader as the first construction suggests, and not narrower as the third interpretation by Madison asserted. Despite this assumption of a rather ample spending power, limited only by the general welfare clause, the Court in Butler invalidated the Agricultural Adjustment Act of 1933 because its tax-and-expenditure scheme authorizing payments to farmers who agreed to acreage restrictions intruded upon rights reserved to the states by the Tenth Amendment.

Only one year later, in Steward Machine Co. v Davis, the Supreme Court upheld a federal tax-credit system which induced the states to pass unemployment compensation statutes. Butler was distinguished on several grounds, but
has never been explicitly overruled. Yet, as recent decisions indicate, the Tenth Amendment nowadays does not serve as a specific limit to the congressional spending power. Consequently, except for the restraints imposed by the Bill of Rights and the notion of providing for the general as opposed to the local welfare, the spending power under Art. I, sec. 8, cl. 1 of the United States Constitution stands as a vast, unlimited federal power.

2. The appropriation requirement, Art. I, sec. 9, cl. 7

Whereas Art. I, sec. 8, cl. 1, makes clear that the federal government may spend as well as tax, Art. I, sec. 9, cl. 7 expressly confers the final control over federal expenditures, the so-called "power of the purse," to the legislative, not to the executive branch of government: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a Regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

Justice Story explains the object of this provision as follows:

As all the taxes raised from the people... are to be applied to the discharge of the expenses and debts of the government, it is highly proper, that Congress should possess the power to decide, how and when any money should be applied for these purposes. If it
were otherwise, the executive would possess an unbounded power over the public purse of the nation; and might apply all its money resources at his pleasure.

Secondly, "[t]o secure regularity, punctuality, and fidelity, in the disbursements of the public money," Art. I, sec. 9, cl. 7 requires "Appropriations made by Law." Chapter IV.E. will anser the question whether "backdoor spending", which circumvents the regular appropriation process, violates this constitutional procedural requirement.

3. Other budget-related constitutional provisions

A provision of a substantive character is Art. I, sec. 8, cl. 2 empowering Congress "to borrow money on the credit of the United States." Justice Story, in his commentaries, accepted loans as "[t]he least burdensome mode of contracting a debt," especially during war times. Prophetically predicting President Roosevelt's New Deal in the 1930s, Story added that "[e]ven in times of peace exigencies may occur, which render a loan the most facile, economical and ready means of supply, either to meet expenses, or to avert calamities, or to save the country from an undue depression of its staple production." Given this broad interpretation, Congress' power to borrow money appears as "general and unlimited" as its spending power.
Finally, the procedural rule in Art. I, sec. 7, cl. 1 prescribes that "[a]ll Bills for raising Revenue shall originate in the House of Representatives..." as opposed to the Senate which "may [only] propose or concur with Amendments as on other Bills." Justice Story explains the purpose of this provision by the fact that House members represent smaller constituencies than senators, thus being closer to the will of the local people who usually object increased federal taxes.

B. The Development of the Federal Budget Process - A History of Shifting Powers

Besides Congress's powers of impeachment and of overriding a presidential veto, its power to set the revenue and expenditure levels in the annual budget represents one of the most important legislative checks on the scope of executive policy-making. On the other hand, the budget serves the President as an essential tool for formulating his policies, planning his programs, and controlling the heads and chiefs of departments and agencies.

As mentioned above, the appropriation requirement in Art. I, sec. 9, cl. 7 forms the only part of the spending side of the budget procedure that is founded on a "textually demonstrable constitutional commitment" to the legislative branch of government. But who is to initiate and to review the budget? May the House Appropriations Committee
"itemize" its appropriation bills to an extent which leaves no more discretion to the administration? The Federal Constitution remains silent on these questions. The British budgetary system, in its infancy at the time of the American Revolution, could not provide any guidance either.

Today's public budgeting, therefore, must be understood as the result of a 200-year-old evolutionary process in which Congress' jealous watch over its power of the purse and the President's efforts to maintain executive flexibility led to a constant shift of budgetary powers from one political branch to the other: "The American budgetary process should be viewed as a working example of the separation of powers."  

1. Hamilton versus Jefferson 

The first decades of the federal government were characterized by two different budgetary philosophies: the doctrine of "executive discretion" (Hamilton) and the theory of "legislative restraint" (Jefferson). 

Alexander Hamilton, the first Secretary of the Treasury from 1789 to 1795, favored and exercised a central role in the budget process, thereby enabling the executive branch to carry the prime responsibility in public finance. Although the Treasury Act of 1789 did not authorize Hamilton to review and oversee the use of appropriations, his powers were practically unfettered, since Congress passed only a few lump-sum appropriations which allowed him to direct and
transfer the appropriated money to any object of executive preference. The absence or sparsity of legislative specifications left it to Hamilton to make the actual policy choices.

This wide latitude in administrative discretion encountered increasing congressional criticism which finally led to Hamilton's resignation from office. Thomas Jefferson supported this legislative opposition even after he had been elected President in 1801. In his first message to the Congress Jefferson proposed to "[c]ircumscrib[e] discretionary powers over money" "by appropriating specific sums to every specific purpose susceptible of definition." In addition to this presidential restraint, Congress managed to strengthen its internal structure by appointing a House Committee on Ways and Means (1795, not permanent until 1802) which controlled tax and expenditure bills simultaneously.

This victory of Congress' doctrine of "legislative restraint" influenced the whole 19th century budget process. The Legislature implemented detailed appropriation bills which drastically narrowed executive discretion. The Secretary of the Treasury was not allowed to coordinate the budget requests of the several departments. Instead he could only transmit their "Books of Estimates" to Congress. The President had no direct impact on the budget.
Several measures of congressional reorganization, however, brought forth a significant decline in legislative budget control during the outgoing 19th century. The increasing complexity of governmental activities made Congress strip the old House Ways and Means Committee of its appropriating function. The newly created Appropriations Committee (1865), therefore, could specialize in the spending side of the budget, but it lost sight of the revenue totals—a danger then regarded as irrelevant because of constant budget surpluses. A change of the House rules in 1876 permitted this new committee to insert general legislation in the appropriation bills. The jealousy of the legislative committees resulted in the second major fragmentation of the House's fiscal committees. In 1885, six major areas, for instance defense and foreign affairs, were taken out of the Appropriations Committee's jurisdiction. The Senate underwent a similar procedure which caused a third fragmentation.

Finally, the outside factor of "coercive deficiencies" weakened congressional budget supervision. In the face of permanent budget surpluses, the administration became more and more upset about Congress' overspecificity and frequent deliberate underfunding in appropriation bills. "Deficiencies" were created when agencies entered into contracts in advance of appropriations or when they spent the money provided for the entire year within the first three quarters. They were made "coercive" by threatening to
curtail services drastically (used by the Post Office) or to delete the whole program. Resentfully, Congress had to appropriate the money necessary to cover these deficiencies.

2. The Antideficiency Act of 1905

To stop these practices of evading the limits set in appropriation legislation, Congress passed the Antideficiency Act of 1905. The Act prescribed in its pertinent parts:

No Department of the Government shall expend... any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or obligation for the future payment of money in excess of such appropriations unless such contract obligation is authorized by law... All appropriations made for contingent expenses or other general purposes... shall... be so apportioned by monthly or other allotments as to prevent undue expenditures in one portion of the year that may require deficiency appropriations to complete the service of the fiscal year; and all such apportionments shall be adhered to except when waived or modified in specific cases by the written order of the head of the Executive Department...

The Act failed for two reasons: agency heads made excessive use of the waiver provisions. Despite a 1906
amendment which narrowed this exception clause to "some extraordinary emergency," deficiency appropriations could not be curbed substantially. Secondly, Congress did not recognize that "coercive deficiencies" were only the consequence of a deeper-rooted evil: meticulous, overspecific itemization of appropriation bills "depriving the government of the benefits of executive judgment." "[T]he practice of itemization was... at variance with the general theory underlying the Constitution which makes Congress responsible for determining policies involving the expenditure of money and the Executive responsible for executing them." Thus, after one hundred years, the warnings of Jefferson's Secretary of the Treasury, Albert Gallatin, became true: "Since it would be impossible to foresee, in all its details, the necessary application of funds..., Congress should grant the executive departments a reasonable discretion by avoiding too detailed appropriations."

In the 20th century, this evil of excessive itemization of appropriation bills was first challenged by the Commission on Economy and Efficiency, appointed by President Taft in December 1909. It proposed to give the executive branch a more accountable role in the federal budget process, thereby laying the foundation for the Budget and Accounting Act of 1921.
3. The Budget and Accounting Act of 1921

This Act set the first milestone in systematic reorganization of the federal budget process. Its main achievement was the concentration of budgetary decision-making within the executive branch. To that end sec. 201 of the Act required the President to submit an annual executive budget proposal to Congress. This document had to list revenue and expenditure figures and estimates for the prior, present, and future fiscal years including "[a]ll essential facts regarding the bonded and other indebtedness of the Government." In order to encourage executive fiscal responsibility, sec. 202 even provided that in case of an imminent deficit "the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency." Since the President was not able to fulfil this new task personally, the Budget and Accounting Act of 1921 also created the new Bureau of the Budget (BOB) to assist the President with the necessary staff and expertise. The head of the Bureau, the Director of the Budget, was appointed by the President and directly responsible to him. He was "the President's man." Sections 207 and 209 authorized the BOB to "assemble, correlate, revise, reduce or increase" the estimates of the several departments as well as to investigate the efficiency of other agencies. In 1939 the BOB moved from its original location in the Treasury
Department to the Executive Office of the President, a change which symbolized its increasing independence from other administrative establishments. The number of employees has risen steadily over the last decades. In 1970, under President Nixon, it was renamed "Office of Management and Budget" (OMB).

As a counterweight to this augmented executive influence, the House, in 1920, and the Senate, in 1922, decided to refer all appropriation bills to their respective appropriation committees, thereby discarding the fragmented process of 1885. The Act of 1921 thus "streamlined" the executive budget preparation in a direct and the legislative appropriation process in a more indirect way. However, one counterweight against executive dominance was provided for in the Act itself: the creation of the General Accounting Office (GAO) with the Comptroller General as its head. The GAO was made responsible solely to Congress, with the Comptroller General removeable only by joint resolution of both Houses. The Act assigned to the GAO all the accounting and auditing functions of the Comptroller of the Treasury and of the six auditors of the Treasury Department.

"[F]or the first time in our national history we could speak of a budget process comprising formulation by the executive, authorization [and appropriation] by Congress, execution under the direction of the President, and independent audit as a means of legislative review."
4. The Legislative Reorganization Act of 1946

After the loose appropriation practice of World War II had ended, Congress recognized that the mere strengthening of its fiscal committees had not sufficed to control public spending efficiently. As explained earlier, the 1865 referral of the appropriating function from the old House Ways and Means to the new Appropriations Committee ran the risk of neglecting to compare revenue and expenditure totals. The 1946 Act tried to avert this looming danger through the innovative idea of a "legislative budget." During the opening weeks of each regular session the four congressional fiscal committees (House Ways and Means, Senate Finance, and the two Appropriations Committees) had to meet as a Joint Committee on the Legislative Budget. By February 15, this Joint Committee had to present a report accompanied by a concurrent resolution, which compared overall federal receipts and expenditures, recommended a maximum level of appropriated money, included deficiency reserves, and suggested reductions in the public debt.

If not a "[f]iasco," the 1946 Act was at least a failure: The 1947 budget resolution was deadlocked in a conference committee of House and Senate, the 1948 resolution - the first congressional budget resolution at all - was accepted by the Republican majority in the Joint Committee, but simply ignored on the floor. Sec. 138 of the
Legislative Reorganization Act has never been followed since.

But Congress learned important lessons which benefited later budget reforms: a special budget committee needed more time; the Feb. 15 deadline was too short. Secondly, a conglomerate of four committees hindered quick decision making. Thirdly, future enforcement provisions would have to assure that committee proposals could not be easily overridden by floor amendments.

In 1950, Clarence Cannon, one of the House opponents of the 1946 Act, suggested an "omnibus appropriation bill" or single spending bill in order to examine appropriations in their totality. Rep. William S. Cole admitted that the 500 pages document had "perplexed, bewildered, befuddled, and amused" him. Nevertheless, for the first time since 1793, Congress, in 1950, enacted an omnibus appropriation bill. Since then the new concept has been ignored in the same way as the "legislative budget."

5. The Budgeting and Accounting Procedures Act of 1950

This Act achieved two significant goals: Firstly, it provided that the Federal Government shall "fully disclose... the results of financial operations." Thus, it realized, on the statutory level, the constitutional mandate that "[a] regular Statement and Account of the
Receipts and Expenditures of all public money shall be published from time to time."

Secondly, and more importantly, the Act established a higher degree of synchronization between the four major actors in the federal fiscal process: Congress (budget authorization and appropriation), Bureau of the Budget (today OMB: budget planning and execution), Secretary of the Treasury (accounting of all fiscal operations), and General Accounting Office (Comptroller General: review of accounting systems, auditing). "From our present point of view, the importance of the Act lies in the emphasis it gives to the close relation that should exist between accounting for the past, administrative management [for the present], and programming for the future."

6. The Congressional Budget and Impoundment Control Act of 1974 and

7. The Balanced Budget and Emergency Deficit Control Act of Dec. 12, 1985, popularly known as Gramm-Rudman-Hollings, form the basis of the present federal budget process and are therefore of no historical significance. Chapters IV, and V.B. will furnish an in-depth analysis of these two statutes.
III. Budget Theory

A. Budget Functions

There are numerous ways to define the term "budget". The standard definition describes a public budget as "a formal listing of the expenditures and revenues of a governmental unit" or as "l'acte par lequel sont prévues et autorisées les récesses et dépenses annuelles de l'Etat..." The best method of understanding the many facets of a public budget, however, is to analyze its different functions.

1. The "time" function

Public budgets, although usually limited to one fiscal year, operate on three time levels: last year's budget reveals what the Executive actually has done; this year's budget tells the administration what it has to do; and the congressional budget resolution for the upcoming year indicates what the Executive is expected to do. Budgets, with their retro- and prospective aspects, make "time" a controllable factor in governmental decision-making. Past action becomes accountable, present action reliable, and future action predictable. "Compared to party platforms and most... laws, inclusion in the budget [even in the executive budget proposals] carries a higher probability of concrete action."
2. The political function

The budget mirrors political compromises emerging from the struggle of political parties and countless pressure groups for a maximum share of scarce public resources and revenues. It expresses the choices of majority interests. The budget, however, can also help to redress inequalities by distributing public funds to "discrete and insular minorities." The budget document, therefore, shows in what areas the protection of minorities or other disadvantaged groups prevailed over majoritarianism. These governmental choices clarify the third political function of public budgets: they are the "most operational expression of national priorities in the public sector." Fourthly, budgets serve an essentially democratic purpose: they inform the public about the past, actual, and planned activities of the government: 

"[T]he popular will cannot be intelligently formulated nor expressed, unless the public has adequate means for knowing currently how governmental affairs have been conducted in the past, what are the present conditions and what program for work in the future is under consideration."

3. The economic function

Budgets determine the provision and distribution of public and social goods like defense, fire protection, and welfare benefits. They define the size of the public sector in the economy. More importantly, however, budgets circumscribe the degree of state intervention into the free play of private
market forces. Budgets, in this way reflect the basic economic concept of the administration ranging from "laissez faire" to a planned economy.

4. The planning, accounting, and auditing functions

Budgets help fulfill both the primary and the secondary function of executive planning. By including certain program items they make clear what the administration wants to accomplish, and by listing the pertinent figures they show how and to what extent the several departments intend to implement these programs. As a central tool for governmental planning, budgets allow officials to compare various alternatives in order to find out the most promising program at the lowest cost. Therefore, budgets may increase administrative efficiency. Subsequent accounting and auditing reveals the degree of efficiency actually achieved.

5. The legal function

Budgets, whether passed in the form of resolutions, bills, or statutes, are legally binding mandates of the Legislature to the Executive to spend certain amounts of money for specific purposes. As the historical chapter has already demonstrated, the crucial point in this context is the degree of administrative discretion. In the United States this means particularly the presidential powers of vetoing the budget or impounding some of its items. Thus, the
budget process indicates the allocation of powers between the two political branches of government.

Secondly, in contrast to long-term financial planning (future development of receipts and outlays), the preparation of next year's budget follows legal rules which can be changed only by Congress and not simply by presidential directives.

All the previously listed budget functions, as different as they may seem, can be traced back to a single idea: control. Budgets allow people to control the government, Congress to bind the Executive, and the President to survey departments and agencies. In a system of checks and balances, the budget forms a central check, helping to guarantee the mutual balance of powers.

B. Budget Concepts

The purpose of this section is to describe various concepts of computing budget deficits. The following analysis tries to answer a question of accounting: What financial operations of the federal government should be included in the budget document in order to provide the public with a clear understanding and a full disclosure of the budget's size, growth, and impact? A completely different set of budget concepts deals not with the accounting but with the planning function of budgeting: Which budgetary theory is most apt to define administrative programs so that they can be funded and implemented
efficiently? This second issue of effective executive decision-making will be discussed later in Chapter V.F.

As explained in subchapter A., budgets serve both static-descriptive functions (ceilings in appropriation bills, accounting, auditing) and dynamic functions (national priorities, governmental interventions, market regulations). "No single budget concept can satisfy all these purposes fully." Each budget theory is able to elucidate one specific aspect while usually neglecting others. As budget functions can be divided into two major groups – static and dynamic, it is useful to maintain this distinction for the analysis of budget concepts. Four static and three dynamic budget theories are commonly debated:

a) static concepts:

- the administrative budget,
- the unified cash budget,
- the capital-, investment- or divided budget, and
- the credit budget;

b) dynamic concepts:

- the current services estimates,
- the National Income and Product Accounts (NIPA), and
- the full- or high-employment budget.

Although it is sometimes difficult to draw a clear line between the two groups, one basic difference in approach should be pointed out: The static concepts depict present governmental activities and their quantitative relation to
The unified cash budget consists of two major groups of funds: the federal funds for general spending purposes and the trust funds earmarked for specific programs, such as social security and unemployment insurance benefits; see as an example the unified budget for 1987 in Appendix B, Table I. The difference between the total receipts (federal plus trust funds) and the total outlays (again federal funds plus trust funds) equals the deficit for the fiscal year, for instance $221.6 billion in 1985.
The budget totals do not comprise transactions of privately owned, government-sponsored enterprises, such as the Federal home loan banks. However, there are numerous federal publicly owned agencies that have been moved off-budget since 1971. These off-budget agencies, together with other off-budget activities, distort the otherwise complete picture of the unified budget. The Balanced Budget and Emergency Deficit Control Act of Dec. 1985, known as Gramm-Rudman-Hollings (hereinafter G-R-H), resolved this problem at least partially by putting all the previously off-budget federal entities (back) into the budget. It is true that G-R-H simultaneously classified the old-age and survivors insurance trust fund (OASI) and the disability insurance trust fund (DI) as off-budget entities. G-R-H thereby did not defeat its deficit-cutting purpose, since sec. 201 (a) (1) provides that the receipts and disbursements of OASI and DI shall be included in calculating the maximum deficit amount allowed under G-R-H. Since trust funds are usually in surplus, an adding of on-budget totals and off-budget totals results in a decreased federal deficit for 1985 (the following figures are already adjusted to the G-R-H changes regarding off-budget agencies):

- **federal funds deficit:** $266.6 billion
- **on-budget trust fund surplus:** + $45.0 billion
- **off-budget trust fund surplus:** + $9.4 billion

**total federal deficit (rounded)** - $212.3 billion.
b) In contrast to the unified cash budget, the capital-, investment-, or divided budget does not aim at completeness but at a separation of current accounts, which yield current benefits, from capital accounts or investment accounts, which yield long-term benefits. "[T]he idea of a capital budget centers on one fundamental concept - government outlays of an investment type should be financed by borrowing while all other outlays should be financed by current taxation." The capital budget helps to point out if not to avert the dangers of "fiscal illusion" (underestimation of present tax burdens) and of unduly burdening future generations, because "current benefits of government expenditures will be paid for by current taxes and future benefits by future taxes." Admittedly, the concept imposes problems of classification:

(1) How to qualify a federal community development block grant the local jurisdiction uses for current instead of investment purposes?

(2) How to assess the long-range benefits of "intangibles" like education, research etc.?

Nonetheless, the capital budget is useful, which can be seen from Appendix B, Table II showing that total federal investment in 1985 was $41.1 billion lower than that year's federal funds deficit and only $12.2 billion higher than the total federal deficit.
In passing the "Federal Capital Investment Program Information Act of 1984," the government acknowledged the advantages of the new theory for the first time: In his budget proposal to Congress, the President shall submit an analysis of current service levels and future capital investment needs for major civilian and military capital investment programs over a period of ten years. These estimates may not exceed the maximum deficit amount prescribed by G-R-H. A civilian capital investment is defined as an "appropriation... [that] will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years..."

c) The fourth and final static-descriptive budget concept worth describing is the federal credit budget introduced in 1980, see Appendix B, Table III. "It measures and controls the volume of new loans and loan guarantees extended to borrowers." This volume surpassed $1 trillion at the end of 1985. "The credit budget is a necessary supplement to the unified budget for two reasons: the unified budget does not include loan guarantees because they are uncertain liabilities contingent upon default, and neither loan guarantees nor direct loans can be fully controlled by appropriations of budget authority." But credit authority is not completely beyond control. Credit
programs subject to the appropriations process are limited for individual budget accounts by ceilings on the volume of new credit. Credit authority outside the regular appropriations process encounters de facto limitations through a 4.3 percent sequestration cut ordered by sec. 252 of G-R-H.

2. The dynamic budget concepts

a) The only dynamic budget mandated by federal statute is the current services estimates. These presidential estimates simply assume that "all programs and activities were carried on... at the same level as the fiscal year in progress and without changes in such programs and activities." Hence, they provide a base which embodies the cumulative effects of all past congressional and presidential budgetary choices, a base against which future budgetary alternatives can be compared. The current services concept answers the question: What happens if we do nothing? As displayed in Appendix B, Table IV, the deficit computed under these assumptions would amount to $103.9 billion in 1991, whereas G-R-H orders a balanced budget for fiscal 1991. Consequently, the current services estimates prove that the budget cannot be balanced without drastic policy changes. These estimates have two additional advantages: they are being provided for the four years beyond the present fiscal year, for example from 1987 to 1991, and they include off-budget receipts and outlays. The current services concept uses the same economic assumptions as the presidential budget proposal, see
Appendix B, Table V, because otherwise it would be impossible to separate the effects of policy differences from the effects of differences in economic assumptions.

b) The second dynamic theory is called the National Income and Product Accounts (NIPA) of the United States, see Appendix B, Table VI. On the expenditure side, "the accounts show the market values of the currently produced output of goods and services..., on the [receipts] side, the accounts measure and classify the stream of income generated in the process of producing GNP..." NIPA differs from the unified budget in that it works on an accrual basis, not on a current basis as the cash budget, and in that it excludes net lending that represents only an exchange of one asset for another. Because of these accounting differences NIPA provides a better measure of the impact of the fiscal policy on aggregate economic activity than does the unified budget. The NIPA approach produces a deficit of $190.1 billion for fiscal 1985, a figure $22.2 billion lower than the deficit calculated with the unified budget method.

c) The full- or high-employment budget, as the third dynamic concept, offers the most interesting deficit-related approach of calculation. As mentioned earlier, budget and economy affect each other: fiscal policy choices influence economic activities, whereas cyclical factors like
unemployment or inflation affect the budget through changing levels in tax revenues and welfare payments. In order to measure the impacts of fiscal policy alone, therefore, the cyclical components must be eliminated. This is usually done by calculating the deficit at a constant unemployment rate of 6 percent (CBO) or 6.25 percent (OMB). Thus, the full-employment budget insulates the budget totals from cyclical fluctuations. For this reason, the high-employment deficit is also called the structural deficit whose economic significance has already been explained in the introductory chapter. Hence, the total federal deficit consists of the structural plus the cyclical deficits.

As long as the unemployment rate in the United States stays beyond this hypothetical benchmark of 6 (6.25) percent, the structural deficit will be lower than the total deficit, because smaller tax revenues and higher unemployment payments create a cyclical deficit, see Appendix B, Table VII. The cyclical deficit indicates the margin of stimulative fiscal policy in times of high unemployment. On the other side, during times of boom, the full-employment concept is in surplus, thereby "help[ing] to achieve economic stability by automatically imposing restraint." 29 This logic was advanced by President Nixon who introduced the full-employment concept in his fiscal 1972 budget message to Congress: The new theory "imposes the discipline of an upper limit on spending," because "expenditures must
never be allowed to outrun the revenues that the tax system would produce at reasonably full employment."

In summarizing the preceding discussion, we can regard the unified budget as a reliable way of computing the federal deficit, if off-budget activities are included in the calculation. The old administrative budget is out-dated. New budget theories provide comparative methods of defining the size and impact of deficits. They should always be taken into account as useful supplemental information for future budget planning.
IV. Functioning of the Federal Budget Process prior to the Gramm-Rudman-Hollings - Characteristics and Criticism

A. Working of the Federal Budget Process

The federal budget process or, more accurately, budget cycle consists of four phases which stretch over a period of three calendar years:

a) executive preparation and submission,
b) congressional action,
c) execution and control, and
d) review and audit.

In passing the Congressional Budget and Impoundment Control Act of 1974, Congress completely reformed its role in the federal budget process. This Act, however, did not alter the first phase of budget-making within the executive branch. In order to stay in the chronological sequence of actions, therefore, the far-reaching innovations of the 1974 Act will be described together with the second phase.

1. Executive preparation and submission

This first budget phase has three major stages itself:

a) spring planning,
b) summer sophistication, and
c) fall review.
Thus, for fiscal year 1988, beginning on October 1, 1987, the administrative planning process began in spring 1986, about 18 months before the third budget phase of execution and about 2 1/2 years prior to the fourth phase of review and audit.

The three major actors in this initial phase of budgeting are the President of the United States, the Office of Management and Budget (OMB), and the several departments, agencies and other executive instrumentalities.

a) In early spring, agencies start to plan their program objectives by reviewing current operations and estimating future needs and goals. Thus, the single agency or department triggers the whole budget cycle. After the budget offices of each agency have revised these plans and projections, the agency reports are submitted to the OMB which discusses these proposals with the heads of the several departments. Then, the OMB informs the President about the preliminary objectives of agencies and departments. The very influential "troika" of OMB, Treasury, and Council of Economic Advisers provides the President with parallel memoranda on the economic outlook and revenue estimates. Relying on this bundle of information, the President then makes his first overall budget decisions regarding programs, receipts, outlays, and deficit targets. The "letter of the OMB Director" transforms these presidential decisions into guidelines and special analyses addressed to the budget- and
 programs flexible.
The letter thus terminates the spring planning stage in early summer.
b) The second stage of sophisticated analysis within the several departments leads to the submission of formal estimates to the OMB in late fall. "Agencies... are expected to be advocates of increased appropriations. It is generally accepted... by Congress and the OMB that agency budget offices will have a strong interest in justifying their program decisions and appropriation requests." Before the actual referral of these requests to the OMB, however, agency chiefs already get in touch with Congressmen, presidential advisers, and lobbyists to receive hints on the general "taxing-and-spending climate." This method of pre-checking protects department officials from "aim[ing] too high or too low" in their demands for budget authority. Aiming too high results in deep cuts which may be taken as precedents for future fiscal years, whereas aiming too low deprives the agency of necessary reserves to keep their programs flexible.

The fall opens the final stage of executive budget preparation: review. The OMB compares the agency submittals with the presidential guidelines and new economic conditions. In contrast to the departments which are supposed to play the egotistic role of expanding their appropriations, the OMB serves as the neutral guardian of the purse trying to weigh "budget requests across the whole range of federal
activity." Since both parties, OMB on the one side, and the departments on the other, fear that one party will appeal to the President or make "end runs" to Congress in order to get an unfavorable decision of the other party overruled, OMB and agencies restrain each other, thus giving an excellent example of intrainstitutional checks and balances.

First, a specialized OMB examiner analyses the formal agency requests. He or she then refers them to top staff members who prepare the "director's review" together with the Budget Director. Finally, the agency documents reach the third and highest level of review by the President who is again supported by the advice of the "troika" (OMB, Treasury, Economic Advisers) and the Chairman of the Federal Reserve Board. The President's conclusions are sent back to each agency head, who may accept them or discuss them once more. After last-minute adjustments, the President presents the official budget document for the upcoming fiscal year to Congress within 15 days after it convenes in January.

2. Congressional Action

The increasing size of the federal government's activities and the lack of executive responsibility in the drafting of budget proposals necessitated the passage of the Budget and Accounting Act in 1921. By creating the Bureau of the Budget (later the OMB) and by requiring an executive budget submittal, the 1921 Act guaranteed a degree of concentration and coordination within the executive branch that had no
counterpart in Congress. Later legislative reform efforts, like the legislative budget or the omnibus appropriations bill, failed shortly after their implementation. Congress had learned its lessons, but it could not make up its mind for a radical restructuring of its budget procedures.

In the early 1970s, however, two defects in the old legislative budget process became so obvious and threatening that immediate action could no longer be postponed. First, as emphasized in the historical chapter, Congress never established a mechanism of comparing revenue and expenditure totals, after it had deprived the old House Ways and Means Committee of its appropriation function in 1865. Both Houses could afford this practice under the small surplus budgets of the 19th century. The huge, often negative budget balances of the post-World-War-II period called for better coordination. Second, President Nixon's aggressive impoundment policy aroused even moderate legislators.

Public Law 92-599, passed in 1972, expressed Congress's growing concern about these two issues. First, Congress established a joint committee of 32 members that had to recommend

"the procedures which should be adopted by Congress for the purpose of improving congressional control of budgetary outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully
coordinated with an overall view of the anticipated revenues for that year..."

Secondly, sec. 402, amending the Budget and Accounting Procedures Act of 1950, required the President to report amount, date, period, and reasons of any impoundment promptly to Congress and the Comptroller General.

In April 1973, The Joint Committee issued its final report. In June 1974, both Houses approved the "Congressional Budget and Impoundment Control Act of 1974" signed into law on July 12, 1974. Sec. 1 defines Titles I - IX as the "Congressional Budget Act of 1974" and Title X as the "Impoundment Control Act of 1974", which originally had been considered in separate legislation. Title X is of no significance at this point, but will form the center part of Chapter V.D.2.

Sec. 2 cites the purposes of Titles I - IX:

"(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;...
(4) to establish national budget 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."
a) The participants in the congressional budget process

Before 1974, the four fiscal committees and to some extent the GAO had been the major actors in legislative budgeting. In order to achieve the goals of the budget reform, Congress went beyond mere procedural improvements and created three new budget institutions:

(1) the Budget Committee of the House of Representatives (HBC, sec. 101);
(2) the Budget Committee of the Senate (SBC, sec. 102); and
(3) the Congressional Budget Office (CBO, sec. 201 - 203).

The jurisdiction and functions of these new participants in legislative budgeting are as follows:

(1) and (2): the Budget Committees

The Congressional Budget Act establishes both committees as standing committees. The HBC consists of 23 members, the SBC of 16 members. They are recruited from the fiscal and legislative committees of each House to coordinate the taxing, spending, and the general legislation of Congress.

The jurisdiction of both committees is circumscribed by their functions and duties. sec 101(c) and 102(a):

"(1) to report the matters required to be reported under titles III and IV...[in particular the first and second concurrent resolutions and the budget which will be discussed below];

(2) to make continuing studies of the effect on the budget outlays of relevant existing and proposed
legislation and to report the results of such studies to the House on a recurring basis;

(3) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures... with direct budget outlays...; and

(4) to review... the conduct by the Congressional Budget Office of its functions and duties."

These ample powers of the two Budget Committees are enforced by sec. 306, one of the central provisions of the 1974 Act. It prohibits any consideration of budget resolutions outside the HBC or the SBC except in the form of amendments. The legislative budget initiative, therefore, lies in the hands of the new Budget Committees.

"It is important to note the distinct nature of the functions of the two Budget Committees. They are created to guide Congress in the new tasks of setting national fiscal policy aggregates; that is, total spending, revenue, and debt levels. No other committee of the Congress performs these tasks, a major defect prior to the establishment of the new congressional budget process."

(3) the Congressional Budget Office (CBO)

The CBO is headed by a Director who is appointed by the Speaker of the House and the President pro tempore of the
Senate, sec. 201(a). Either House may remove him by resolution, sec. 201(a)(4).

Sec. 202 specifies the duties and functions of the CBO. Its prime task is to assist the Budget and Appropriations Committees of both Houses by furnishing information on appropriation bills, tax legislation, and future revenue estimates, sec. 202(a),(b). Furthermore, it has to provide all the information particularly requested by Congress.

Secondly, the CBO assumes all the duties of the Joint Committee on Reduction of Federal Expenditures created in 1941. Consequently, the CBO became responsible for "score-keeping," an important budgetary function which "involves the tracking of Congress' numerous spending decisions and relating them to the budget authority and outlay targets established in concurrent resolutions on the budget." Through this method, Congress is periodically being informed whether pending legislation harmonizes with taxing and spending limits.

Thirdly, by April 1 of each year, the CBO has to submit a report to both Budget Committees, including alternative levels of total revenues and outlays and a discussion of national budget priorities under various fiscal policies, sec. 202(f).

Fourthly, sec. 403 directs the CBO to prepare an estimate of costs which would be incurred in carrying out proposed bills and resolutions for the following four fiscal years.
In summary, the CBO operates as an essential, nonpartisan arm of Congress with wide-ranging responsibilities in the procurement of alternative data relevant to budgetary choices.

b) The first concurrent resolution on the budget

Title III, comprising sections 300 to 311, forms the core of the Congressional Budget Act of 1974. It prescribes a totally reorganized legislative budget process, forcing each participant to take certain actions at specified dates. The procedure starts in November, eleven months before the beginning of the new fiscal year on October 1. Appendix A, Table I displays the precise timetable set up in sec. 300. The following analysis will adhere to this meticulously devised schedule.

The first stage encompasses all actions leading to the completion of the first concurrent resolution on the budget (hereinafter: first resolution) by the May 15 deadline.

According to sec. 605(a), the President must submit the current services estimates to Congress by November 10. "The purpose of these projections is to provide a neutral baseline against which the Congress can consider potential changes as it examines the budget for the upcoming fiscal year." Then, 15 days after Congress meets in January, the President has to present the formal executive budget document which is based upon the unified budget concept. This proposal contains no less than 25 different items.
The most important ones are the estimated revenues, expenditures, and proposed appropriations "necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year," information about the national debt, and finally a comparison of last fiscal year's receipt and outlay estimates with the actual receipt and outlay totals of that year.

Shortly after the submission of the President's budget, both Budget Committees begin hearings with administration officials, members of Congress, and representatives of interest groups, sec. 301(d). Additionally, by March 15, each congressional standing committee has to submit to the HBC and the SBC detailed analyses of legislation affecting future revenue and spending totals, sec. 301(c). Further information on fiscal policy choices flows from the Joint Economic Committee. Finally, as mentioned above, the CBO issues a comprehensive report on all budget-relevant data to both committees by April 1, sec. 202(f).

This refined mechanism of consultation and information improved congressional budgeting in a double sense: In contrast to their 1946 ancestor, the Joint Budget Committee, HBC and SBC use a five-months time frame (Nov. 10 to Apr. 15) to prepare the first budget resolution. Secondly, they are informed by offices and committees of both political branches about estimated receipt and outlay totals.
and thus about the size of an eventual deficit. Congress has learned these lessons well.

Equipped with such wealth of information, the Budget Committees are prepared to do the major step in the new budget process: the passage of the first resolution by April 15, sec. 301(a) and (f). This first concurrent resolution on the budget shall set forth:

"(1) the appropriate level of total budget outlays and of total new budget authority;
(2) an estimate of budget outlays and an appropriate level of new budget authority for each major functional category...;
(3) the amount... of the surplus or the deficit in the budget which is appropriate in light of economic conditions...;
(4) the recommended level of Federal revenues...; 22
(5) the appropriate level of the public debt..."

Appendix A, Table II illustrates these requirements for the fiscal year 1976 resolution, not including, however, the functional break-down under clause (2). Technical budget terms like "budget authority," "outlays," "authorizations," "appropriations" etc. are explained in Appendix C.

The final deadline of the first stage in congressional budgeting is May 15. After that date it shall not be in order to report any bills allowing for new budget authority.
Sec. 402(a) thus prohibits legislative committees from authorizing new programs which would change revenue and expenditure totals, after floor consideration of the first resolution had been finished also by May 15, sec. 301(a). Stingent procedural rules (debate limits, prohibition of motions to recommit or reconsider the resolution) make sure that House and Senate conferees and each floor actually meet this May 15 deadline.

It should be kept in mind, however, that this resolution is only a "tentative budget." Its 19 functional categories as well as its five major budget aggregates (revenues, budget authority, outlays, deficit, and public debt) are not legally binding but only guide Congress in its future budget considerations. Violations of these target-totals, therefore, are not subject to points of order.

c) The appropriation process

The first stage of congressional budgeting answered two questions: What programs shall be authorized for the upcoming fiscal year starting on October 1? Secondly, which revenue and expenditure totals are appropriate? The second or appropriation phase, in contrast, determines the amount of budget authority provided for every single program. These decisions are made by the House and Senate Appropriations Committees and Subcommittees in the same way as before 1974. Since the functional break-downs in the first resolution are not necessarily identical with the Appropriation Committees'
jurisdiction, a special accompanying report allocates the spending totals to each committee, a technique called "crosswalking."

On or before the 7th day after Labor Day (early September) all spending legislation must be completed, sec. 309. Sec. 307 requires the House Appropriations Committee to bundle all appropriation bills and to report them jointly to the floor. This appropriations "package" can more easily be compared with the spending limits of the first resolution than spending bills reported on a piecemeal basis. Furthermore, the CBO issues periodic scorekeeping reports during this second stage so that Congress stays up-to-date concerning the impacts of proposed legislation on revenue and expenditure totals.

d) The second concurrent resolution on the budget

After all fiscal legislation—guided by the totals and categories in the first resolution—has been finished, Congress enters the third stage which leads to the passage of a second resolution by September 15. Both Budget Committees submit to their floors this second resolution which reaffirms or revises the first resolution, even if Congress is not in session on the day of submission, sec. 310(a). This document contains the revenue and spending totals held appropriate by the Budget Committees and directions to the fiscal committees of both Houses to adjust their bills to the new revenue floors and spending ceilings of the second
resolution. By September 15, two weeks before the fiscal year begins, Congress must have completed action on the second resolution, sec. 310(b).

e) Reconciliation

These directions to the fiscal committees are usually approved on the floor. Consequently, the new totals and categories of the second resolution must be reconciled with the totals and functions of all fiscal legislation implemented between the passage of the first and the second budget resolution. This fourth and final stage of congressional budgeting is therefore called "reconciliation". The several committees report their corrective actions to the Budget Committees which bundle them and transfer them to the floors, sec. 310(c). By September 25, Congress must have approved or amended these corrections in the form of a reconciliation bill or a reconciliation resolution, sec. 310(d).

Two essential enforcement provisions assure that the second and the reconciliation resolutions become binding upon Congress:

(1) Sec. 310(f) forbids any adjournment sine die before the completion of these resolutions. Thus, Congress cannot escape by mere inaction.

(2) Sec. 311(a) subjects to points of order all legislation which, if implemented, would exceed the spending ceilings or fall short of the revenue floors set forth in the
reconciliation resolution. This regulation impedes spontaneous, unreflecting floor amendments.

In summary, the Congressional Budget Act of 1974 eliminated the three major shortcomings of the 1946 Act. The new budget process established smaller committees with more time for deliberation and stricter enforcement rules against floor inaction or overruling.

3. Execution and control

In this third phase of federal budgeting, it is the executive branch which reassumes responsibility.

When the appropriation bills are enacted in conformity with the reconciliation process, the various agencies request the OMB for apportionment of funds. "Apportionments may be defined as the rate at which budget authority may be used." To ensure that appropriated money is spent effectively and equally over the whole year, the OMB apportions the funds usually by quarters. Thus, the administration retains some, but not unlimited discretion in the disbursement of public money. The subsequent breakdown of apportionments within the individual agencies is called allotment.

Outlays can be financed by old and new budget authority. In the first case, the money had already been obligated during the old fiscal year (e.g. by a sales contract), but it had not been disbursed before the actual delivery during the new fiscal year. For this and other reasons, budget
authority - the right to obligate money - and outlays - the payment of money - differ in every fiscal year.

Outlays are generally covered by Treasury deposits at the twelve Federal Reserve Banks. "Federal disbursing officers make payment by issuing checks against the Federal Reserve Bank accounts on the basis of vouchers approved by certifying officers of the various agencies."

A minimum of congressional control during the third budget phase stems from three presidential reporting duties:

(1) Twice a year, before April 11 and July 16, the President must submit to Congress an up-dated budget stating changes in budget requests and estimates.

(2) "The President may submit to Congress proposed deficiency and supplemental appropriations [he thinks] necessary because of laws enacted after the submission of the budget or that are in the public interest."

(3) Envisaged rescissions and deferrals of budget authority must be transmitted to Congress in a special message under the Impoundment Control Act of 1974. This procedure will be discussed in more detail in Chapter V.D.2.

Finally, every federal officer is legally bound by the provisions of appropriation bills. The following restraints resemble the Antideficiency Act of 1905, but they differ from it by excluding the loopholes which caused the failure of the old Act:
"An officer or employee of the United States Government... may not -

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation...; or

(B) involve... government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

4. Audit

In the final budget phase budgetary power shifts back to Congress. The General Accounting Office (GAO), established by the 1921 Budget Act and responsible solely to Congress, discharges the duties of auditing the financial transactions carried out by the executive branch. The GAO is empowered to "investigate all matters related to the receipt, disbursement, and use of public money." It audits the books of all federal agencies responsible for the custody and payment of public funds, including the Internal Revenue Service and the Federal Reserve Board. It also supervises the accounting systems of the general agencies.

GAO auditing can take three different forms. The comprehensive audit checks the reporting system and selective transactions of an individual agency. The general audit examines the accounts of disbursing officers in order to analyse the legality of each transaction. If the GAO discovers irregularities, it institutes recovery procedures against the liable officer. The third form of review, the
commercial audit, applies only to government corporations and enterprises.

Thus, a federal program, planned in spring 1985, authorized and funded in summer 1986, and executed during fiscal year 1987, will not be completely audited before spring 1988.

B. Criticism of the Federal Budget Process under the 1974 Budget Act

In general, the 1974 Act was received positively as a useful "step in the right direction." It helped to close the information gap between the executive branch and Congress, thus making the Legislature more independent of administrative data and policy choices. The new budget process proved that Congress had the will and courage to (re)assume fiscal responsibility. In the judgment of a Congressman, "[t]he budget process has survived... in the face of all... the jurisdictional issues and the threats that it brings to existing power structures, because the budget process is the most promising vehicle that we have."

From May 1976, the start of the new process, to May 1980, Congress met its deadlines for the first and second concurrent resolutions on the budget. Democratic sponsorship guaranteed majorities in both Houses for the budget resolutions. Whereas half of the Republican Senators usually supported this majority, the resolutions encountered severe
resistance from Republican Representatives until 1980. When President Reagan came into office in 1981, Republican opposition decreased because of the deep tax and spending cuts approved by Congress. With rising deficits, however, Republicans became again suspicious of the virtues of the 1974 Act.

Critics argue that under the new Act the deficit has skyrocketed from $6.1 billion in 1974 to $212.3 billion in 1985. "But condemning budget reform for failing to accomplish [the objective of deficit reduction] is like criticizing Hamlet for not making you laugh - it wasn't necessarily supposed to in the first place." "The Budget Act was not adopted to promote any particular fiscal policy or set of spending priorities," like curbing expenditures of even balancing the budget. "Rather, it is designed to give Congress the means to examine the budget as a whole and to establish whatever policies or priorities it wishes." The 1974 Budget Act had one principal thrust: to give Congress an integrated and expedited budget process and thus more weight in the control of federal spending. The new mechanism should make Congress aware of spending totals and deficits, but it left open the options of widening or narrowing these deficit gaps. No single provision forced Congress to set up balanced budget totals in the first or second resolution. "To increase spending, no coordination is necessary; to decrease it, an enormous amount is required." The 1974 Act
has never been expected and has never been drafted to provide this form of coordination.

From a perspective of fiscal restraint, however, the new budget process included some clearly identifiable shortcomings and loop-holes.

Most incentives for unlimited spending stem from the non-binding, tentative, and accommodating nature of the first budget resolution: "Fortunately, this resolution only sets a target and does not actually provide the spending itself. That will be done in later actions through various appropriations..." In order to win majority vote on the floors, "first budget resolutions had been written to accommodate most legislation that the Budget Committees expected."

This "soft law"- or guideline character of the first resolution entailed four unfortunate difficulties:

a) subcommittee extra spending:

As mentioned earlier, the Budget Committees - in a procedure called "crosswalking" - allocate maximum spending authority levels to the Appropriations Committees of House and Senate. These committees then subdivide the allocations among their subcommittees. But none of these apportionments is binding in total or in function. Therefore, clever subcommittee chairmen first deal with discretionary, low-priority spending bills remaining well below the recommended expenditure ceiling. Later they address mandatory (entitlements) and high-priority legislation, thus leaving to the
full committees and to the floors only a short period of time to reconsider urgent legislation. This technique of "coerced appropriations" leads to spending totals far beyond the limit set in the first resolution.

b) Fiscal committees work less concisely under a non-binding first resolution. They engage in discussions with the Budget Committees and party leaders for last minute bargains. Thereby, they frequently miss their reporting deadlines and block the second resolution.

c) These delays reduce the short period left for reconciliation (Sept. 15 - 25). Hence, authorizing and appropriating committees find it more and more difficult to cope with the directions contained in the second resolution. The floors are unable to control whether these committees actually adhered to the directions.

d) Since the totals of the first resolution, let alone the functional categories, are not mandatory, the tough decisions are delayed, thus overloading the reconciliation process which was made for purely corrective action. As a result, appropriation legislation is often not finished by the start of the new fiscal year, although the 1974 Act had deferred it by three months, from July 1 to October 1. In order to keep agencies running, Congress must resort to the most dangerous budget loop-hole: last-minute, short-time appropriations in the form of continuing resolutions.
This way of escape is offered by sec. 304:

"At any time after the first concurrent resolution on the budget for a fiscal year has been agreed to pursuant to sec. 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises the concurrent resolution on the budget for such fiscal year most recently agreed to."

These continuing resolutions undermine the spending ceilings (or the tax floors if used for tax increases) of the second resolution. Consequently, Congress had to turn to a fiscally dishonest practice: It revised the totals of the old second resolution together with the passage of the new first resolution of the upcoming fiscal year.

Congress started to recognize that the second budget resolution overloaded the process and restrained appropriations too late. After a series of missed deadlines (Nov. 28 for fiscal year 1980, Nov. 20 for fiscal 1981, and December 10 for fiscal 1982), the Legislature decided to discontinue the formulation of second budget resolutions starting with fiscal year 1983. At the same time, first budget resolution totals were made binding (i.e., subjecting legislation breaching the totals to points of order) with the start of the new fiscal year.
"The shift from the second to the first resolution is much more than a matter of timing: it also changes the focus of reconciliation." Reconciliation now begins immediately after the approval of the first budget resolution, giving Congress more time to modify pending appropriation legislation. Even authorization bills, whose consideration should normally be completed before the first resolution [sec. 402(a)], have recently been subjected to reconciliation in order to reduce budget authority ceilings for certain programs. Applied in this manner, reconciliation cuts spending twice by curtailing programs (authorizations) and funds (appropriations). Thus, Congress was able to pass Omnibus Budget Reconciliation Acts (bundled into one package) already in mid-summer 1981 and 1982.

Besides these procedural issues, many critics blamed the 1974 Act for neglecting off-budget agency supervision and "backdoor-spending" (budget authority granted outside the regular appropriation process). As explained in Chapter III., the first problem was solved by G-R-H that moved all off-budget agencies - except social security - back into the budget. The difficulties involving "backdoor-spending" are the subject of Title IV of the 1974 Act and Subpart II of G-R-H. They will be thoroughly analysed in Chapter V.E.
V. How to Reduce the Federal Budget Deficit?

A. A Balanced Budget Amendment to the United States Constitution - Senate Joint Resolution 58

For two reasons, the Congressional Budget Act of 1974 failed to reduce federal spending, let alone to balance the budget:

a) As pointed out earlier, the 1974 Act has made Congress conscious of budgetary totals and their impact on the economy. Budget surpluses or deficits were regarded as useful figures in the process of making fiscal choices, but they were not judged as either desirable or detrimental. The new budget process was supposed to promote congressional awareness of facts, not the approval of fiscal restraint.

b) The second flaw is inherent in every legislation. Congress is the master of its own rules: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member," Art. I, sec. 5, cl. 2 of the Federal Constitution. Provided that a motion to change or to suspend the legislative rules finds the necessary two thirds majority, Congress may depart from self-imposed restrictions at its whim: "No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present..." 1 Rule XXVII of the House of Representatives. This option is expressly reserved in sec. 904 (a)(2) of the 1974 Act.

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An additional avenue for avoiding the enforcement provisions of the Congressional Budget Act is offered by sec. 904 (b): "Any provision of title III [new budget process] or IV [backdoor-spending] may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate." This waiver does not even require a qualified majority. Senator Barry Goldwater reported that the Senate has approved over 250 waivers of just one section of the 1974 Budget Act between 1976 and 1984. Yet a balanced budget amendment would be unnecessary, if the two existing statutory limits to public spending worked. The first limitation is without any bite: "Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may not be more than the receipts of the Government for that year." By saying "commitment" instead of "obligation" and "may" instead of "shall" the provisions remain unenforceable. The second statutory restraint, the public debt limit, imposes a more precise ceiling on public spending by stating a concrete dollar amount which obligations issued by the federal government may not exceed. Like the 1974 Budget Act, this provision might have made Congress aware of an essential budget aggregate, namely the national debt as the accumulation of past deficits. As a matter of legislative routine, however, Congress has raised this ceiling every
year in order to adjust it to increasing annual deficits. Since Congress did not want to cast an extra public vote on a higher debt ceiling, it resorted to a "legal fiction" which raises the debt limit automatically. This silent method is deceptive because it operates beyond the scrutiny of the press and the public. Despite its complicated diction, Rule XLIX of the House of Representatives is therefore worth quoting:

"Upon the adoption by Congress... of any concurrent resolution on the budget setting forth as the appropriate level of the public debt... an amount which is different from the amount of the statutory limit on the public debt..., the enrolling clerk... shall prepare an engrossment of a joint resolution... increasing... the statutory limit on the public debt by an amount equal to the difference between such limit and such appropriate level. The vote by which the conference report on the concurrent resolution... was agreed to in the House... shall be deemed to have been a vote in favour of such joint resolution... Upon the engrossment of such joint resolution it shall be deemed to have passed the House of Representatives..."

The public debt limit set by the most recent joint resolution is $2.078 trillion.
In summary, all statutory provisions meant to control or reduce public deficits have a major flaw in common: they are subject to changing congressional majorities. The only exception, the two-thirds majority needed to overrule points of order against alleged rule violations, is applied so frequently that it severely impedes the enforcement of the new budget timetable. The following discussion will analyse the most drastic means to remove deficit control from the uncertainties of simple legislative majorities: a federal constitutional amendment imposing a balanced budget requirement as a substantial limit to federal spending.

1. The working of Senate Joint Resolution 58 (SJR 58)
The only balanced budget proposal which has found a two thirds majority in one House of Congress is SJR 58, approved by a vote of 69 to 31 on August 4, 1982, but rejected in the House of Representatives as HRJR 350 on Oct. 1, 1982, by a vote of 236 to 187, 46 short of the required two thirds majority. Appendix A, Table III quotes the text of SJR 58.

A new Senate effort to initiate a balanced budget amendment won a majority of 66 over 34 votes on March 25, 1986, just one vote short of a two-thirds majority of 67.

Theoretically, there are four ways to reduce the federal budget deficit by amending the Constitution:

a) a balanced budget amendment,

b) a spending limitation amendment,
c) a tax limitation amendment, and
d) a combination of these three options.

Alternative a) eliminates future deficits, but it does not prescribe the level at which the budget must be in balance. Rising expenditures can be compensated by higher taxation, particularly when higher inflation pushes an increasing number of taxpayers into higher tax-brackets. Option b) is able to achieve what alternative a) could not accomplish: to link spending to a fixed growth rate of GNP, personal income, or changes in the consumer price index, thus keeping public sector size stable in relation to the private economy. Option b), however, may fail to balance the budget, if the Legislature votes for tax cuts. Variation c) shares this defect because it does not exclude government borrowing as a source of revenue.

For these reasons, the Senate decided to adopt alternative d) in the form of a balanced budget/tax limitation amendment. Sec. 2 of the amendment should be read first. It imposes the crucial substantive limit by requiring that the expected receipts for the upcoming fiscal year do not grow faster than the national income in the last calendar year. This limitation should then be read together with sec. 1 providing that the planned outlays for each fiscal year may not be greater than the planned receipts calculated under sec. 2. "Put another way, sec. 2 states that the balanced budget in sec. 1 should not be balanced at levels of
receipts and outlays that consume an increasing proportion of the national economy." "Since taxes cannot grow faster than the economy and since outlays cannot exceed receipts, the proposed amendment will also establish the fiscal norm that federal outlays cannot grow faster than the economy - a de facto spending limit..." Thus, the combination of a balanced budget - with a tax limitation amendment implies an indirect spending limit.

To enforce the budget balance, the last sentence of sec. 1 directs Congress and the President to ensure that actual outlays do not exceed planned outlays. This requirement, however, does not work for receipts: actual receipts may very well fall short of planned receipts, for instance during an unpredicted economic recession. Then, spending would not have to be cut to balance the budget because reduced expenditures would only aggravate the recessional trends.

Only a supermajority of three fifths of the whole number of both Houses may waive the requirement that actual outlays shall not be greater than estimated outlays. Again, this is not true for the receipt side of the budget: according to sec. 2 a majority of all members of both Houses may permit taxes to grow faster than the national income. This difference sheds some light on how Congress sees itself: since tax increases are more unpopular than new spending programs, a smaller majority was deemed sufficient to
prevent new taxes. This attitude of implementing new expenditure programs without concomitant tax increases, nourished by massive lobbying, has created a pro-spending bias in Congress. In the opinion of the sponsors of the amendment, the constitutional balanced budget mandate was supposed to offset this pro-spending incentives by a new anti-spending bias:

"The... amendment would reduce this bias toward spending by creating a countervailing political disadvantage for pro-spending votes that does not presently exist. For the first time, votes to increase spending would, under normal circumstances, have to be accompanied by votes to increase taxes or by votes to reduce other spending programs commensurately.

Sec. 3 of the amendment contains an emergency clause for war times. Sec. 4 excludes borrowing from total receipts and repayments of debt principal from total outlays in order to prohibit an evasion of the amendment's purpose. Sec. 6, finally, imposes a constitutional limit on the public debt which cannot be increased unless approved by a supermajority of three-fifths of all members of both Houses. Remember that the statutory ceiling on the national debt could be expanded by a simple majority! Furthermore, the amendment does not distinguish between on- and off-budget transactions."
Consequently, an off-budget deficit would have to be compensated by an on-budget surplus.

The amendment has been endorsed by President Reagan in his 1986 State of the Union Address and by renowned scholars of economics like Milton and Rose Friedman ("free[s] the people... from excessive taxation"), James Buchanan and Richard Wagner, Aaron Wildavsky, and William A. Niskanen. They all view the amendment as the most promising way to stabilize the budget and the economy. In contrast, prominent legal scholars, including Laurence Tribe, Gerald Gunther, and James Ely, either reject or doubt the alleged advantages of a balanced budget amendment. They fear the risks of:

a) assembling an unprecedented constitutional convention,
b) constitutionalizing a controversial economic theory, and
c) enforcing spending cuts or tax increases through the judiciary.

2. The risks of a constitutional convention according to Art. V of the United States Constitution

All twenty-six amendments to the Federal Constitution have been proposed by a majority of at least two thirds of both Houses and have then been ratified by at least three fourths of the several state legislatures. Never has the constitution been amended on the application of two thirds of the several state legislatures requesting Congress to call a
convention proposing amendments. Yet for the first time in their history the American people are very close to such a convention. Thirty-two out of the necessary two thirds majority of thirty-four states have applied for a constitutional convention to propose a balanced budget amendment to the United States Constitution. No one can predict, if and when the two still missing applications will be filed with Congress.

In a recent interview with the author, Representative Ed Jenkins (D - Ga.), member of the House Budget Committee, expressed his concerns about the convention process:

a) Nothing in Art. V limits the jurisdiction of a constitutional convention. Departing from the limited issue of balancing the budget, the convention might turn into a roving commission debating every political controversy from abortion to school prayers. Prof. Gunther sees the same risk of a "runaway" convention: "With respect to the central constitutional question - whether a convention could and would be limited to a single object - I am convinced that there is a serious risk that it would not." Prof. Charles Black supports this view, but comes to a more radical conclusion: "If the convention really cannot be limited, then an illimitable convention is the thing the states have to ask for."

b) Secondly, in Mr. Jenkins's opinion, the convention method runs the risk of severely distorting the will of the
American people. As of yet there are no procedural rules of how to select the delegates of the several states. What if a State Governor simply appoints his favorite delegates, refusing to hold a general election? Would the Framers have accepted a constitutional convention consisting of executive appointees like the German upper house, the "Bundesrat"?

Prof. Gunther sees additional problems of procedure: Who has the "Kompetenzkompetenz", the power to prescribe the rules of procedure for the convention? What if Congress ignores or vetoes the convention's proposals, alleging the convention has transgressed the bounds of its jurisdiction?

For these reasons, Mr. Jenkins would prefer a revision of the legislative process to balance the budget.

It would be too simple, however, to reject the convention alternative as "inapposite and unavailable for the purpose of addressing a specific... shortcoming in the Constitution." In analysing the meaning of Art. V, Justice Story, in his commentaries, cites a passage from "The Federalist": "[Art. V]... equally enables the general, and the state governments to originate the amendment of errors..." If Congress may propose limited amendments, why should a constitutional convention be not allowed to do so?

Prof. Gunther refuses to accept this notion of two equal amendment procedures. The argument he presents is of considerable weight: The 1787 convention expressly rejected a
suggestion by James Madison to allow two thirds of the states to propose an amendment. Instead, the Framers conceded only the right to apply for a constitutional convention which, after its assemblage, would be entitled to make proposals. Prof. Gunther asserts that this difference proves the superiority of the traditional amendment process initiated by Congress.

Despite this difference in degree, it cannot be denied, that the Founding Fathers opened a second avenue for amending the Constitution. In Marbury v. Madison, Chief Justice Marshall declared: "It cannot be presumed that any clause in the constitution is intended to be without effect..." In Prof. Bator's view this effect was to provide "some recourse if intransigent central authority adamantly refuses to correct... a deeply felt constitutional insufficiency or flaw." He "think[s] the Art. V convention represents a profound political protection for us, as a people, against the tyranny of central government." The Xth Amendment confirms this conclusion by reserving all powers to the States which are neither prohibited to them nor delegated to the Federal Government. The amendment initiative power, however, is not only not prohibited but explicitly granted to the States.

Despite the mentioned risks, neither language nor purpose of Art. V forbid a constitutional convention limited to the proposal of a balanced budget amendment.
3. Admissibility and risks of inserting a controversial economic theory into the constitution

James Madison, discussing the doctrine of parliamentary sovereignty in Great Britain, wrote in *The Federalist*: "Where no constitution paramount to the government, either existed or could be obtained, no constitutional security similar to that established in the United States, was to be attempted." The constitution as the "supreme Law of the Land", Art. VI, sec. 2 of the Federal Constitution, must be guarded against both easy mutability and perpetuation of discovered faults. In Madison's opinion, Art. V is "stamped with every mark of propriety" to protect the Constitution from hasty and unnecessary amendments. According to Justice Story, the Framers "believed, that the power of amendment was, if one may say so, the safety valve to let off all temporary effervescences and excitements," "to secure due deliberation, and caution, and to follow experience, rather than to open a way for experiments, suggested by mere speculation or theory."

Does the balanced budget amendment incorporate such a speculative economic theory? In his famous dissent in *Lochner v. New York*, Justice Holmes wrote: "[A] constitution is not intended to embody a particular economic theory." The majority opinion in *Lochner*, applying a standard of strict scrutiny, had struck down a New York maximum working hours regulation. Thirty years later,
however, in *Nebbia v. New York* the Supreme Court affirmed Holmes' dissent in *Lochner* by upholding a New York milk price regulation. Unlike the *Lochner* majority, the *Nebbia* court refused to read a free market theory into the Constitution. Economic policies were held to be a governmental, not a constitutional, domain: "[A] state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to this purpose." Although *Lochner* has never been overruled, the Supreme Court in *Ferguson v. Skrupa* (1963) reaffirmed Holmes' opinion: "The doctrine that prevailed in *Lochner*... has long since been discarded."

Relying on Madison's requirement of a "discovered fault" and on Justice Holmes' dissent in *Lochner*, Professors Tribe and Ely reject a balanced budget amendment:

a) They interpret "discovered fault" as a structural flaw in the process of political participation and representation.

Eight out of eleven amendments adopted in the last century dealt with the right to vote and with issues of presidential succession. A balanced budget amendment, in contrast, would burden the Constitution with a substantive, non-procedural mandate: a tax and spending limit related to the growth of GNP.

b) Secondly, values proposed to become part of the Constitution must be general, fundamental, and enduring like liberty, due process, and equal protection (Vth and XIVth
Amendments). Specific, contested theories about the advantages of an annual budget balance should be enforced through the regular legislative process, not through a constitutional amendment.

But is the Federal Constitution really neutral in terms of economic and fiscal principles? Does it not empower the federal government "to lay and collect taxes" even "without apportionment among the several States," to regulate interstate and foreign commerce as well as bankruptcies, and to pay the debts of the Confederation? Does Amendment XIV, sec. 4 not define the scope of the validity of the federal public debt? Isn't the federal government prohibited from depriving any person of his or her property without due process of law or from taking this property without just compensation? Does Art. I, sec. 10 not forbid the "impairing of the Obligations of Contracts" by the states? Why is a balanced budget requirement less fundamental, less structural, and more specific than these provisions?

For these reasons, Aaron Wildavsky rejects Tribe's and Ely's arguments. It is true that the amendment restricts fiscal flexibility in times of recession and that it binds future generations who might be fiscally more liberal. But spending and taxing limits can be waived by qualified congressional majorities, and amendments can be repealed.
Despite Kenneth Dam's warning "that the Framers included only what they considered the minimum conditions for achieving their limited fiscal objectives," there is no reason to believe that in times of almost unlimited federal fiscal responsibilities a balanced budget amendment would turn this minimum into a monster of "uncertainty and inefficiency."

4. The risks of evading and enforcing the amendment

a) Evasion

SJR 58 contains only one exception: a declaration of war would allow Congress to suspend the provisions of sec. 1 and 2. Sec. 4 excludes borrowing from receipts and forecloses thereby a major accounting escape device. SJR 58 would therefore be hard to circumvent.

More dangerous, however, would be an amendment as the one proposed by Representative Alexander but later rejected in the House: its sec. 2 also requires a balanced budget, "except that Congress may, by declaration of National Emergency, adopt a statement of receipts and outlays in which total outlays are greater than total receipts." What is a national emergency: a recession, a deep recession, a depression, a series of terrorist acts? Under such a provision the amendment could be easily undermined, as former Secretary of State Dean Rusk has warned recently.
b) Judicial enforcement

The Senate Judiciary Committee which reported the amendment bill saw no problems with the enforcement of the amendment:

"[I]t... is expected that the amendment will be largely self-enforcing and self-monitoring. First, Congress and the President each are expected to establish appropriate procedures for complying with the amendment; second, Congress and the President each are expected to monitor the activities of the other branch...; and, finally, the public is expected... to monitor the actions of both of these branches of government... Only as a final resort, and only under the most compelling circumstances..., is there anticipated to be a significant role for the judicial branch."

This scheme of self-enforcement would work, if Congress cut new presidential spending programs or if the President succeeded in impounding excessive appropriations. But let us assume that both Congress - ignoring the necessary waiver majorities - and the President permit a deficit budget without taking any counteractions. Unless this occurs shortly before a general election where the electorate can remove the responsible Congressmen or the President, the Supreme Court of the United States remains the only institution to mandate a rebalancing of the budget.
In order to compel the Court to address the merits of an alleged violation of the amendment, a litigant would have to clear three procedural hurdles of justiciability:

1. Standing,
2. The political question doctrine, and
3. Equitable relief.

1. Standing

Two commentators agree that lawsuits challenging a violation of the amendment would overcome the standing barrier announced by the Supreme Court in *Flast v. Cohen* (1968). In distinguishing *Frothingham v. Mellon* (1923) the Court for the first time granted standing to a federal taxpayer who had challenged a congressional appropriation funding parochial schools as violative of the Establishment Clause of the 1st Amendment. In *Flast* the Court announced a "double nexus" test a federal taxpayer must satisfy in order to have standing:

"First, the taxpayer must establish a logical link between [his] status [as a taxpayer] and the type of legislative enactment attacked... Secondly, [he] must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional
limitations imposed upon the exercise of the congressional taxing and spending power..."

Since a litigant would attack taxing and spending legislation under Art. I, sec. 8, cl. 1, asserting that it exceeded the tax and expenditure limits imposed by a balanced budget amendment, he could show sufficient standing under the bifurcated Flast test.

The Flast standard has been upheld in the recent decision of Valley Forge College v. Americans United (1982). Under the Federal Property and Administrative Services Act of 1949, the Department of Health, Education and Welfare (HEW) conveyed federal "surplus property" to petitioner church-related college without asking for any payment. Respondents, an organization dedicated to the separation of church and state, challenged the conveyance on the ground that it violated the Establishment Clause of the 1st Amendment. Justice Rehnquist, recently proposed for Chief Justice by President Reagan, revised the Court of Appeals and denied respondents' standing. Their claim failed the first prong of the Flast test for two reasons: it challenged an executive, not a congressional action; secondly, Congress had enacted the 1949 statute not under its taxing and spending power, Art. I, sec. 8, cl. 1, but under the Property Clause of Art. IV, sec. 3, cl. 2. Therefore, the court
did not decide on the second *Flast* prong and further eventual standing requirements.

In section II of his opinion, however, Rehnquist elaborated on his general understanding of the standing doctrine. At an irreducible minimum, the "case and controversy" requirement in Art. III, sec. 2, cl. 1 calls for a personal, actual or threatened injury as a consequence of the alleged unconstitutional action. This "injury in fact" must be "likely to be redressed by a favourable decision." If this minimum standard is satisfied, there are still "prudential principles" which may exclude standing. One passage in Rehnquist's prudence analysis appears to be particularly relevant to a future litigant attacking a violation of a balanced budget amendment: "[T]he Court has refrained from adjudicating abstract questions of wide public significance which amount to general grievances, 'pervasively shared and most appropriately addressed in the representative branches.'" At another point Rehnquist becomes more concrete: "Art. III limit[s] the federal judicial power to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.'"

This approach is completely innovative: Justice Rehnquist analyses issues of separation of powers under the standing doctrine, not under the political question doctrine, as
Justice Brennan did in the landmark case of Baker v. Carr (1962). Rehnquist seems inclined to expand the standing requirement in order to be able to dismiss a claim at this early stage of justiciability analysis. Why, then, did he cite this passage from United States v. Richardson in his ongoing explanations about standing:

"'[R]epeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not... be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches?"

Under the given Supreme Court rationale, it is probable that a plaintiff attacking a violation of a balanced budget amendment would clear the hurdles of the Flast "double nexus" test and of the Valley Forge "irreducible minimum" standard. The threatened injury would consist of future tax increases to compensate for presently excessive spending. With Justice Rehnquist's restrictive approach to standing, however, it seems likely or at least possible that the future Rehnquist court will dismiss a law suit for prudential reasons founded on separation-of-powers concerns.
(2) Political question doctrine

Should the Supreme Court reach this second step of justiciability analysis, it might avoid a decision on the merits by declaring the petitioner's challenge a political question. First, the Court could argue that the Taxing and Spending Clause expresses a "textually demonstrable constitutional commitment of the issue to a coordinate political department." Second, it could observe that it "lack[ed] ... judicially discoverable and manageable standards" to calculate economic growth rates and fiscal estimates. Who would be the expert to doubt and refute the congressional and presidential computations? Third, the Supreme Court might emphasize that its recalculation of economic data and its consequent orders to cut spending or to raise taxes would increase "the potentiality of embarrassment from multifarious pronouncements by various departments in one question."

Thus, Baker v. Carr offers three standards under which the Supreme Court could reasonably dismiss the action as involving a nonjusticiable political question.

(3) Equitable relief

Would the plaintiff's asserted injury be "amenable to judicial remedy?" Should the court order declaratory relief as in Powell v. McCormack, thus leaving it to the political branches to transform a court decision
upholding petitioner's claim into concrete fiscal legislation or impoundments? Or should it devise injunctive relief, thereby "fundamentally modify[ing] the tripartite system of government?"

Consequently, whatever the Court may hold, the balanced budget amendment leads into a serious dilemma: if the Court dismisses law suits against alleged violations of the amendment as nonjusticiable— the more likely alternative under the foregoing considerations, the amendment cannot be enforced by the judiciary, but can only be self-enforced. If the Court decides on the merits, it becomes heavily entangled with issues of fiscal management, "matters beyond [its] expertise," thus embarrassing the political branches and disturbing the balance of powers. To avoid this dilemma, a statutory approach to balance the budget seems more appropriate than a constitutional amendment.

B. Gramm - Rudman - Hollings

The "Balanced Budget and Emergency Deficit Control Act" of Dec. 1985, named Gramm-Rudman-Hollings (G-R-H) after its co-authors in the Senate, represents the first effort to balance the budget on the statutory level. Prior legislative enactments like the Antideficiency Act of 1905 or the Congressional Budget and Impoundment Control Act of 1974 intended to control public spending, but they did not aim at
the precise budgetary goal of an annual fiscal equilibrium of revenues and expenditures.

G-R-H comprises 31 sections, divided into five Parts and covering 64 pages on the statute books. The most important provisions for the purpose of balancing the budget are
a) sec. 201 (Part A, Subpart I) which amends the 1974 Budget Act by setting maximum deficit amounts and by making the first budget resolution immediately binding, and
b) sec. 251 - 257 (Part C) which contain the core enforcement mechanism in case of excessive expenditures: automatic, across-the-board spending cuts through presidential sequestration orders.

How seriously Congress takes G-R-H may be drawn from a statement by Senator Evans (R - Wash.) who tried to explain why a new balanced budget amendment proposal failed to win the required two thirds majority in the Senate on March 25, 1986: "Gramm-Rudman had a proper impact... There was a great reluctance to amend the Constitution when Gramm-Rudmann let us look at this statutorily."

1. The operation of the amended budget process

The thrust of G-R-H is to reduce the federal budget deficit to zero with the beginning of fiscal year 1991 on October 1, 1990. Sec. 201(a) prescribes the maximum deficit amounts for the fiscal years until 1991:
- for fiscal year 1986: $171.9 billion,
- for fiscal year 1987: $144 billion,
- for fiscal year 1988: $108 billion,
- for fiscal year 1989: $72 billion,
- for fiscal year 1990: $36 billion, and
- for fiscal year 1991: $0 billion.

To attain this goal, $36 billion have to be cut from the annual budget starting with fiscal 1987. It should be noted, that despite these immense reductions the national public debt would grow by $531.9 billion up to a total of about $2.5 trillion by 1990. Therefore, even if the federal government adhered to the G-R-H timetable, billions would have to be spent to pay the interest and principal on this elevated level of national indebtedness, unless a new law mandated budget surpluses for the time after G-R-H's deficit ceilings will have expired.

Otherwise, G-R-H leaves the basic structure of the budget process under the 1974 Act untouched. However, there is one important exception: under the 1974 Act, the second budget resolution became binding in the form of a reconciliation resolution or a reconciliation bill. Later the second annual budget resolution was dropped; the first budget resolution became the only congressional document to guide fiscal legislation. But this first resolution became not binding before the start of the new fiscal year on October 1. Under G-R-H, the first resolution becomes binding immediately with its passage, "sec. 311(a)" and "sec. 301(f)" of the 1974 Act as amended. The revised G-R-H
budget timetable requires Congress to complete action on the only concurrent resolution on the budget by April 15, thus preceding the old deadline by one month.

All other deadlines of reporting or deciding are also set at an earlier stage of the budget process: most importantly, reconciliation must be finished by June 15 (formerly: Sept. 25), and House action on regular appropriations bills has to be completed by June 30 (formerly: early September).

The crucial points of reform, therefore, are the three new functions assigned to the budget resolution by G-R-H:

(1) The budget resolution passed by April 15 restricts immediately every subsequent tax or expenditure legislation. This binding character of the budget resolution is enforced by "sec. 311(a)" which subjects legislation departing from the limits set in the resolution to points of order. The enforcement of "sec. 311(a)" itself is assured by "sec. 904(b)" which requires a three fifths majority in the Senate in order to waive or suspend "sec. 311(a)." Remember that under sec. 904(b) of the original 1974 Act a simple majority in the Senate was sufficient for any rule changes. Thus, Congress took an important step to free the enforcement provisions from the uncertainties of simple majority voting.

(2) The budget resolution is not only binding upon future legislation but is bound itself by the maximum deficit amounts listed in "sec. 3(7)." Hence, the budget resolution
serves as the tool which links fiscal legislation to the overall deficit ceilings mandated for fiscal years 1986 to 1991. "Sec. 301(i)" enforces this mechanism in the same way as "sec. 311(a)" enforces the binding nature of the resolution. "Sec. 301(i)" may be waived only by qualified majorities of three fifths in the Senate ["sec. 904(b)"] and House ["sec. 301(i)(1)(B)"].

(3) Finally, G-R-H oppresses the "coercive appropriations" induced by subcommittee "maneuvering." "Crosswalking," i.e. the allocation of limited budget authority to committees and the subdivision of these allocations by the committees to their subcommittees, is enforced through points of order, "sec. 302(a),(c), and (f)" and equally reassured by "sec. 904(b)."

The supermajority of three fifths required for rule waivers in "sec. 301(i)(1)(B)" applies to every budget resolution the two Houses may adopt after the passage of the April 15 resolution, "sec. 304." Only in the case of a declared war, or during a recession as defined in sec. 254(a) of G-R-H, may Congress resort to less stringent rule waiver procedures, "sec. 301(i)(2), 311(a), and 904(b)."

2. The process of sequestration

If all these limits to deficit spending - outlay ceilings, points of order, strict rule waiver requirements - turn out to be ineffective, Congress imposes upon itself a process of automatic, across-the-board spending cuts in the form of
sequestration orders which are initiated by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO), sent for final revision to the Comptroller General as the head of the General Accounting Office (GAO), and finally issued by the President. This process is regulated in Part C (sec. 251 - 257) of G-R-H, entitled: "Emergency Powers to Eliminate Deficits in Excess of Maximum Deficit Amounts."

a) Initial estimates, determinations, and reports by the Directors of OMB and CBO, sec. 251(a)

By August 20, about six weeks prior to the beginning of the new fiscal year on Oct. 1, the Directors of OMB and CBO must submit a report to the Comptroller General "estimating the budget base levels of total revenues and total budget outlays for [the new] fiscal year, identifying the amount of any deficit excess for such fiscal year," sec. 251(a)(2). It is important to know that for fiscal years 1987 - 1990 a deficit excess of $10 billion is needed to trigger the sequestration process. Consequently, the federal government could increase the public debt by another $40 billion until 1991 without violating G-R-H. For fiscal years 1986 and 1991 any sum exceeding the maximum deficit amounts is sufficient to initiate automatic cuts.

The prime task of OMB and CBO is to calculate the spending reductions necessary to eliminate the entire deficit excess, sec. 251(a)(3). "First, the amount by which the estimated
deficit exceeds the maximum deficit amount for the fiscal year is calculated. One-half of the deficit excess is to come from defense programs and one-half from non-defense programs." Representative Les Aspin (D -Wis.) "believes that this 50-50 formula is taking on a life of its own, becoming the standard against which all budget decisions will be measured... 'The Gramm-Rudman legacy may be the enshrining in stone of 50-50.'" Second, OMB and CBO calculate the total amount of outlay savings from cancelling automatic spending increases for indexed retirement and disability programs. Third, four special rules apply to calculate the outlay savings to be achieved by cutting certain programs like guaranteed student loans, medicare, and other health programs, sec. 256(c)-(f). Fourth, in the case of further reduction needs, cuts must be made on a uniform percentage basis which is computed differently for defense and non-defense programs.

"In the event that the Directors of OMB and CBO are unable to agree on any of these calculations, [sec. 251(a)(5)] requires that their estimates be averaged to the extent necessary to produce a single, consistent set of data that achieves the required deficit reductions." The reports of OMB and CBO must be based upon the budget concept of the current services estimates, sec. 251(a)(6).
b) Report to the President and Congress by the Comptroller General, sec. 251(b)

By August 25, the head of the GAO shall submit a report to Congress and the President, based upon the estimates and saving specifications of OMB and CBO. The Comptroller General must take "due regard for the data, assumptions, and methodologies used" by the Directors, sec. 251(b)(1). He is entitled to make his own findings, but "shall explain fully any differences between the contents" of his and the Directors' reports, sec. 251(b)(2).

c) Presidential sequestration orders, sec. 252

If the Comptroller General's estimates indicate that the maximum deficit amount for a particular fiscal year between 1987 and 1990 will be exceeded by more than $10 billion, the President, by September 1, must issue an "initial order" eliminating the entire deficit excess down to the maximum deficit amount. The President must act in "strict accordance" with sec. 252(a)(3) which states that "[t]he President may not modify or recalculate any of the estimates, determinations [etc]... set forth in the report" of the Comptroller General. This initial order becomes effective on Oct. 1 with the start of the fiscal year to which it applies.

At the beginning of the new fiscal year, OMB and CBO (Oct. 5) and GAO (Oct. 10) issue revised reports indicating to what extent recent legislation has changed their initial
reports, sec. 251(c). On the basis of the Comptroller General's revised report, the President shall issue the final sequestration order on October 15. Like the initial order, this final order must be in strict compliance with the GAO report, sec. 251(b)(1)(B). Sec. 251(b)(3) prescribes that the final sequestration order "shall become effective on the date of its issuance, and shall supersede the [initial] order." After the initial order had merely withheld budget authority, the final order "cancels budgetary resources as required." On November 15, the Comptroller General must present a compliance report to Congress and the President, "either certifying that the [final] order fully and accurately complies with... [the sequestration] requirements or indicating the respects in which it does not," sec. 253.

d) Alternative congressional plan. sec. 254 (b)

Within two days after the submission of the revised GAO report on Oct. 10, the Senate may initiate an accelerated form of reconciliation for formulating a congressional alternative to presidential saving instructions contained in the initial order of September 1. This process is coordinated by the Senate Budget Committee and may lead to a conference agreement with the House of Representatives. The resulting omnibus reconciliation bill, if signed by the President, would supersede in whole or in part a presidential sequester order.
e) Special provisions in the event of recession or war

If the economy enters a recession, Congress has to consider a suspension of the whole sequestration process, sec. 254(a). A recession is defined in two alternatives:

(1) a projection by OMB or CBO that real economic growth will be less than zero for two consecutive quarters during the six-quarter period beginning with the prior quarter; or

(2) a report by the Department of Commerce that actual real economic growth for the previous two quarters was less than one percent.

A declaration of war by Congress automatically suspends the reports of OMB, CBO, and GAO, sec. 251(g), and the requirement that budget resolutions comply with the maximum deficit amounts, "sec. 301(i)(2)."

3. Constitutionality of the sequestration process

In the consolidated cases of Synar v. United States and National Treasury Employees Union v. United States the United States District Court for the District of Columbia had to address the constitutionality of the automatic deficit reduction process. Representative Mike Synar (D - Okla.), eleven other Representatives, and the NTEU, an association representing the interests of both active and retired federal employees, challenged the constitutionality of the sequestration process on two grounds:
(1) Part C of G-R-H contains an unlawfully broad delegation of legislative power to the President and other government officials (OMB, CBO, and GAO).

(2) The powers assigned to the Comptroller General and the Director of the CBO are executive in nature. Since both officers allegedly belong to the legislative branch, the doctrine of separation of powers prohibits them from participating in the sequestration process.

Defendant United States filed a motion to dismiss the claim on the ground that the congressional plaintiffs lacked standing. The United States Senate and the Comptroller General moved for leave to intervene as defendants and also filed motions to dismiss on the ground that the Act is constitutional.

The three-judge panel included Antonin Scalia, Circuit Judge of the Court of Appeals for the District of Columbia Circuit. Although the court decided per curiam, "lawyers who saw the opinion, as well as courthouse sources, said that the work was largely that of Judge Scalia," appointed by President Reagan to fill the recent Supreme Court vacancy. The court noted that jurisdiction was averred to exist pursuant to sec. 274(a)(1) and (2) of G-R-H allowing any Member of Congress and any person adversely affected to challenge the Act in the D.C. District Court on the ground that it is unconstitutional. The judges concluded that
(1) plaintiffs in both cases have standing, that
(2) the powers in question may lawfully be delegated, but that
(3) the delegation of certain executive powers to the Comptroller General, an officer removable by Congress, violates the constitutionally requisite separation of powers.

Consequently, the court invalidated the automatic deficit reduction process and the presidential sequestration order of Feb. 1, 1986. As the judgment was directly appealed to the Supreme Court, its effect is stayed under sec. 274(b),(e).

a) Standing of the parties

On the standing issue, the court reiterated the standard of Justice Rehnquist's opinion in Valley Forge Christian College v. Americans United that the plaintiff, at a minimum, must show a personal, actual or threatened injury-in-fact. NTEU contended that the presidential sequestration order issued on February 1, 1986, suspended annual cost-of-living adjustment ("COLA") benefits otherwise due those of its members who are federal retirees. The court concluded that NTEU had thus made "a sufficient showing of injury to satisfy Article III's threshold requirement of injury-in-fact." The panel, unfortunately, did not reach the step of possible prudential concerns limiting plaintiff's standing: "We disregard these prudential limitations because we think
it clear that Congress has, by enacting the judicial review provisions contained in sec. 274 [of G-R-H], expanded standing to challenge the constitutionality of the Act to the full extent permitted by Art. III." Hence, the court saw no reason to elaborate on Justice Rehnquist's merger of separation-of-powers considerations into standing issues in Valley Forge.

Congressional plaintiffs asserted that the sequestration process amended or repealed prior appropriation bills duly passed according to U.S. Const. Art. I, sec. 7. The court found the plaintiffs had standing, holding that "this claim of injury is 'specific' and 'discernible'... aris[ing] out of an interest identified in the Constitution.'"

b) Unlawful delegation of legislative power?

At the outset of its analysis, the court declared that "[i]t is strictly unnecessary... to reach this point [delegation of powers], since we hold that the challenged provisions of the Act are unconstitutional on... [separation of powers] grounds. We think it appropriate, however, in light of... subsection 274(c)... that we expedite to the greatest possible extent the disposition' of these cases, and that... we... provide our views obiter dicta." It is highly important to note the court's analytical starting-point: "The delegation doctrine is rooted in the principle of separation of powers that underlies the three-branch system of government established by the Constitution."
outlining the governing test, the District Court relied on
Chief Justice Taft's considerations in J.W. Hampton, Jr. &
Co. v. United States (1928):

[T]he separation-of-powers principle does not prevent
the legislative branch from seeking the 'assistance' of
coordinate branches; the extent and character of that
assistance must be fixed according to common sense and
the inherent necessities of the governmental
cooperation;' and so long as Congress 'lay[s] down by
legislative act an intelligible principle to which the
person or body authorized to 'exercise delegated
authority' is directed to conform, such legislative
action is not a forbidden delegation of legislative
power.'

The court continued to emphasize that in the last 200
years the Supreme Court has only twice invalidated a statute
on delegation-of-legislative-powers grounds. The two cases
are A.L.A. Schechter Poultry Corp. v. United States and
Panama Refining Co. v. Ryan, both decided in 1935, where
the Court struck down portions of the 1933 National
Industrial Recovery Act, a part of President Franklin Roose-
velt's "New Deal" legislation. Applying the J.W. Hampton
test of Chief Justice Taft, the Supreme Court held that in
both cases Congress had failed to provide intelligible
standards and statements of purpose to guide the authorized
Although the Schechter criteria are still valid, the Court has never again invalidated a statute by reason of undue delegation. In *Yakus v. United States* (1934) the Supreme Court affirmed a delegation "unless it were impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed."

In *Synar* the plaintiffs raised three major arguments which in their view justified an invalidation of the sequestration process as an unlawful delegation of legislative powers:

1. **Per se nondelegability**,  
2. **lack of standards**, and  
3. **preclusion of judicial review**.

The District Court proceeded to scrutinize these assertions separately.

1. **Per se nondelegability**

First, the District Court rejected plaintiffs' assumption that the spending power and the power of the purse constitute "core functions" of Congress which are per se nondelegable. In *Lichter v. United States* (1948) the Supreme Court stated that "[a] constitutional power implies a power of delegation of authority under it sufficient to effect its purposes." Second, the panel refused to accept the argument that the delegated power is too broad. As authority supporting its opinion the court cited *Amalgamated Meat Cutters v. Conally* (1971) where a three-judge district court upheld a delegated presidential authority "to issue such
orders and regulations as he deems appropriate to stabilize prices, rents, wages and salaries."

Third, the Synar court denied a "principle of necessity" which would render the sequestration process unconstitutional because Congress could have made the budget cuts on its own. Plaintiffs asserted that the delegation was therefore "unnecessary."

Finally, plaintiffs argued that the delegated powers allow administrators to "nullify" or "override" laws. The District Court refuted this theory. Congress may lawfully authorize officials to decide when a statute should take effect. The sequestration process, which is only triggered if certain deficit ceilings are exceeded, represents nothing but a form of constitutional "contingent legislation."

(2) Lack of standards

This argument was offered the most serious and thorough deliberation by the District Court: "The search for adequate standards to restrict administrative discretion lies at the heart of every delegation challenge." After a detailed analysis of the deficit calculation process set forth in sec. 251(a),(b) of G-R-H, the court concluded that the Act contains "constitutionally adequate legislated standards" by defining the budget base and certain specific terms like "real economic growth," "budget authority," and "budget outlays." In the court's opinion, "the totality of the Act's standards, definitions, context, and reference to past administrative practice provides an adequate 'intelligible
principle' to guide and confine administrative decisionmaking." The three judges admitted that "the assessments of current facts and the predictions of future facts that the statute requires [involve] a good deal of judgment." But "[w]hat is significant about this case... is that the only discretion conferred is in the ascertainment of facts and the prediction of facts. The Comptroller General is not made responsible for a single policy judgment..."

(3) Preclusion of judicial review

Sec. 274(h) Of G-R-H provides that "[t]he economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays... shall not be subject to review in any judicial or administrative proceeding." Plaintiffs argued that any delegated power had at least to be justiciable lest it should become an administrative monopoly. The court decided that this narrow exception from judicial review provided no sufficient basis for finding the delegation invalid."

Notably, this section of G-R-H raises serious doubts whether Congress would approve a judicial review of economic data and predictions required under a balanced budget amendment.

The Synar court concluded that "Congress has made the policy decisions which constitute the essence of the legislative function."
c) Violation of the separation of powers?

Having upheld the sequestration process on delegation of powers grounds, the District Court reviewed it as a possible violation of the doctrine of separation of powers. The judges had to answer two central questions:

(1) "In this opinion, we are careful to direct our attention to the question whether the power that the Comptroller General exercises under the Act is 'executive power in the constitutional sense.'"

(2) Does it violate the separation-of-powers doctrine, if an officer, removable by Congress, performs such executive functions?

The court answered both questions affirmatively.

It observed that the Comptroller General first determines the gross amount to be sequestered by specifying levels of anticipated revenues and expenditures; secondly, he allocates reductions amounts to particular budget items:

The first of these specifications requires the exercise of substantial judgment concerning present and future facts that affect the application of the law — the sort of power usually conferred upon the executive officer charged with implementing a statute. The second specification requires an interpretation of the law..., similarly a power normally committed initially to the Executive under the Constitution's prescription that he 'take Care that the Laws be faithfully executed,'
Art. II, cl.3... In our view, these [powers] cannot be regarded as anything but executive powers in the constitutional sense.

Thus, the court assumed that under G-R-H the head of the General Accounting Office performed executive functions in addition to his traditional legislative functions. How does this "double-functionality" affect Congress's power to remove the Comptroller General?

Like all civil officers of the United States, the Comptroller General can be impeached by Congress according to U.S. Const. Art. II, sec. 4. But he may also be removed by a joint resolution of Congress for "permanent disability, inefficiency, neglect of duty, malfeasance, or a felony or conduct involving moral turpitude." This "authority to remove embodied in the tenure statute... has the immediate effect... of causing the Comptroller General to look to the legislative branch rather than the President for guidance.

For developing the rule of law governing the scope of Congress's removal powers, the District Court relied on three principal Supreme Court cases. The first case, In re Hennen (1839), declared "the power of removal as incident to the power of appointment." This approach contravenes congressional removal authority, since the Comptroller General is not appointed by the Legislature, but by the
President with the advice and consent of the Senate, U.S. Const. Art. II, sec. 2, cl. 2.

In the second case, Myers v. United States (1926), the plaintiff was a postmaster appointed by the President for a four-year term; he was dismissed by the President despite a tenure-of-office act requiring advice and consent of the Senate for his removal. In applying the rationale of In re Hennen, Chief Justice Taft found the limitation imposed upon the President's removal power unconstitutional. If Congress drew to itself the power to remove, it would "infringe the constitutional principle of the separation of governmental powers."

The third and most significant case, Humphrey's Executor v. United States (1935), weakened the firmness of the seemingly well established In re Hennen rule. A commissioner of the Federal Trade Commission had been removed without cause by President Roosevelt. He sued for back pay. In the interpretation of Justice Sutherland, the Federal Trade Commission Act allowed removal by the President only for inefficiency, neglect of duty, or malfeasance in office. Myers was distinguished on the ground that it extended only to "purely executive officers." Justice Sutherland stated that a Federal Trade Commissioner, in contrast, "occupies no place in the executive department and... exercises no part of the executive power vested by the Constitution in the President," but that he acts only "in the discharge... of
quasi-legislative of quasi-judicial powers..." The Supreme Court in **Humphrey's Executor** continued to observe that

it [is] plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of [this] character... For it is quite evident that one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will... So much is implied in the very fact of the separation of powers of the[ ] departments by the Constitution... The sound application of a principle that makes one the master in his own house precludes him from imposing his control in the house of another who is master there."

Since the Comptroller General is charged with both executive and legislative duties, the District Court concluded that the **Synar** case "falls neatly between the two stools of Myers [postmaster as purely executive officer] and **Humphrey's Executor** [commissioner having no place in the executive department]." **Humphrey's Executor** had expressly left this "no man's land" "for future consideration and determination."

By applying various techniques, the **Synar** court accorded this middle ground to the Myers rationale. First, the panel diminished the authority of **Humphrey's Executor** as a
case "stamped with some of the political science preconceptions characteristic of its era and... with hostility towards the architect of the New Deal." Secondly, the Synar court believed that the landmark case of Immigration and Naturalization Service v. Chadha (1983) presaged the abandonment of Humphrey's Executor. In Chadha the Supreme Court invalidated the legislative veto of agency action described as "quasi-legislative" by the majority. In analogy, the Synar court regards it as "unthinkable that Congress could constitutionally provide for veto of... determinations by an officer removable by Congress - the Comptroller General, for example." Thirdly, the Synar judges argued that if defendants' assertions were true, Congress could control almost every executive power, no matter how significant it may be, by conferring it upon an official who exercises one or more nonexecutive powers as well. Fourthly, the District Court saw "neither judicially manageable nor congressionally knowable standards" to determine a still adequate mixture of legislative and executive powers in the hands of an officer removable by Congress.

At this point of its analysis, the Synar court could have saved the sequestration process by invalidating the congressional removal power. The judges, however, refused to do so. They doubted whether Congress would have entrusted the Comptroller General with the far-reaching reduction
powers had been not removable by Congress. Secondly, they referred to the G-R-H "fall back" deficit reduction process, sec. 274(f). This process takes effect if any of the "automatic" cutting procedures are found unconstitutional. The reports of OMB and CBO would then be transmitted to a special joint committee of Congress, not to the Comptroller General. The joint resolution of this committee would serve as the basis for the final presidential sequestration order. The Synar judges held that this fallback mechanism proved the congressional intent to drop the automatic sequestration process rather than to abandon Congress's power to remove the Comptroller General. Since Congress itself provided for an alternative reduction procedure, the remainder of the Act stays intact.

4. Critique and outlook

The Synar court's analysis, though elaborate and thorough in most of its parts, reveals several points of weakness in authority and logic. Most fundamentally, its perception of the doctrine of separation of powers is at odds with constitutional history, the doctrine of delegation of powers, judicial precedent, and the practical needs of a functioning government. The brief for the Comptroller General argues that "the district court's ruling... reflect[s] an unduly rigid view of the separation of powers that seeks to prevent any intermixture of the branches of government." Appellant's assertion is supported by
historical and judicial authority. According to Madison, Montesquieu "did not mean that the departments [of government] ought to have no partial agency in, or no control over, the acts of each other." In the landmark case of Buckley v. Valeo (1976), which invalidated the composition of the Federal Election Commission, the per curiam opinion of the Supreme Court held:

"It is... clear from the provisions of the Constitution itself, and from the Federalist Papers, that the Constitution by no means contemplates total separation of each of the three... branches of Government... [The Framers] saw that a hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively... The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.

The Supreme Court reaffirmed this rationale in the presidential papers case of Nixon v. Administrator of General Services (1977). The Court declined to accept an 'archaic view of the separation of powers as requiring three airtight departments of government.' Rather, in determining whether the Act disrupts the proper
balance between the coordinate branches, the proper in-
quiry focuses on the extent to which it prevents the
Executive Branch from accomplishing its constituionally
assigned functions.

But how do the powers accorded to the Comptroller General
in computing budget reductions interfere with the executive
prerogatives? The power of the purse, the right to raise and
decrease appropriations of public money, is vested in
Congress by express constitutional mandate, U.S. Const. Art.
I, sec. 9, cl. 7. This core power of congressional control
over the executive branch does not suddenly change from a
legislative into an executive function merely because it is
assigned to the Comptroller General. The Synar court itself
admitted that it is the control over functions, not over
offices, that counts in a separation of powers analysis.
The Comptroller General functions as nothing more than a
"congressional computer aid." Congress has prescribed the
budget base, the calculation formulae, the definitions of
budget terms, and the exceptions in certain areas of social
welfare. It is true that the Congressional Budget Office,
clearly an "arm of Congress," avails itself of considerable
budget expertise, too. The broad investigative powers of the
Comptroller General and the unique familiarity of the GAO
with government accounting and auditing procedures, however,
justify the additional assistance Congress sought by
allowing the Comptroller General to revise the reports of
OMB and CBO. Under G-R-H the Comptroller General does not apply the law by assessing complaints of individual citizens, nor does he enforce the law—the utmost executive function—by issuing permits or injunctions in specific cases. In the words of Buckley v. Valeo, he therefore "operates merely in aid of congressional authority to legislate...[,] sufficiently removed from the administration and enforcement of public law."

The Comptroller General falls under the same category as the Federal Trade Commissioner in Humphrey's Executor: "To the extent that [he] exercises any executive function... [he] does so in the discharge... of [his] quasi-legislative... powers..." Thus, under the rule of Humphrey's Executor, Congress's power to remove the Comptroller General does not violate the separation of powers principle. On March 27, 1986, the Court of Appeals for the Third Circuit explicitly affirmed this conclusion in Ameron, Inc. v. U.S. Army Corps of Engineers:

The core principle of Humphrey's Executor was that Congress could create agencies exercising dual functions and which were independent of unfettered executive control. In their blend of powers and functions, the Comptroller General and the GAO closely resemble the FTC and other "fourth branch" agencies. There is, therefore, little basis for distinguishing Humphrey's Executor in the present case.
Secondly, the Synar court's approaches to the doctrines of delegation of powers and of separation of powers cannot be reconciled. While the court held that the Comptroller General's powers of discretion and judgment were narrow enough to uphold them on delegation grounds, it deemed them to be "substantial" enough to invalidate them on separation-of-powers grounds. Since the "delegation doctrine is rooted in the principle of separation of powers," as the Synar court conceded, these two different approaches are logically inconsistent. The District Court would counterargue that only the broad factual as opposed to policy discretion of the Comptroller General let it conclude that he performs executive functions. But the process of finding and evaluating facts is no less important in the preparation of laws (legislative function) than in the execution of laws (executive function).

Synar provokes two additional points of criticism. Firstly, the case was not ripe for adjudication. In upholding the Comptroller General's automatic stay powers under the Competition in Contracting Act (CICA), the Ameron court declared as not ripe for review the question whether Congress's power to remove the Comptroller General is constitutional:

Congress has never tried to remove a Comptroller General and is unlikely to do so in the foreseeable future. The constitutionality of the removal provision,
therefore, has yet to be tested, and because Congress in this case [and in Synar] has not sought to remove the Comptroller General, we do not deem the constitutionality of the removal provision to be justiciable.

Nor has Congress ever tried to remove the head of an independent regulatory agency since the creation of the Interstate Commerce Commission in 1887. Besides this historical evidence, there are legal obstacles rendering a removal unlikely: Congress can dismiss the Comptroller General only for five specific causes and only by joint resolution which requires presidential approval or a congressional two thirds majority if vetoed by the President.

Secondly, Synar's analogy to Chadha is not persuasive. Comparing Congress's removal power with the invalidated one-house legislative veto, the district court judges stated: "It seems to us no more constitutionally permissible to achieve the same result [nullifying administrative determinations] ex ante [by the assertion of removal authority] instead of ex post [through legislative veto], prescribing in advance the exercise of executive power, instead of invalidating its exercise." This analogy simply goes too far. The fact that Congress can remove the Comptroller General does not prescribe a single of his calculative determinations. Furthermore, in Chadha the House of Representatives had vetoed the deportation suspension
granted Mr. Chadha by the Attorney General. This veto interfered on a case-by-case basis with the daily business of another branch of government, creating exactly the danger the separation of powers was designed to avert. In contrast, to remove the Comptroller General for neglect of duty, malfeasance etc. would require a charge of irresponsible conduct over a longer period of time and could hardly be based upon a single false determination of budget data.

For all these reasons, the Supreme Court should hold that Congress may constitutionally assign deficit reduction calculations to the Comptroller General despite its power to remove him for cause. The G-R-H sequestration process would then have to be declared constitutional.

The Synar decision may entail serious legal implications apart from the budget law. In Prof. Tribe's opinion, parts of the decision provide "powerful ammunition for the [Reagan] administration in its assault on the delegation of power to agencies independent of the president," like the Federal Trade Commission or the Federal Reserve Board. The Supreme Court might take the occasion to overrule Humphrey's Executor. Then, the President could remove commissioners for purely political reasons - a major shift in the federal balance of powers.
C. Sunset Legislation

Another statutory tool for strengthening congressional control of federal spending was developed under a theory called "sunset legislation" or simply "sunset." Whereas Gramm-Rudman-Hollings works prospectively by imposing maximum deficit ceilings on future outlays, sunset is intended to work retrospectively by means of a periodic legislative review and reenactment of federal programs. Sunset "was designed to complement the two-step authorization/appropriation process by which the Congress develops and funds federal program efforts." In the words of sunset's major sponsor, Senator Muskie (D-Me.), the new procedure is meant "to make Government more effective" by enabling Congress "to exercise greater control over the results of its legislative work." Since sunset legislation provides a method of constantly revising the progeny of legislative enactments, it functions as "a logical follow-up to budget reform." Authorizing congressional committees would cease to limit their debates to the question whether particular program funds should be increased or freeze; rather, they would decide whether certain activities are to be terminated completely. Sunset would thereby become an integral and permanent part of the authorizing process and reverse the traditional presumption of legislative continuity.

How does a sunset act operate? Senator Muskie introduced the first sunset legislation in 1976, called the "Government
Economy and Spending Reform Act of 1976." Since the 94th Congress adjourned without acting on the legislation, Muskie presented an almost identical version to the 95th Congress, called the "Sunset Act of 1977." Title I set out a five-year schedule for review and reauthorization of all federal programs according to budget function and subfunction. Unless specifically reauthorized by Congress, no program shall continue to function after the review date fixed in the schedule. Title II delegated these responsibilities to the authorizing committees of the House and Senate. Any authorization allowing new budget authority in the form of appropriations, borrowing, or contracts would be ruled out of order unless it had been scrutinized under the required sunset review provisions. Title IV, finally, describes the special rules which apply to the sunset review of tax expenditures.

In 1979, Senator Kennedy (D-Mass.), proposed the "Administrative Practice and Regulatory Control Act" whose Title III dealt with the "Review of the Effectiveness of and Continuing Need for Government Regulation Review Authorized." The bill was conceived to impose "sunset oversight" on regulatory agencies.

Although none of the proposed bills has yet been enacted, the sunset concept has five distinct advantages: First, it allows Congress to look back. Sunset permits the Legislature to check whether the Executive has adhered to
deficit ceilings and other spending restrictions, whether programs were carried out in accordance with the congressional will, and whether they were carried out at all. Second, the 19 budget functions could be grouped in a way to provide a more comprehensive and cohesive review of five major budget areas in a five-year cycle, e.g., foreign and internal security and defense; social security; natural resources, technology, research, and education; foreign and interstate commerce and transportation; finance (federal banks, interest on national debt). Third, indefinite and multiyear authorizations which render about three quarters of the federal budget uncontrollable (especially entitlements) would have to face an automatic and periodic review of their legitimacy. Fourth, the Muskie bill would not suddenly terminate entire agencies or statutes, but only "starve" programs through funding cutoffs. Fifth and most importantly, the mere threat of sunset - the peril of Congress's refusal to reauthorize an activity - would motivate the Executive to preview the effectiveness and justifiability of its administrative policies.

However, there are two constitutional concerns inherent in the idea of sunset. First, legislative oversight might violate the separation of powers, if Congress goes beyond its proper role of policy making by threatening executive officials with the termination of particular programs unless these officials interpret and apply the law according to
legislative directions. Particularly when Congress had granted broad discretionary powers of adjudication to an agency, such interference might be unconstitutional. Secondly, congressional intervention may violate the due process rights of private parties who are entitled to an unbiased administrative decision free from legislative pressures. In Pillsbury Company v. Federal Trade Commission the Court of Appeals for the 5th Circuit addressed these two issues holding that comments of a Senate subcommittee which directly questioned the correctness of the FTC's approach in a pending divestiture case intervened in the Commission's adjudicative functions and deprived Pillsbury of its right to a fair and impartial trial according to the maxims of procedural due process. The Court of Appeals for the D.C. Circuit applied a similar rationale to the "Three Sisters Bridge" case, D.C. Federation of Civic Ass'n v. Volpe. The Court found that repeated public threats by a few Congressmen had influenced the Secretary of Transportation's approval of a bridge construction project. This "extraneous pressure intruded into the calculus of considerations on which the Secretary's decision was based" and was "sufficient, standing alone, to invalidate the Secretary's action."
D. New Presidential Powers to Cut Federal Spending

Having analysed Congress's "arsenal" to balance the budget we now turn to the question whether new presidential powers—an item veto or a broader impoundment policy—are constitutional and appropriate to curb federal expenditures.

1. The item veto and the line-item veto

In contrast to the impoundment power, the presidential veto power is expressly granted by the Federal Constitution. Art. I, sec. 7, cl. 2 states that "[e]very bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it..." This general veto power is uncontested. "Its initial purpose was to protect the presidency from congressional encroachments and to permit presidents an opportunity to block measures they deemed unconstitutional."

Even a broad interpretation of the Constitution, however, does not permit an item veto or a line-item veto. The language of Art. I leaves only two choices to the President: total approval or total refusal of the bill. There is no middle ground. Consequently, the establishment of an item veto would call for a constitutional amendment.

The item veto can be defined as the presidential power "to veto, delete or send back to Congress any subsection or
portion of an appropriation bill passed by Congress." The line-item veto is more restrictive, allowing the President only to veto line-item figures, i.e., appropriation levels in appropriation bills. Either form of an item veto, however, would so significantly increase presidential authority that the two alternatives will be considered together without further distinctions.

A 1985 Gallup poll showed that 71 percent of the American people approve a presidential item veto. Since 1876, more than 150 constitutional amendments to create this new veto were proposed in Congress. All Presidents from Truman to Reagan have sought it, most recently President Reagan in his Feb. 4, 1986, State of the Union Address: "I ask you to give me what 43 Governors have - give me a line item veto... (Applause). Give me the authority to veto waste, and I'll take the responsibility..." Even Democrat Congressmen like Senator Alan Dixon (D-Ill.), welcome this aggrandizement of presidential powers: "I am convinced that adding an item veto constitutional amendment... is probably the single most important action we could take if we really wanted to end the deficit nightmare."

Four major reasons are advanced to support the adoption of a presidential item veto:

a) The item veto would help eliminate waste and extravagance in the budget.
b) It would be an effective tool to reduce federal deficits and to balance the budget.

c) It would stop the congressional practice of "logrolling," since an item veto would allow the President to disapprove single provisions of omnibus appropriation bills containing a cluster of unrelated issues.

d) It works well in most states and is favored by a majority of the American public.

What is the substance of these alleged advantages? A closer look at the item veto reveals its limited benefits. First, given the small percentage of discretionary spending (about 25 percent of the budget) the President's item veto could reduce waste only in this small section of controllable budget functions. Second, the President can already avail himself of powerful means to limit spending: he may use his general veto power more vigorously, he may defer or rescind appropriations (the two forms of impoundment), or he may address the public in order to campaign against legislative items he deems unnecessary or wasteful. With this array of possibilities, it is doubtful whether presidential influence should be strengthened by a new item veto. Third, the practice of "logrolling" would not stop but simply change sides. The President could announce in advance to veto program A, if Congress does not pass program B. In the end, both programs are likely to be implemented. Thus, the item veto would ironically boost spending, if the
President used it to trade votes for his favorite objectives. Finally, a 1981 investigation showed that the seven states without a governor's item veto had a lower per capita expenditure ($1,091) than the states with an item veto ($1,141). As an average, the former group ranks only 31st on a scale from 1 (high per capita spending) to 50 (low per capita spending). State experience, therefore, does not support the thesis that the item veto reduces spending.

Not only are the above-mentioned advantages unpersuasive, the item veto also entails fundamental risks: Congressional self-restraint in the appropriation phase would be weakened, since the President would make the final corrections anyway. State litigation proved that courts would find it difficult to give a precise and uniform definition of the terms "item" and "line-item." Moreover, only compelling reasons or structural flaws in the present system of checks and balances should lead to a constitutional amendment. Yet under existing constitutional and statutory law, the President already plays an important role in the legislative and budgetary processes.

In summary, the item veto would run the risk of severely disturbing today's system of checks and balances. Unless overridden by a legislative two thirds majority, the President's budget decisions would be final. The Executive would then exercise the power of the purse reserved to Congress in Art. I, sec. 8, cl. 1 and sec. 9, cl. 7 of the
United States Constitution. This danger of an intrusion on the principle of separated powers was recognized as early as 1915 by the New York Constitutional Convention: The item veto "has nearly resulted in an abandonment to the executive of the priceless legislative function of holding the purse." Thus, for efficiency and constitutional reasons, a presidential item veto appears inappropriate to cut deficit spending.

2. Broader impoundment powers

The Federal Constitution is silent on impoundment. Nevertheless, since the early days of the United States Presidents have impounded congressional appropriations by withholding their disbursement. Thomas Jefferson declined to spend an appropriation for gunboats. Franklin D. Roosevelt impounded congressionally approved funds in order to control inflation. Most recently, Richard M. Nixon, impounded numerous congressional appropriations that deviated from the priorities and spending levels set in his budget proposal. His aggressive impoundment policy left the rather modest efforts of his predecessors far behind: "[D]uring the Nixon years restraint was replaced by abandon, precedent stretched past the breaking point, and statutory authority pushed beyond legislative intent." This "selective enforcement of the laws" by the President manipulated the substance of legislative policy choices and led to a crucial constitutional conflict between Congress and the Presidency.
To understand the full dimensions of this crisis, different types of impoundment must be distinguished. The first group comprises the so-called "routine" impoundments which "do not by themselves restrict authorized programs... and do not interfere with the [spending] priorities... established by Congress." Their purpose is to enhance efficient management by saving the money which could not be spent because a cheaper contractor was found or because the sudden end of a military conflict could not be foreseen. Thus, the administration retains a degree of discretion to respond to changing events. Other routine impoundments are based on statutory authority or on express or implied constitutional powers like the Commander-in-Chief clause or the presidential foreign affairs power. For these reasons, routine impoundments are generally considered as constitutionally permissible.

What upset Congress was that President Nixon impounded funds for purely political reasons. This second group, the highly controversial "policy" impoundments, "reflects a determination by the president to substitute executive spending priorities for those enacted by Congress. Here the administration acts 'with prejudice' toward congressional preferences." Policy impoundments therefore threaten legislative budget prerogatives more seriously than do routine impoundments.
In comparison to the item veto, however, even the less intrusive routine impoundments can heavily endanger congressional budget control. An item veto represents presidential action with the opportunity to override it. But how can one fight the inaction of an unpublished impoundment decision silently directed to governmental agencies? "Discretionary impoundment of funds therefore constitutes an item veto without the concomitant congressional ability to overrule presidential judgment."

The controversy between Congress and President Nixon reached its peak when Nixon directed the Administrator of the Federal Environmental Protection Agency to allot no more than $2 billion of the $5 billion authorized for fiscal year 1973 to administer the Federal Water Pollution Control Act Amendments of 1972. EPA officials asserted that the Water Pollution Act's appropriations were not mandates to spend but rather ceilings on the amounts to be expended and, therefore, subject to executive discretion. In Train v. City of New York (1975) the Supreme Court rejected this argument and invalidated President Nixon's impoundments:

As conceived and passed in both Houses, the legislation was intended to provide a firm commitment of substantial sums... to achieve an early solution of what was deemed an urgent problem. We cannot believe that Congress at the last minute scuttled the entire effort by providing the Executive with the seemingly
limitless power to withhold funds from allotment and obligation.

Since litigation had lasted for two years, implementation deadlines mandated by Congress could not be met. Despite losing in court the administration achieved its prime goal to stretch out the realization of anti-pollution measures.

In response to these executive delay tactics, Congress passed the "Impoundment Control Act of 1974" as title X of the Congressional Budget and Impoundment Control Act of the same year. Because Congress did not want to leave it to the Executive to draw the often narrow line between permissible routine impoundments and controversial policy impoundments, the new Act required the administration to report any impoundment to Congress. The Act distinguishes two categories of impoundments: deferrals and rescissions. Whereas deferrals merely delay the obligation or expenditure of budget authority for one fiscal year, rescissions constitute a final cancellation of budget authority. Whenever the President determines to defer or to rescind the obligation of funds, he must transmit this decision to Congress in a special message stating amounts, reasons, and estimated effects of the impoundment. Because of their farther-reaching impact, rescissions are subject to a stricter congressional approval procedure. All presidential rescission proposals shall be made available for obligation unless, within a 45-day period, both Houses
of Congress pass a rescission bill affirming the President's cancellation of budget authority. Hence, rescission can be stopped by mere congressional inaction. This is not true for deferrals. As deferrals withhold budget authority only temporarily, at least one House of Congress must pass an "impoundment resolution" which disapproves the impoundment and forces the administration to disburse the delayed funds. The Comptroller General surveys presidential compliance with these reporting provisions. He informs Congress about executive failures to notify the Legislature, and he is entitled to reclassify conclusively deferrals into rescissions and vice versa. Finally, he can bring a civil action in the United States District Court for the District of Columbia, if the President refuses to make impounded obligations available.

The bicameralism requirement articulated in the recent landmark case of INS v. Chadha (1983), however, shifted more impoundment power to the President. In Chadha the Supreme Court struck down a one-house legislative veto. Fearing an extension of the Supreme Court's rationale to one-house impoundment resolutions, Congress frequently includes deferral disapprovals in appropriation legislation passed by both Houses. Thus it becomes more difficult to stop presidential deferrals.

In addition to introducing a notification process for every impoundment, the 1974 Impoundment Control Act narrowed
the scope of the administration's most powerful routine impoundment tool based on a 1950 amendment to the Antideficiency Act. The 1950 amendment allowed the President to establish reserves for contingencies and to effect savings made possible by a change in requirements, greater efficiency, or other developments. The 1974 version deleted the "other development" clause "to remove from the act any excuse for withholding funds for such policy reasons as combating inflation."

An overall evaluation shows that the presidential impoundment power as restricted by the 1974 Act serves as a valuable institution to make Congress review wasteful appropriations and lower federal spending.

E. Closing Budgetary Loop-Holes

There are various ways to disguise the true amount and impact of federal spending. One way is to circumvent independent auditing procedures, as occurred in the 1960s when the newly created Defense Contract Audit Agency (DCAA) took over the role of the General Accounting Office. Pro-defense Congressmen had sponsored this move which resulted in an increasing lack of auditing precision for defense contracts. Deliberate underestimation of shadow prices can serve the same end. Many governmental services are provided regardless of changes in supply or demand. In the absence of a true market value, officials, therefore,
create shadow prices. Frequently these shadow prices do not yield the money necessary to cover administrative costs. Thus, they include a hidden subsidy to the user of these services which is not evident from the budget totals.

"Backdoor spending" and off-budget activities, however, constitute the most dangerous threat to the budgetary principles of completeness and clarity.

1. Backdoor spending

Backdoor spending creates budget authority not approved through the regular appropriation process. Entitlements and tax expenditures represent the most common forms.

Entitlements may be described as provisions of law that mandate annual federal transfer payments to eligible persons or groups according to fixed formulae spelled out in the legislation authorizing the program. These federal benefits are therefore merely based on—usually permanent—authorizations. They do not have to be funded by additional appropriation bills. Permanent authorizations cover programs like social security, medicare, and unemployment insurance. They are tied to the consumer price index (CPI) and thus subject to varying economic conditions. For 1982 a one percentage point increase in unemployment, for example, was estimated to effect a $5.1 billion rise in spending. Since entitlements entitle a person to a certain benefit, savings can be achieved only by tightening the eligibility requirements contained in the permanent authorization—a lengthy
procedure which must overcome the pressures of numerous interest groups. As the fastest growing part of the federal budget, entitlements account for about two thirds of all uncontrollable spending which itself amounts to three quarters of federal expenditures.

The 1974 Congressional Budget Act, as amended by G-R-H, contains two provisions in title IV which help slow down the growth of entitlement outlays. First, entitlements cannot take effect prior to the start of the next fiscal year. Second, their amounts can be cut by the Appropriation Committees, if an Authorization Committee proposes entitlements which exceed its maximum budget authority.

"Tax expenditures can be regarded as the tax code's equivalent of direct spending. They are special provisions... that allow tax relief to encourage certain kinds of economic activity or to benefit taxpayers in particular circumstances." In the language of sec. 3(a) of the 1974 Budget Act they represent "those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." For the first time in budget history, the 1974 Act, as amended by G-R-H, requires an annual evaluation of the amount and possible impact of tax expenditures. The report accompanying the concurrent resolution on the budget shall
include estimates of tax expenditures by functional categories. Committee proposals providing for new tax expenditures must contain a projection of the legislation's effects. Finally, the Congressional Budget Office issues an annual report estimating the tax expenditures for the next five fiscal years.

Other forms of backdoor spending include contract authority to enter into obligations prior to appropriations and borrowing authority to take loans from the Treasury or the public. These types of budget authority outside the regular appropriation process were more severely restricted than entitlements and tax expenditures. The 1974 Budget Act as amended prescribes that new contract and borrowing authority will be effective only to the extent provided for in appropriation Acts. This novelty reintegrates contracting and borrowing at least de facto into the appropriation process.

Over the last few decades, backdoor spending has become such an entrenched feature of American fiscal policy that no one has ever asked whether this practice violates Art. I, sec. 9, cl. 7 of the Federal Constitution holding that "[n]o money shall be drawn from the Treasury but in consequence of appropriations made by law..." Despite their differing philosophies of fiscal control, Hamilton and Jefferson agreed upon the central importance of this provision: Jefferson argued that "all applications of money
varying from the appropriation or transcending it in amount" should be disallowed. Hamilton conceded that "[t]he design of the Constitution in this provision was... to secure these important ends, - that the purpose, the limit, and the fund of every expenditure should be ascertained by a previous law." Justice Story wrote in his commentaries that the appropriation requirement "induces a caution and integrity" in congressional spending revision.

The present practice of backdoor spending does not violate the Constitution. Contract and borrowing authority are limited in amount by subsequent appropriations. Tax expenditures do not constitute money "drawn" from the Treasury. They are merely potential revenues which were never collected. Entitlements, in contrast, fall within the language of the Constitution since they are funded by the Treasury without an appropriation. However, they are at least based on (permanent) authorizations which give them a legal foundation. Secondly, the Framers could not foresee the needs of modern welfare states where changing economic conditions create an uncertain number of beneficiaries which can not be determined at the start of the fiscal year. A periodic review of eligibility standards would ascertain the necessary degree of clarity and control envisioned by the Framers.
2. Off-budget agencies and government-sponsored corporations

The principal activity of off-budget agencies is to lend money on more favorable terms than would the private markets. Their loans thus include a subsidy which allocates resources to the borrowers. The Federal Financing Bank (FFB) operates as the most important off-budget agency. It either lends money to federal entities raised by issuing ordinary debt securities or it purchases loans that are 100 percent guaranteed by the federal government. The fees charged for this guarantee are often lower than the amount necessary to cover expected defaults. Because of these miscalculations many off-budget agencies ran into deficits which did not appear in the budget document, contrary to the constitutional mandate that "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." Finally, in 1985, G-R-H put the six federal off-budget agencies back into the budget, thus eliminating a popular instrument for shifting or disguising deficits.

Government-sponsored enterprises are privately owned and therefore off-budget by their nature. Fiscally most relevant are seven credit corporations which are granted favorable lines of credit from the Treasury. Certain additional preferences and tax exemptions enable them to borrow at lower rates than non-government-sponsored credit institutes. Submitting government-supported enterprises to budget review
would interfere with shareholders' rights. One commentator, however, suggested that the present system of diffused linkages should be replaced by an explicit subsidy scheme to provide a clearer picture of government involvement.

F. Enhancing Administrative Efficiency

So far Chapter V. has dealt with Congress's and the President's opportunities to balance the budget without violating constitutional requirements, in particular the doctrine of separation of powers. The following short analysis will consider whether the several federal agencies could improve their internal budget preparation to a point at which further cuts by Congress or the President are not needed.

1. The Planning-Programming-Budgeting System (PPBS)

Until the early 1960s agency budget planners followed a system of incremental budgeting on a line item basis. They simply "accept[ed] last year's budget as legitimate and concentrat[ed] their attention on marginal or incremental changes from that budget." Furthermore, budget needs were calculated on an item basis, e.g., personnel, supplies, equipment, etc. The objectives or purposes to be attained by these means were not taken into account. This blind approach lacked the orientation required to establish a means-ends or cost-benefit analysis. The Kennedy and Johnson
administrations eliminated this flaw by introducing an innovative management technique called Planning-Programming-Budgeting (PPBS). PPBS relies on three documents: the program memorandum (PM), the program financial plan, and the special analytic study. PM determines the agency's goals, the financial plan indicates the funds necessary to develop programs which can achieve these goals, and the special analytic study explains the reasons underlying the adoption of a particular program. PPBS, however, fails if program benefits are hard to measure. It is easy to decide which out of three tank models is most cost-effective to fulfill a limited function. It is almost impossible to compare the benefits of an aircraft carrier with those of a new highway. But setting national priorities requires these comparisons which transcend the possibilities of PPBS. Consequently, PPBS should be restricted to readily measurable and comparable program alternatives.

2. Zero-Base Budgeting (ZBB)

President Carter introduced ZBB first as Governor of Georgia and then as United States President. "It is a technique designed to help budgeters avoid the pitfalls of mindless incrementalism." Whereas sunset legislation is a congressional tool to review the functioning of legislative programs, ZBB operates as an executive program management device developed to examine the entire budget "through discrete decision packages and priority rankings." Like
sunset legislation, ZBB thus reverses the traditional presumption of budgetary continuity. The mere existence of ZBB admonishes officials that last year's programs may be cancelled unless their legitimacy is constantly reexamined and affirmed. This incentive alone furthers administrative innovation and efficiency.

The above-mentioned decision-packages consist of budget proposals with alternative levels of spending. Output and costs of the several packages are compared in order to set up a list of decisional preferences. Because of the tremendous amount of paperwork involved, ZBB was not very successful. A reasonable compromise could combine PPBS and ZBB in a three-year cycle with two years of PPBS and one year of ZBB. ZBB could then still yield some innovative ideas without overloading the agencies with permanent data gathering.

G. A Budgetary Ombudsman

An ombudsman is a "public official, usually responsible to the legislature, with broad authority to investigate individual complaints of administrative misconduct, to report on them, and to make recommendations." He or she should hold an independent office unaffected by the pressures of interest groups, constituencies, and reelection concerns. His/her powers should permit to investigate both executive and legislative "trade-offs", "logrolling," and
"pork-barrel" spending. A staff of half a dozen employees would suffice to fulfil this task since the pure existence of an independent, flexible budget watchdog would make legislators and officials afraid of public disclosures. A step into the right direction was taken by G-R-H which provides that "[t]he Speaker of the House... may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the[ir] effect and impact..."
VI. A Comparative Approach

The federal system of the United States consists of fifty member States with fifty separate fiscal jurisdictions. Each State jurisdiction imposes its own taxes and passes its own appropriation bills. As Professors Jerome and Walter Hellerstein pointed out, "the broadening of the nature and scope of the services regarded as a responsibility of State and local governments account[ed]" for an unprecedented increase in State budget totals over the last 20 years. Apart from the area of national defense, the States had to face similar challenges to budgetary restraint as the federal government experienced, particularly in the fields of environmental protection, transportation, education, and research. The States have always served as "experimental laboratories" for testing new concepts. It is therefore reasonable to look at how they managed or averted their fiscal crises.

The federal nature of the United States opens a second comparative perspective. How did other democratic, market-oriented, highly industrialized, federally structured countries like Canada, Switzerland, or the Federal Republic of Germany deal with the fiscal consequences of new governmental functions?
A. Solutions Found by Member States of the United States

1. California

California is a particularly suitable focus for a study of State approaches to public spending limitations. The renowned Proposition 13 was novel in a double sense. First, it was an exercise in direct or do-it-yourself democracy by means of referendum voting. Second, the new concept did not function as a ceiling on spending legislation but as a reduction of tax rates.

In June 1978, two out of three voters accepted Proposition 13, also called the Jarvis-Gann referendum-initiative, as an amendment to the California Constitution. The new Art. XIII A limits State and local taxes in four different ways:

a) Any ad valorem tax on real property shall not exceed one percent of the 1975 full cash value except for changes of ownership or new construction.

b) The annual increase in assessing the property's market value is limited to two percent.

c) The State may not levy new ad valorem taxes on real property. The raising of other State taxes is subject to the approval by a two thirds majority in both Houses of the California Legislature.

d) Municipalities may not impose any ad valorem property or property transfer taxes. Again, other local taxes may be increased only by a two thirds vote of the qualified voters of the district.
Many reasons can be cited for this tax revolt. First, it mirrors a widespread "frustration with government as an effective and efficient social agent" and with the booming public sector size in general. Second, due to inflation and rising real estate prices, families had to pay a constantly growing share of their income for living in the same house on the same lot. Third, "the property tax became an identifiable evil around which political action could coalesce." Property taxes are more evident and are perceived as more burdensome than other levies like income or sales taxes which are generally withheld from salaries or added to the price, respectively. Finally, between 1973 and 1978, the State of California had accumulated a surplus of $7 billion which could be used as a reserve to "cushion" the sudden drop in revenues and to "bail out" local jurisdictions with a particularly heavy dependence on property taxes.

Only one year later, in 1979, the California people went even one step further by adopting a second referendum-initiative called Proposition 4. Art. XIIIIB of the amended California Constitution limits annual State and local appropriations to the tax proceeds in 1978-79 adjusted every year by the jurisdiction's change in population and United States change in cost of living or change in statewide per capita personal income, whichever is less. Thus, California, by popular vote, had "frozen" both the revenue and the expenditure sides of State and local budgets.
After two years the $7 billion reserve was used up. Local jurisdictions could no longer count on state funds to help compensate for their revenue losses. The remedy turned out to be too severe: in order to reduce a $7 billion surplus, property tax proceeds were cut by 57 percent equalling a 37 percent decrease in own-source revenues of local governments. Ironically, a survey conducted prior to the vote on Proposition 13 had shown that the public did not favor any decreases in most local public goods and services except for welfare and administrative expenses. Californians were caught in the self-imposed mechanism of fiscal restraint mandated by Propositions 13 and 4. Federal assistance could not be expected either; to the contrary, President Reagan reduced federal aid to state and local governments.

The consequences of the tax revolt were soon felt. On the State level, educational, cultural, and minority support programs were curbed drastically. On the local level, zoning management, capital construction, and the redevelopment of blighted areas suffered from tightened budgets. Municipalities adopted "four alternative methods to maintain governmental services and still comply with" the constitutional amendments: (1) user fees, (2) private sector capital, (3) special assessments, and (4) long term bonded debt. User charges were imposed for essential governmental functions like police and fire protection. The costs of capital
improvement and municipal infrastructure were largely passed on to the developer.

Furthermore, Proposition 13 burdens new property owners who are taxed at present market value whereas old owners will continue to profit from their 1975-76 assessments. Besides unequal treatment, the two Propositions entail a strange paradox: the low one percent tax rate encouraged new businesses to purchase real estate in California. The additional tax revenues, however, could not be appropriated because of the spending limit in Proposition 4, although they were urgently needed to support land development and social welfare programs.

The California experience proves that hasty constitutional amendments can become very costly if they amount to fiscal rigidity on the tax and expenditure sides and do not allow sufficient flexibility for corrective actions. However, service cuts were not drastic enough to impress California voters: in June 1982, they "approved an initiative permanently indexing the state income tax and abolishing the State inheritance and gift taxes."

2. Massachusetts

Within months after the adoption of Proposition 13, the California tax rebellion had grown to a nationwide movement. In November 1978, thirteen States other than California voted on measures designed either to cut taxes or slow the growth rate of government spending. Only two
States, however, Idaho and Nevada, passed amendments similar to Proposition 13. Massachusetts followed in November 1980 with the adoption of Proposition 2 1/2 by 59 percent of the electorate. Chapter 59 of the General Laws of Massachusetts was amended by inserting section 21C. This statutory approach allowed more flexibility as can be seen from the fact that the original bill was amended three times in 1981, 1982, and 1984.

The main thrust of Proposition 2 1/2, however, remained unchanged: local governments may tax property at a rate no greater than 2.5 percent (Proposition 2 1/2) of full and fair market value. Communities exceeding that figure at the time the tax limit went into effect had to reduce the tax levy by 15 percent a year until the 2.5 percent limit was reached ("roll back" or "phase-in"). Third, the annual tax growth rate is also limited to 2.5 percent.

Despite the above-mentioned amendments, the repercussions were as severe as in California. The City of Cambridge, facing a 25 percent budget cut had to ask the State Legislature for approval of a one percent payroll tax on the employees of the city's largest tax-exempt institutions, Harvard University and MIT. Local jurisdictions made a variety of accommodations: they decided (1) to undertake mandated full market value assessment revaluation at this time; (2) to raise alternative sources of revenue as in Cambridge; (3) to cut appropriations; (4) to change
dependence on the capital market, or (5) to seek increased state aid.

3. Georgia

The State of Georgia offers an instructive example of budgetary restraint mechanisms on the constitutional, statutory, and agency level. With its strict limitations on appropriations legislation, Georgia is representative of the majority of the Union's Member States. A refined system of budget reserves and the courage to implement Zero-Base Budgeting (ZBB) as the first Member State makes Georgia a rare case of budgetary creativity.

Like the constitutions of 30 other States, the Constitution of Georgia contains ceilings on the State debt. Eleven paragraphs underline the importance the people of Georgia attributed to a detailed regulation of public indebtedness. A limitless public debt may be incurred only to "repel invasion, suppress insurrection, and defend the state in time of war." Temporary deficits created by a delay in tax collection and general obligation debts for infrastructural and educational projects are limited to 5 and 10 percent of previous year's net revenue, respectively. With 39 other States, Georgia shares the constitutional requirement of a balanced budget. Supplementary appropriations may be funded only by an unappropriated surplus in the State Treasury or by additional taxes. Furthermore, like 42 other State Constitutions, the Constitution of Georgia, as
interpreted by the Georgia Attorney General, gives the Governor an item veto power over appropriation bills.

On the statutory level, in Title 45 of the Official Code of Georgia Annotated, the State government has designed an interesting precautionary system of security funds to avert budget deficits. First, each year's General Appropriations Act contains a specific sum as an emergency appropriation. This money can be allotted at the Governor's discretion to agencies with unexpected financial needs. Second, if the monthly State income exceeds the approved budget allotments for each appropriation account, the surplus shall be credited to an income equalization account. Should a later monthly income be insufficient to meet the authorized allotments, the State Office of Planning and Budget, an arm of the Governor, may utilize any balance in the income equalization account to cover the deficiency. Finally, as of June 30 of each fiscal year, the State Auditor shall reserve from any available State budget surplus an amount equal to three percent of that year's net revenue collection as a revenue shortfall reserve. This wise contingency policy, combined with conservative revenue estimates by the Governor and the tax proceeds from a flourishing State economy, resulted in a $350 million surplus for Georgia in fiscal 1985. Hence, Georgia can easily meet the $100 million cut in federal aid expected for fiscal year 1986 due to Gramm-Rudmann-Hollings.
On the agency level, Governor Jimmy Carter introduced Zero-Base Budgeting (ZBB) as a new administrative management technique. On the basis of the available data, most commentators conclude that ZBB was at least a disappointment if not a complete failure. Ten thousand decision packages transcended the Governor's review capacity. Prof. Lauth argues that although ZBB did not "result in widespread program elimination" it might have led to a more efficient redistribution of resources within program units — an assumption still to be analysed in more detail.

B. The Canadian "Envelope System"

During the last decade, Canada encountered the same economic difficulties as its neighbor, the United States. From 1947 to 1977, total government spending (federal and provincial) rose 73 percent faster than the Gross National Expenditure (GNE) and reached over 40 percent of GNE in the 1980s. As in the United States, the federal Canadian government had to bear the prime share of the annual deficits, whereas certain provinces, particularly in the oil-rich west, ran considerable surpluses. Ottawa, however, was in a more serious financial position, since its deficit, in 1982, amounted to about one third of federal expenditures compared to one sixth in the United States for the same fiscal year. Additionally, high interest rates increased the burden of financing the Canadian national debt.
The Parliament's expenditure "watchdog", Auditor General James Macdonnell, called for a reevaluation of governmental programs in order to find the administration's "bottom line" with a new "value for money" auditing approach. In the late 1970s, this early criticism was further developed by the Royal Commission on Financial Management and by Canada's Comptroller General, who, in contrast to his United States counterpart, reports to the Executive, not to the Canadian Parliament.

The first comprehensive effort at fiscal restraint was undertaken on the revenue side of the federal budget. Pressure by the conservative opposition forced the Liberal Government under Prime Minister Trudeau to index the income tax brackets. This 1974 tax reform, however, lasted only until 1982, when Mr. Trudeau de-indexed taxes as part of his anti-inflation campaign. In 1976, the Liberals started another promising initiative. They committed themselves to a policy which linked the increase in federal spending to the growth rate of real GNP, an approach similar to those of SJR 58 - the United States Balanced Budget Amendment proposal - and California Proposition 4. Like tax reform, the spending limit was unsuccessful in the long run, because Ottawa's overall fiscal stance collided with the monetary policies of the Bank of Canada. Struggles over growing tax expenditures and the Finance Minister's "budget secrecy" further delayed a radical overhaul of the Canadian budgetary system.
Finally, during their brief nine-months tenure in 1979, the Clark Tories enacted a new budget concept called the "Ottawa Envelope System" (ES). It was maintained by Trudeau's Liberals on their return to power in 1980. ES was meant to reform both the tax and the expenditure sides of the Canadian federal budget. "The system assigned nine blocks of expenditure (envelopes) to different cabinet committees [consisting of groups of several ministers], each of which had both annual and rolling five-year ceilings."

These spending limits were allocated to the committees by the central Cabinet Committee on Priorities and Planning chaired by the Prime Minister. Prior to ES, only the president of the Treasury Board and/or the Minister of Finance had an institutional responsibility to suggest budget cuts. Under the new system, each minister was individually held responsible for complying with the restrictions imposed by the envelopes.

Thus, ES works on three administrative levels. At the top of the hierarchy, the Central Planning Committee and the Prime Minister set the long-term overall priorities by determining the size of the envelopes. The committees then define the medium-range fiscal strategies for their respective envelope. Finally, at the lowest level, the Minister and his staff allot the limited resources to agency heads, thus making the short-term decisions for the daily operations.
The entire ES philosophy can be summarized in the following terms: integration of policy, tax, and expenditure decision making; decentralization of authority to ministerial committees; establishment of expenditure limits; development and publication of long-range fiscal planning; inclusion of both direct and tax expenditures into the various envelopes. Each envelope consists of an "operational planning level" for existing programs and a "policy reserve" to implement new budget priorities. This technique allows a permanent comparison of old programs with new requirements and - like sunset and ZBB - it provides more flexibility and overview for budget officials.

In practice, however, ES is still confronted with numerous difficulties. At the medium and lower decision level, envelopes do not give sufficient guidance to committees and ministers. Different choices in timing and in applying the available instruments - taxation, spending, regulation, etc. - may result in a standstill due to lacking coordination among committees. Secondly, it is still unclear to what degree tax expenditures, equity financing, and loan guarantees to private enterprises should be charged against the envelope. But despite these initial practical problems, ES promises to simplify and clarify budgetary choices in Canada.
C. Switzerland

Budgetary control in the Swiss Confederation merits analysis for a very special reason. Until the late 1960s, legislative supervision of fiscal decision making was virtually nonexistant. American OMB officials would read with jealousy that "parliament is not in the habit of making any changes... in expenditures... The budget debate is normally not the occasion for much argument." The two federal chambers, the National Council representing the people and the Council of States representing the 25 cantons, may only approve or disapprove the national accounts. The executive branch, headed by the Federal Council, thus audits its fiscal operations without substantial parliamentary interference.

How could a democratic, linguistically and ethnically diversified trade nation like Switzerland survive with such an archaic, rudimentary system of fiscal checks and balances? The main reason is found in the Swiss concern for a broad national consensus to integrate the four ethничal groups. Too many powers of one governmental branch over the others could create tensions and conflicts detrimental to national unity. Instead, the Federal Constitution directs the government to consult a wide range of local and national interest groups at the preparatory stage of economic and social decisionmaking. "At this [administrative level]...the relevant choices are made with the participation of all the
interested parties so that they can only be reviewed with great difficulty at the parliamentary stage, where indeed most of the same participants are to be found again." Moreover, the Federal Council as the Chief Executive is usually supported by a 80 percent majority in both chambers. Since all four majoritarian political parties are represented by at least one Federal Councillor, "the governing coalition [has] little tendency to disapprove of the [Executive's] actions." This Federal Council acts "in corpore," as a collegiate organ. The responsibility for a particular spending decision can therefore hardly be traced back to an individual Federal Councillor. Finally, since fiscal legislation is not of general application, it is not subject to the uncertainties of the frequent popular referenda.

In the late 1960s, the "Mirage Affair" shook this unusual balance of fiscal consensus and early compromises. Parliament had appropriated 870 million Swiss Francs to purchase 100 Mirage fighter aircraft. Three years later, the Defense Department asked for a supplementary appropriation of 500 Swiss Francs million to cover certain modifications of the Mirage. Parliament suspected an executive maneuver and refused. It became obvious that neither the nonprofessional Swiss Legislature nor the outmoded planning systems in the Defense Department were able to deal with complex high-technology acquisitions of far-reaching importance. In a critical separation-of-powers conflict, the Legislature
relied on the doctrine of parliamentary supremacy for claiming broader powers of control and more informational independence of the executive branch. The conflict was finally resolved by two reform efforts. First, the defense administration was decentralized into more efficient units. New management tools like system analysis, operational research, and a cost-efficiency approach were introduced. Second, the Legislature gained more investigative rights. Among other things, it was granted the right to hear evidence from federal civil servants without executive permission. There had been no such power before the Mirage affair! Parliamentary work was professionalized and provided with more outside expertise to narrow the information gap between the executive and the legislative branches. The new process later applied to the debate concerning the purchase of tactical support aircraft. Parliament assumed a more active role from the outset. Increased legislative scrutiny, however, led to a substantial delay in this urgent question of national defense.

D. Federal Republic of Germany

After two decades of post-war "Wirtschaftswunder" (economic wonder), the Federal Republic of Germany encountered its first recession in 1966-67. The government, i.e. the Executive under German terminology, was used to double-digit growth rates and was therefore totally
unprepared for counter-cyclical measures. In order to establish a set of tools for fighting future economic crises, the Federal Parliament ("Bundestag" and "Bundesrat") implemented several reforms on the constitutional and statutory levels. From 1967 to 1969, three amendment bills restructured the entire financial section of the Basic Law, West Germany's temporary constitution. During the same period, parliament passed the "Law for the Promotion of Stability and Economic Growth" (Stability Law) and a new "Law on Budgetary Procedure" (Budget Law). The constitutional amendments will be addressed first.

1. Constitutional reform

Three constitutional provisions can be interpreted as limits on federal spending. The first, Art. 110, sec. 1, requires a balanced budget: "The budget must be balanced as regards revenue and expenditure." The second, Art. 115, sec. 2, imposes a deficit limit linked to the size of government investment: "Revenue obtained by borrowing shall not exceed the total of expenditures for investments provided for in the budget..." But there is an escape clause: "exceptions shall be permissible only to avert a disturbance of the overall economic equilibrium." Finally, Art. 109, sec. 2, prescribes a rather vague spending restriction: "The Federation and the Laender shall take due account in their fiscal administration of the requirements of overall economic equilibrium."
Do these provisions have a real impact on public budgeting or do they merely recommend financial caution? Art. 110, the balanced budget requirement, clearly has no effect. The prevailing construction suggests that Art. 110 intends only a formal, not a substantive budget balance. Borrowing, therefore, constitutes a legal revenue source to cover the annual budget deficits. Art. 115, in contrast, imposes a real deficit limit: government may not borrow more than it invests. This simple formula follows the "generation fraud theory" which holds that public deficits may be used only to finance long-term capital investments which benefit the future taxpayer generation which will have to pay back today's deficits. One weak point, however, is inherent in Art. 115: what is an investment? In order to keep their budgets within the constitutional limit, former Ministers of Finance applied a broader, more liberal definition of the term "investment." The parliamentary opposition grew so resentful of this behavior, that the issue was almost brought before the Federal Constitutional Court in Karlsruhe.

Both Art. 109 and the escape clause in Art. 115 refer to a term called "overall economic equilibrium." This technical expression cannot be understood without an explanation of the 1967 Stability Law. Art. 109 and 115 will, therefore, be further analysed in connection with the budget restraints mandated by the Stability Law.
2. Statutory reform

Paragraph one of the Stability Law cites the four factors - the "magic quadrangle" - which determine the overall economic equilibrium: price stability, high employment, foreign trade equilibrium, and steady and appropriate economic growth. The means to achieve these goals are debated in the newly created Economic Council ("Konjunkturrat"). The panel consists of federal, state, and local budget experts whose prime task is to coordinate fiscal policies on these three levels of government. Otherwise, federal countercyclical measures would run the risk of being nullified by local pro-cyclical policies. The statute's central provision is paragraph 6 which authorizes the Executive to regulate economic cycles by means of a compensatory reserve ("Konjunkturausgleichsrucklage"). In boom times, budget surpluses flow into this reserve; in recession times, the reserve helps finance deficits resulting from governmental stimulus programs and investment subsidies. Once these funds are expended, the Federal Minister of Finance is authorized to borrow additional money not exceeding DM5 billion.

According to Art. 115 of the Basic Law, the maximum deficit amount must therefore be calculated as follows: federal investments (general rule) plus compensatory reserve plus 5 billion Deutschmarks (if the exception clause triggering the Stability Law is held applicable). A well respected German commentator, Professor v. Arnim, rejects this
conclusion. He argues that Art. 109, sec. 2 - requiring the overall economic equilibrium to be duly taken into account - imposes a spending limit in addition to Art. 115. That means that deficits are not automatically in order because they range below investment expenditures; instead they must be necessitated by an economic imbalance. In Professor v. Arnim's opinion, Art. 115 prescribes a ceiling which may be reached only under an extreme economic depression or disequilibrium. These propositions are arguable, but given the broad terms of Art. 109. sec. 2 the Federal Constitutional Court would have to substitute its own fiscal policies for those of the government in order to confirm a violation of Art. 109. Consequently, Art. 115 remains the only enforceable and hence effective federal constitutional deficit limit.

The 1969 Budget Procedure Act establishes a budget process in compliance with the new standards set both in the Basis Law and the Stability Law. A final observation which may stun the American reader is that the German Parliament needs executive consent to increase the expenditures proposed by the administration, a constitutional spending limit almost unknown to the German public. Although the Executive, with very few exceptions, has always approved the legislative spending increase, the administration may require the Legislature to postpone the vote on higher expenditures. This opportunity often results in a compromise on a lower spending level.
VII. Comparisons and Conclusions

Budgetary thrift and efficiency cannot be mandated by legal rules. It is political courage that is required to withstand the temptations of short-term spending programs that please certain interest groups and constituencies and that are designed largely to ensure the reelection of their sponsors. The role of legal provisions, therefore, is principally to encourage a lower level of public expenditures through the establishment of a procedural framework that favors budgetary restraint over deficit spending. This final chapter will suggest improvements of the federal budget process in light of solutions found by the States and by foreign nations which are politically and economically comparable with the United States.

A. Improvements through Amendments to the United States Constitution

The Federal Constitution owes its influence to the fact that its basic principles and values have remained unchanged over two centuries. The 1987 bicentennial of the world's oldest unrepealed constitution should not be celebrated with amendments designed to avert a budget crisis. A balanced budget amendment, if held justiciable at all, would entangle the Supreme Court in the evaluation of fiscal priorities and
economic assumptions, the kind of discretion which has always been regarded as a prerogative of the political branches of government. It may be easier to find justiciable standards to determine the constitutionality of presidential item vetoes and policy impoundments. The frequent exercise of these two powers, however, would so severely alter the existing system of checks and balances that both the item veto and the impoundment power are not compatible with the separation of powers laid down in Art. I, II, and III of the Constitution.

The cases of California and Massachusetts have proved that constitutional tax limitation amendments do not work either. They deprive governments of the fiscal flexibility needed to fight unexpected recessions. To avoid the unwanted consequences of constitutional tax limitations, the administration is forced to levy user charges which finally amount to the original tax burden. The German example demonstrated that all deficit limits short of explicit maximum amounts can be undermined by redefining the terms of the limit, e.g. the expression "investments." A concrete maximum deficit amount, however, runs the above-mentioned risk of budgetary rigidity.

B. Improvements on the Statutory Level

1. Reform of the 1974 budget process as amended by G-R-H

G-R-H's most important achievement was the binding nature of the first (and now only) concurrent resolution on the budget. This reform imposes early spending limits — six months before the start of the new fiscal year — and more time for reconciling appropriations exceeding these limits. However, there are still some shortcomings to be eliminated.

The continuous budget resolution which is passed in order to appropriate additional funds after the start of the new fiscal year represents the most dangerous threat to budgetary integrity and clarity. A two thirds instead of the existing three fifths majority should be required to pass a continuous resolution which departs from the expenditure ceilings set forth in the concurrent resolution. Furthermore, two weeks after the beginning of the new fiscal year, any motion for a continuing resolution should be out of order except for war times. Secondly, Congress, supported by the Congressional Budget Office, should study the programs with the highest growth rates. The authorizations and appropriations funding these activities should be subject to an annual sunset review of their legitimacy and efficiency. The programs with the lowest growth rates, by contrast, should be set on a biennial budget cycle with two-year appropriations. However, every permanent authorization and appropriation — especially entitlements, must lapse after three years, regardless of their annual increase factor. Thirdly, tax- and tax expenditure legislation ought to be broken down
in the same degree of specificity as spending legislation. It would be advisable to indicate even the purposes that these revenues are supposed to fund. Legislators and taxpayers would thus become more aware of the relations between the revenue and the expenditure sides of the budget which, until recently, were regarded as isolated issues. Finally, the two Budget Committees are still considered as legislative newcomers. In order to strengthen their respect and influence, both parties should assign experienced and moderate members to these Committees. This would increase the chance of bipartisan support of budget resolutions on the floor.

2. **Bowsher v. Synar** - the future of the sequestration process

In **Bowsher, Comptroller General of the United States v. Synar, Member of Congress**, decided on July 7, 1986, the Supreme Court affirmed the D.C. District Court's invalidation of G-R-H's automatic deficit reduction process. Chief Justice Burger, speaking for four other Justices, wrote the opinion. Two Justices concurred; Justices White and Blackmun filed dissenting opinions.

The Chief Justice relied mainly on the District Court's per curiam opinion. His analysis reiterates the inquiry of the lower court. He started with the proposition that "[a] direct congressional role in the removal of officers charged with the execution of the laws beyond [the impeachment
power] is inconsistent with the separation of powers." \(^3\)

Humphrey's Executor v. United States (1935), relied upon heavily by appellants, was distinguished on the ground that it dealt with a Federal Trade Commissioner removable by the President not, as the Comptroller General, by Congress. In his second analytic step, the Chief Justice held that the breadth of "the removal powers over the Comptroller General's office dictate that he will be subservient to Congress." \(^5\) The remaining question was whether the Comptroller General performed executive functions. For Chief Justice Burger there was no doubt that "[i]nterpreting the law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." He concluded that "the powers vested in the Comptroller General under sec. 251 [of G-R-H] violate the command of the Constitution that the Congress play no direct role in the execution of the laws." The Chief Justice found that result supported by the Court's recent decision in INS v. Chadha (1983): "[A]s Chadha makes clear, once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly - by passing new legislation." \(^9\) The judgment was stayed for a period not to exceed 60 days to permit Congress to implement the fallback provisions.

Justice Steven's concurring opinion, in which Justice Marshall joined, contained the most thorough and
comprehensive discussion of the relevant legal issues. He
saw the case from a totally different perspective: "[T]he
critical inquiry in this case concerns not the manner in
which Executive officials or agencies may act, but the
manner in which Congress and its agents may act." For
Justice Stevens the essential question was not one of sepa-
ration of powers but was "simply one of congressional pro-
cess." He rejected the majority opinion's contentions that
the Comptroller General is subservient to Congress and that
he performs executive functions: "The notion that the remo-
val power... creates some kind of 'here-and-now-subservien-
tce'... is belied in history." Second, because "one of the
Comptroller General's primary responsibilities is to work
specifically on behalf of Congress" and because "there is
no definite line that distinguishes executive power form
legislative power," Justice Stevens concluded that the
"chameleon-like" function of the Comptroller General under
G-R-H "may appropriately be labeled 'legislative.'" There-
fore, the concurrence characterized the Comptroller General
as an "agent of Congress" with a degree of independence
sufficient to exclude any separation-of-powers concerns. As
an agent of Congress, however, the Comptroller General may
not be entrusted with binding policy decisions of "transcen-
dent importance" that determine the "economic destiny of the
Nation." These far-reaching decisions must be made by
Congress according to "the procedures mandated by Article I
of the Constitution - through passage by both Houses and presentment to the President:” “If Congress were free to delegate its policymaking authority to one of its components, or to one of its agents, it would be able to evade 'the carefully crafted restraints spelled out in the Constitution.'"

In his dissent, Justice White criticized the majority for having "interpose[d] its distressingly formalistic view of separation of powers" on "one of the most novel and far-reaching legislative responses to a national crisis since the New Deal." "[T]he test for a violation of separation of powers should be whether an asserted congressional power to remove [the Comptroller General] would constitute a real and substantial aggrandizement of congressional authority at the expense of executive power..." The dissent argued that such a threat to the principle of separation of powers did not exist. Justice White named several reasons for this proposition: First, the power of the purse belongs to Congress. Thus, the Legislature does not deprive the President of any power when it authorizes the Comptroller General to cut appropriations. Second, G-R-H was approved by the President. Third, presidential consent and bicameral passage would be needed to remove the Comptroller General by joint resolution. This "requirement of presidential approval obviates the possibility that the Comptroller will perceive himself as so completely at the mercy of Congress that he
will function as a tool." Fourth, Congress could threaten the Comptroller with more drastic though legal means as reducing his salary and personnel or by abolishing his position altogether. Finally, his removal for cause would be subject to post-termination judicial review. In sum, Justice White concluded that G-R-H did not "so alter[] the balance of authority among the branches of government as to pose a genuine threat to the basic division between the lawmaking power and the power to execute the law."

The second dissenting opinion by Justice Blackmun suggested that appellees were not entitled to the requested relief. Any incompatibility of the 1921 removal statute and G-R-H should have been cured by striking down the former, not the latter. To invalidate Congress's removal power and to leave G-R-H intact would have caused a lesser "disruption of congressional objectives," since Congress did not want the Comptroller General to be "subservien[t] to Congress, but rather... independen[t] from the President."

What are Congress's choices after Bowsher v. Synar? If Congress does not act at all, the fallback procedure established by G-R-H will come into operation. Then, a Temporary Joint Committee on Deficit Reduction consisting of the two Budget Committees would replace the Comptroller General. Only five days after the receipt of the reports of OMB and CBO, this Joint Committee would have to submit its own report to the floors of House and Senate. If both
Houses, within another five days, pass a joint resolution mandating spending cuts, the resolution would be presented to the President for his approval or veto. Given the imminence of the 1986 fall elections, it is hard to imagine that Congress will vote for substantial reductions within a ten-day time-frame.

Congress could consider an amendment of the sequestration process in compliance with the Supreme Court judgment. The easiest cure would be to vest the Comptroller General's functions under G-R-H into the Budget Director, the head of the Office of Management and Budget, an arm of the President. All Supreme Court Justices agreed that this move would raise no delegation-of-powers concerns. Congress, however, would lose considerable power in the oversight of the budget. The budget Director might manipulate his economic assumptions in order to favor certain presidential spending priorities. One year later, when the Comptroller General starts to audit administrative accounts and to review the soundness of these assumptions, Congress would face des faîtes accomplis.

Despite Justice Stevens' objections, Congress would therefore be well advised to abandon its power to remove the Comptroller General. Even a Comptroller removable for cause by the President would possess the necessary degree of independence to uphold Congress's power of the purse.
3. Other reform proposals

Like the State of Georgia and the Federal Republic of Germany, the Federal Government should employ a budget process that provides for a system of annual reserves. These funds would increase the ability to respond to sudden needs and would end the unfortunate practice of continuing resolutions.

The Swiss experience shows that, even in a highly pluralistic society, pressures from lobbies and constituencies can be channelled in a way that individual and local interests do not endanger long-term national priorities. Since lobbying already forms part of the American legislative process, it should be subject to the same ethical standards and to the same degree of public scrutiny. Otherwise Victor Hugo's phrase would always hold true: "The budget, strange fish and monster vast,/To which from all sides the hook is cast."

Finally, Congress should consider turning over those federal programs to the States which benefit mainly the local taxpayer and, therefore, should also be financed by him. Furthermore, more federal funds should be disbursed to the States in association with block grants which have proved to be more efficient and innovative than categorial grants.
C. Improvements on the Agency Level

The federal administration should study the Canadian "envelope system." This new approach to executive budget planning makes each department individually responsible for adhering to the spending limits imposed by the envelope. The resulting increase in competition among the several agencies induces budget planners to weed out unnecessary and wasteful programs. Combined with an alternating use of PPBS and ZBB, this "pre-filter" on the agency level would reduce the number of conflicts with Congress and allow the Legislature to spend more time on long-range strategies to balance the budget.
REFERENCES

CHAPTER I

Pages 1 - 6

1) 44 Congressional Quarterly, Weekly Report 276 (Feb. 8, 1986).


6) Id. at 10.


10) Id. at 32.


12) See generally Public Debt and Future Generations (J.M. Ferguson ed. 1964), especially at 61 the explanations of
J.M. Buchanan who developed the theory that the real burden of the public debt can be shifted to future generations.

13) Levy, supra note 7, at 52.


17) Congress. Quarterly, supra note 1, at 255.

18) AEI, supra note 4, at 13.


21) Bernstein, supra note 8, at 30.

22) AEI, supra note 4, at 24.


26) Id. at 87.


30) In the consolidated cases of Synar v. United States and National Treasury Employees Union v. United States, 626 F.Supp. 1374 (D.D.C. 1986), a Federal District Court, in a per curiam decision dating from Feb. 7, 1986, declared unconstitutional the Balanced Budget and Emergency Deficit Control Act of Dec. 12, 1986 (Pub. L. No. 99-177), popularly known as Gramm-Rudman-Hollings Act, on the ground that it vests executive power in the Comptroller General, an officer removable by Congress, thus violating the doctrine of separation of powers. For a discussion of the Supreme Court decision on appeal, see Chapter VII.B.2., accompanying notes 1 - 30.

CHAPTER II


2) Id. at 272.


4) Id. at 443-444 (quoting Hamilton).

5) 297 U.S. 1 (1936).

6) Id. at 66.

7) Id. at 65.

8) 301 U.S. 548 (1937).

9) Id. at 592-593.

10) see Bell v. New Jersey, 461 U.S. 773, 790 (1983) and García v. San Antonio Metropolitan Transit Authority, 105 S.Ct. 1005 (1985). The latter was a commerce clause case, where the majority "reduce[d] the Tenth Amendment to meaningless rhetoric," 105 S.Ct. at 1022 (Powell, J., speaking for three other dissenting Justices).

12) 3 Story, supra note 3, at 213-214.
13) Id. at 213.
14) 2 Story, supra note 3, at 503.
15) Id. at 504.
16) 2 Rotunda & Nowak & Young, Treatise on Constitutional Law - Substance and Procedure sec. 5.11, at 365 (1986).
17) 2 Story, supra note 3, at 340-341.
23) Id.
26) Id. (emphases added).
27) 34 Stat. 49, sec. 3 (1906).
29) Id.
30) Saloma, supra note 21, at 5 (interpretation of Gallatin's warning by Saloma, not Gallatin's own words).
31) 42 Stat. 20 (1920).
32) Id. sec. 201(g), at 21.

34) V.J. Browne, The Control of the Public Budget 88 (1949).


41) U.S. Const. Art. I, sec. 9, cl. 7.

42) Smithies, supra note 22, at 89. For a more detailed explanation of the "Planning-Programming-Budgeting-Systems" (PPBS) see Chapter V.F.1.


CHAPTER III


3) "Budget functions" in the sense of "budget objectives or purposes" should not be confused with the technical term "budget functions" meaning the 19 major categories in which the budget is broken down, see Office of Management and Budget, Budget for the United States Government - Fiscal Year 1987 part 5 (1986).


6) Wildavsky, supra note 3, at 4-5.

7) W.F. Willoughby, The Movement for Budgetary Reform in the States 1 (1918).


9) See infra Chapter V.D.2.

10) OMB, supra note 3, Special Analyses B-1.


12) OMB, supra note 3, at 6a-6.

13) Id. at 6b-7.

14) Id. at 6b-6. These entities are:
   - Rural electrification and telephone revolving fund;
   - Rural Telephone Bank;
   - SPR petroleum account;
   - Federal Financing Bank;
   - Postal Service fund;
   - United States Railway Association; and
   - United States Synthetic Fuels Corporation.
   Off-budget agencies and their fiscal impact will be discussed in Chapter V.E.2, infra.

15) Id. at 6a - 6-19.


19) Id. at 20.


23) OMB, supra note 3, at 6c-2.

24) Id. at 6c - 2-3.


27) Ott & Ott, supra note 18, at 10-11.

28) Id. at 11.


30) Id. at 11.

31) Id.

CHAPTER IV


4) Id. at 32.

5) Id. at 31.


7) 42 Stat. 20 (1920).

9) Id. sec. 301(b)(1).

10) See supra, note 1.


13) House Comm. on the Budget, supra note 11, at 5.


15) See supra Chapter III, pp. 45-46.


18) See supra Chapter III, pp. 41-42.


20) Id. sec. 1105(a)(10).

21) Id. sec. 1105(a)(17)&(18).


23) Ott & Ott, supra note 3, at 40.

24) Id. at 46.

25) Id. at 37.

26) Id. at 37-38, 46-48.

27) Id. at 47.


35) Ott & Ott, supra note 3, at 48.


38) Allen Schick, The First Five Years of Congressional Budgeting, in id. at 10, 17.


41) Id.; against this suggestion: Louis Fisher, Comments on R.D. Reischauer, The Congressional Budget Process, in Federal Budget Policy in the 1980s 416 (G.B. Mills & J.L. Palmer 1984): "The notion that the Budget Act was meant to be 'neutral' toward spending seems to me wholly unsupportable."


43) Schick, supra note 38, at 15.

44) Havemann, supra note 39, at 204.

45) Senate Comm. on the Budget, supra note 40, at 6.


48) Id. at 15, footnote 1.


50) Id. and Sen. Comm. on the Budget, supra note 40, at 4-5.

CHAPTER V.A.


6) Rules of the House, supra note 1, at 721-722 (emphases added).


12) Id. at 347.

13) Id. at 349.


15) Rabushka, supra note 11, at 346.


20) Id. at 135-136.

21) L.H. Tribe, Issues Raised by Requesting Congress to Call to Constitutional Convention to Propose a Balanced Budget Amendment, statement before the Committee on Ways and Means of the California State Assembly (Feb. 11, 1979).


24) Interview with the author in Mr. Jenkin's office, Washington, D.C. on April 23, 1986.


27) Gunther, supra note 22, at 6.

28) Id. at 7.


31) Gunther, supra note 22, at 8.

32) 5 U.S. (1 Cranch) 137 (1803).

33) Id. at 174.

34) Rabushka, supra note 11, at 25.

35) Id. at 27.


37) Id., No. 43, at 296.

38) Story, supra note 30, at 687.

39) Id. at 686.

40) 198 U.S. 45 (1905).

41) Id. at 75.

42) 291 U.S. 502 (1934).

43) Id. at 537.

44) 372 U.S. 726 (1963) (upholding a state statute regulating the business of debt adjusting).

45) Id. at 730.

46) The Federalist, supra note 36, at 296.

47) Tribe, supra note 21.

48) Ely, supra note 23.


52) Id. Amend. XVI.

53) Id. Art. I, sec. 8, cl. 3.

54) Id. Art. I, sec. 8, cl. 4.

55) Id. Art. VI., sec. 1.

56) Id. Amend. V.

57) Wildavsky, supra note 19, at 74.

58) U.S. Const. Amend. XXI, repealing Amend. XVIII (prohibition).


60) Al Ullman, Federal Spending and the Budget Crisis, in Control of Federal Spending 42 (C.L. Harriss 1985).


62) Commencement speech held at the University of Georgia School of Law, Athens, Ga., May 17, 1986.


65) Note, supra note 49, at 1614; see supra note 64, at 1079-1080.


67) 262 U.S. 447 (1923).


70) Id. at 479.

71) Id. at 471-476.

72) Id. at 472, 485.

73) Id. at 473.


75) Id. at 474.

76) Id. at 475 [quoting Warth v. Seldin, 422 U.S. 490, 499-500 (1975)].

77) Id. at 472 [quoting Flast v. Cohen, 392 U.S. 83, 97 (1968)] (emphasis added).


80) Valley Forge, supra note 69, at 474 [quoting United States v. Richardson, 418 U.S. 166, 188 (Powell, J., conc.)].

81) But see supra note 64, at 1079-80.


83) Id.

84) Id.

85) 369 U.S. 186 (1962).

86) Valley Forge, 454 U.S. 464, 475 (Rehnquist, J., regards this issue as another standing requirement).


88) See supra note 64, at 1107.

89) S. Rep., supra note 63, at 65.
CHAPTER V.B.


2) 33 Stat. 1257-58, sec. 4 (1905), see supra Chapter II, pp. 29-30.


6) All following sections cited in quotation marks refer to the 1974 Act as amended by G-R-H, not to the sections of G-R-H itself.

7) Fiscal year 1986 operated under a special timetable, since G-R-H was passed after fiscal year 1986 had already started; see Senate Committee on the Budget, Gramm-Rudman-Hollings and the Congressional Budget Process, An Explanation 28-29 (1986).

8) Id. at 7.


10) Sen. Comm. on the Budget, supra note 7, at 8.

11) Id.

12) See supra Chapter III., pp. 45-46.


14) Id. at 10.


16) Id. at 1378.

17) Id.


20) Synar, 626 F.Supp. at 1374, 1377.


22) Synar, 626 F.Supp. at 1379-80.


25) Id. at 1380, note 3.

26) See supra Chapter V.A., pp. 91-92, accompanying notes 75-80.

27) Synar, 626 F.Supp. at 1382.

28) Id. at 1382-1383 (emphasis in original).

29) Id. at 1383.

30) 276 U.S. 394 (1928).


33) 293 U.S. 388 (1935).

34) Id. at 430; Schechter, at 295 U.S. at 541-542.


36) Id. at 426, quoted in Synar, 626 F.Supp. at 1384.


39) Id. Art. I, sec. 9, cl. 7.


42) Synar, 626 F.Supp. at 1386.

43) Id. at 1387.

44) Id.

45) Id.

46) Id. at 1388.

47) Id. at 1389.

48) Id.

49) Id. (footnote omitted) (emphasis in original).

50) Id. at 1390.

51) See supra Chapter V.A., pp. 92-94.

52) Synar, 626 F.Supp. at 1391.

53) Id. at 1391-1404.

54) Id. at 1397, note 25.

55) Id. at 1400.

56) Id. at 1399-1400, note 29.


58) Synar, 626 F.Supp. at 1393.


60) Id. at 259.


62) 272 U.S. 52 (1926).

63) Id. at 161.
64) 295 U.S. 602 (1935).

65) Id. at 619-626.

66) Id. at 628, quoted in Synar, 626 F.Supp. at 1397 (footnote omitted).


68) Synar, 626 F.Supp. at 1399.

69) Id. at 1400.

70) Humphrey's Executor, 295 U.S. at 632.

71) Synar, 626 F.Supp. at 1399-1403.

72) Id. at 1398 [note 27 cites Justice Jackson: "I really think the decision that made Roosevelt madder at the Court than any other decision was that damn little case of Humphrey's Executor v. United States." E. Gerhart, America's Advocate: Robert H. Jackson 99 (1958)].


74) Synar, 626 F.Supp. at 1398.

75) Chadha, 462 U.S. at 953-54, note 16.

76) Synar, 626 F.Supp. at 1403.

77) Id. at 1401.

78) Id.

79) Id. at 1394.

80) Id.

81) Id. at 1403.


83) Montesquieu developed the principle of separated governmental powers in his work The Spirit of the Laws (London 1823).

CHAPTER V.C.


3) Id.
195
d
Pages 123 - 130

4) Davidson, supra note 1, at 144.


8) 354 F.2d 952 (5th Cir. 1966).

9) Id. at 964.

10) 459 F.2d 1231 (D.C.Cir. 1972).

11) Id. at 1246.

12) Id. at 1245.

CHAPTER V.D.


2) Id. at 127.

3) Id. at 136.


6) Cronin & Weill, supra note 1, at 130.

7) Cong. Quart., supra note 4, at 248.


9) Cronin & Weill, supra note 1, at 145-46.

10) Id. at 144.


13) *Id.* at 201.

14) *Id.* at 165.


20) *Id.* at 45-46 (footnote omitted).


22) *Id.* sec. 1011(1), 1013.

23) *Id.* sec. 1011(3), 1012.

24) *Id.* sec. 1013(a), 1012(a).

25) *Id.* sec. 1012(b).

26) *Id.* sec. 1011(4).

27) *Id.* sec. 1013(b).

28) *Id.* sec. 1015, 1016.


30) Cronin & Weill, *supra* note 1, at 132. In his dissent in *INS v. Chadha*, Justice White pointed out, however, that
presidential acceptance of countless one-house impoundment resolutions argues in favor of the constitutionality of the one-house legislative veto, 462 U.S. 919, 971 (1983).


32) Fisher, supra note 12, at 156.

33) For a study of the subtle forms of "de facto"- and "quasi" impoundments - reprogramming of funds, personnel ceilings, and absorption policies - see Fisher, supra note 17, at 155-171.

CHAPTER V.E. - G.


9) See supra Chapter II.B.1., pp. 26-27.

10) F.W. Powell, Control of Federal Expenditures 175 (1939).

11) Id. at 133 (emphasis in original).


13) See supra Chapter III.B.1., note 14.

14) U.S. Const. Art. I, sec. 9, cl. 7.

15) See supra Chapter III.B.1. accompanying notes 14-16.

16) - Student Loan Market Association; 
   - Federal National Mortgage Association; 
   - Bank for Cooperatives; 
   - Federal Intermediate Credit Bank; 
   - Federal Home Loan Bank; 
   - Federal Land Bank; and 
   - Federal Home Loan Mortgage Corporation.


18) For a general study on administrative efficiency see: The President's Private Sector Survey on Cost Control (popularly known as the Grace Commission), A Report to the President (1984).


20) Id. at 269.


23) Gellhorn & Boyer, supra note 3, at 55.

CHAPTER VI.


5) Id. at 13, 16, 34.

6) Id. at 15.


9) Duncombe & Lynch, supra note 3, at 207.

10) Rose, supra note 7, at 13.

11) Rothenberg & Smoke, Early Impacts of Proposition 2 1/2 on the Massachusetts State-Local Public Sector, 2 Public Budgeting and Finance 90, 92 (1982).


14) Id. par. 1, 2.

15) Id. par. 4(b).

16) Id. par. 5.

18) OCGA sec. 45-12-77 (1982).
19) Id. at 45-12-86.
20) Id. at 45-12-93.
21) See supra Chapter V.F.2., pp. 143-144.
23) Lauth, supra note 22, at 102.
25) Id. at 22.
26) Id. at 31.
27) Id. at 32-33.
29) Id. at 318.
30) Id. at 317.
33) GG Art. 146. A final constitutional document will not be drafted until the reunion of the two German states.
34) Stabilitätsgesetz 1967 BGBl. I 582.
37) See supra Chapter I.A.1., pp. 6-9.
38) Comparable with the United States Secretary of the Treasury.

39) StabL par. 18.


41) GG Art. 113, sec. 1.


CHAPTER VII.


3) Bowsher, LEXIS slip opinion at 14.

4) 295 U.S. 602 (1935).

5) Bowsher, LEXIS slip opinion at 26.

6) Id. at 29.

7) Id. at 34.


9) Bowsher, LEXIS slip opinion at 30-31.

10) Id. at 70.

11) Id. at 68.

12) Id. at 38.

13) Id. at 45.

14) Id. at 54.
15) Id. at 57.
16) Id. at 59.
17) Id. at 50.
18) Id. at 53.
19) Id. at 36.
20) Id. at 64 quoting Chadha, 462 U.S. at 959.
21) Bowsher, LEXIS slip opinion at 71.
22) Id. at 91.
23) Id. at 77-78, see U.S. Const. Art. I, sec. 9, cl. 7.
24) For this reason, Justice White rejected the Chadha analogy, Bowsher, LEXIS slip opinion at 82-83.
25) Id. at 88-89 (footnote omitted).
26) Id. at 88.
27) Id. at 87.
28) Id. at 97.
29) Id. at 103.
30) Id. at 110.
34) Id.
Appendix A:


<table>
<thead>
<tr>
<th>Deadline date</th>
<th>Action to be completed</th>
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<tbody>
<tr>
<td>November 10</td>
<td>Current services budget submitted</td>
</tr>
<tr>
<td>15 days after Congress meets</td>
<td>President's budget submitted</td>
</tr>
<tr>
<td>March 15</td>
<td>Reports of congressional committees submitted to budget committees</td>
</tr>
<tr>
<td>April 1</td>
<td>Report of Congressional Budget Office submitted to budget committees</td>
</tr>
<tr>
<td>April 15</td>
<td>Budget committees report first concurrent resolution on the budget to House and Senate</td>
</tr>
<tr>
<td>May 15</td>
<td>Committees report bills authorizing new budget authority</td>
</tr>
<tr>
<td>May 15</td>
<td>First concurrent resolution on the budget passed by Congress</td>
</tr>
<tr>
<td>7th day after Labor Day</td>
<td>All appropriation bills passed by Congress</td>
</tr>
<tr>
<td>September 15</td>
<td>Final action on second concurrent resolution completed by Congress</td>
</tr>
<tr>
<td>September 25</td>
<td>Final action on reconciliation for second concurrent resolution completed by Congress</td>
</tr>
<tr>
<td>October 1</td>
<td>Fiscal year begins</td>
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Table II: First Concurrent Resolution on the Budget - Fiscal Year 1976:

Resolved by the House of Representatives (the Senate concurring), That the Congress hereby determines, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on July 1, 1975 -

(1) the appropriate level of total budget outlays is $367,000,000,000;
(2) the appropriate level of total new budget authority is $395,800,000,000;
(3) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $68,820,000,000;
(4) the recommended level of Federal revenues is $298,180,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $3,400,000,000; and
(5) the appropriate level of the public debt is $617,600,000,000 and the amount by which the temporary statutory limit on such debt should accordingly be increased is $86,600,000,000.

Section 1. Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement.

Section 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increases in national income in the last calendar year ending before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.
Section 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

Section 4. The Congress may not require that the States engage in additional activities without compensation equal to the additional costs.

Section 5. Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

Section 6. This article shall take effect for the second fiscal year beginning after its ratification."
Appendix B:

Table I:

<table>
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<td>Federal funds</td>
<td>459.5</td>
<td>485.2</td>
<td>533.3</td>
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<td>Trust funds</td>
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<td><strong>Total, on-budget receipts</strong></td>
<td>547.9</td>
<td>579.2</td>
<td>636.1</td>
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<td>777.1</td>
<td>850.4</td>
<td>933.2</td>
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<td>184.7</td>
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<td>209.6</td>
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<td><strong>Total, Federal Government outlays</strong></td>
<td>946.3</td>
<td>979.9</td>
<td>994.0</td>
<td>1,026.8</td>
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<td><strong>Surplus or deficit (-):</strong></td>
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<td><strong>On-budget:</strong></td>
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<td>Federal funds</td>
<td>-266.6</td>
<td>-265.8</td>
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<td>Trust funds</td>
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<td>-202.8</td>
<td>-143.6</td>
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Table II:

### SUMMARY OF TOTAL FEDERAL INVESTMENT-TYPE OUTLAYS, 1984-87

(In billions of dollars)

<table>
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<tr>
<th>Category</th>
<th>1984</th>
<th>1985</th>
<th>1986 estimate</th>
<th>1987 estimate</th>
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<td>Loans and financial investments</td>
<td>5.2</td>
<td>32.5</td>
<td>20.5</td>
<td>9.7</td>
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<td>Construction and rehabilitation:</td>
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<tr>
<td>National defense</td>
<td>4.7</td>
<td>5.4</td>
<td>5.8</td>
<td>5.9</td>
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<tr>
<td>Nondefense</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants to State and local governments</td>
<td>22.7</td>
<td>24.4</td>
<td>26.0</td>
<td>24.1</td>
</tr>
<tr>
<td>Other</td>
<td>6.8</td>
<td>8.1</td>
<td>8.6</td>
<td>9.0</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>34.1</td>
<td>38.0</td>
<td>40.4</td>
<td>38.9</td>
</tr>
<tr>
<td>Acquisition of major equipment:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National defense</td>
<td>63.8</td>
<td>72.6</td>
<td>78.1</td>
<td>79.2</td>
</tr>
<tr>
<td>Nondefense</td>
<td>2.6</td>
<td>3.6</td>
<td>3.9</td>
<td>3.8</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>66.5</td>
<td>76.2</td>
<td>82.0</td>
<td>83.0</td>
</tr>
<tr>
<td>Conduct of research and development:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National defense</td>
<td>26.8</td>
<td>30.4</td>
<td>32.1</td>
<td>35.3</td>
</tr>
<tr>
<td>Nondefense</td>
<td>15.2</td>
<td>16.9</td>
<td>16.4</td>
<td>16.3</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>41.0</td>
<td>47.2</td>
<td>48.5</td>
<td>51.6</td>
</tr>
<tr>
<td>Conduct of education and training:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants to State and local governments</td>
<td>10.6</td>
<td>11.4</td>
<td>11.9</td>
<td>11.2</td>
</tr>
<tr>
<td>Other</td>
<td>11.5</td>
<td>11.6</td>
<td>12.0</td>
<td>10.5</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>22.1</td>
<td>23.0</td>
<td>24.0</td>
<td>21.7</td>
</tr>
<tr>
<td>Other (including commodity inventories):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National defense</td>
<td>1.1</td>
<td>1.2</td>
<td>1.0</td>
<td>1.2</td>
</tr>
<tr>
<td>Nondefense</td>
<td>6.0</td>
<td>6.4</td>
<td>4.9</td>
<td>0.8</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>7.2</td>
<td>7.6</td>
<td>5.9</td>
<td>2.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>176.1</td>
<td>224.5</td>
<td>221.3</td>
<td>206.9</td>
</tr>
</tbody>
</table>

Source: see supra p. 207, at D-2.
Table III:

CREDIT BUDGET: NEW DIRECT LOAN OBLIGATIONS AND GUARANTEED LOAN COMMITMENTS
BY AGENCY
(In millions of dollars)

<table>
<thead>
<tr>
<th>Department or other unit</th>
<th>Direct Loan Obligations</th>
<th>Guaranteed Loan Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funds Appropriated to the President</td>
<td>6,339</td>
<td>6,532</td>
</tr>
<tr>
<td>Agriculture</td>
<td>21,256</td>
<td>23,805</td>
</tr>
<tr>
<td>FFB direct loans</td>
<td>2,063</td>
<td>2,019</td>
</tr>
<tr>
<td>Commerce</td>
<td>106</td>
<td>20</td>
</tr>
<tr>
<td>Defense: FFB direct loans</td>
<td>1,533</td>
<td>495</td>
</tr>
<tr>
<td>Education</td>
<td>1,315</td>
<td>1,261</td>
</tr>
<tr>
<td>Energy</td>
<td>12</td>
<td>33</td>
</tr>
<tr>
<td>Health and Human Services</td>
<td>10</td>
<td>21</td>
</tr>
<tr>
<td>Housing and Urban Development 1</td>
<td>15,072</td>
<td>2,013</td>
</tr>
<tr>
<td>FFB direct loans</td>
<td>133</td>
<td>50</td>
</tr>
<tr>
<td>Interior</td>
<td>74</td>
<td>66</td>
</tr>
<tr>
<td>Labor</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>State</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Transportation</td>
<td>443</td>
<td>570</td>
</tr>
<tr>
<td>FFB direct loans</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Treasury</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>31</td>
<td>32</td>
</tr>
<tr>
<td>Small business assistance</td>
<td>1,017</td>
<td>962</td>
</tr>
<tr>
<td>FFB direct loans</td>
<td>525</td>
<td>514</td>
</tr>
<tr>
<td>Veterans Administration</td>
<td>1,090</td>
<td>1,126</td>
</tr>
<tr>
<td>Other independent agencies:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export-Import Bank</td>
<td>660</td>
<td>1,062</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td></td>
<td>130</td>
</tr>
<tr>
<td>Federal Savings and Loan Insurance Corporation (FHLLB)</td>
<td>783</td>
<td>500</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>50</td>
<td>102</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>63</td>
<td>66</td>
</tr>
<tr>
<td>FFB direct loans</td>
<td>206</td>
<td>248</td>
</tr>
<tr>
<td>United States Synthetic Fuels Corporation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>52,847</td>
<td>41,634</td>
</tr>
</tbody>
</table>

ADDENDUM

| Secondary guaranteed loans 1                  | 54,597       | 60,463        | 55,357       |

* $500,000 or less.
1 Commitments by GHBA to guarantee securities that are backed by loans previously insured or guaranteed by the Federal Housing Administration, Veterans Administration, or Farmers Home Administration (secondary guarantees) are excluded from the totals and shown as a memorandum entry.

Note: Loans guaranteed by Federal agencies and disbursed by the Federal Financing Bank (FFB) are identified in this table as FFB direct loans.

Source: see supra p. 207, at 6e-13.
Tables IV and V:

**SUMMARY OF ECONOMIC ASSUMPTIONS**

(Fiscal years)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross national product (in billions of current dollars)</td>
<td>3,937</td>
<td>4,192</td>
<td>4,538</td>
<td>4,903</td>
<td>5,269</td>
<td>5,623</td>
<td>5,955</td>
</tr>
<tr>
<td>Change in constant dollar GNP (percent change, year over year)</td>
<td>2.9</td>
<td>3.0</td>
<td>4.0</td>
<td>4.0</td>
<td>3.9</td>
<td>3.7</td>
<td>3.6</td>
</tr>
<tr>
<td>Inflation measures (percent change, year over year):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GNP deflator</td>
<td>3.6</td>
<td>3.4</td>
<td>4.1</td>
<td>3.9</td>
<td>3.4</td>
<td>3.0</td>
<td>2.3</td>
</tr>
<tr>
<td>Consumer Price Index</td>
<td>3.6</td>
<td>3.4</td>
<td>4.0</td>
<td>3.9</td>
<td>3.4</td>
<td>3.0</td>
<td>2.3</td>
</tr>
<tr>
<td>Federal construction deflator</td>
<td>2.9</td>
<td>3.5</td>
<td>4.4</td>
<td>4.2</td>
<td>3.7</td>
<td>3.1</td>
<td>2.5</td>
</tr>
<tr>
<td>State and local purchases deflator</td>
<td>5.9</td>
<td>3.5</td>
<td>4.5</td>
<td>4.3</td>
<td>3.7</td>
<td>3.2</td>
<td>2.5</td>
</tr>
<tr>
<td>Unemployment rate (percent, annual average)</td>
<td>7.1</td>
<td>6.8</td>
<td>6.6</td>
<td>6.4</td>
<td>6.1</td>
<td>5.9</td>
<td>5.6</td>
</tr>
<tr>
<td>Interest rate, 91-day Treasury bills (percent)</td>
<td>7.9</td>
<td>7.3</td>
<td>6.8</td>
<td>5.8</td>
<td>5.0</td>
<td>4.3</td>
<td>4.0</td>
</tr>
<tr>
<td>Interest rate, 10-year Treasury notes (percent)</td>
<td>11.1</td>
<td>9.2</td>
<td>8.6</td>
<td>7.7</td>
<td>5.8</td>
<td>4.8</td>
<td>4.5</td>
</tr>
</tbody>
</table>

**ADDENDUM**

Federal pay raise (percent):  
- Current services:  
  - Military: 4.0  
  - Civilian: 3.5  
- President’s Budget:  
  - Military: 4.0  
  - Civilian: 3.5

Source: see supra p. 207, at A-2 and A-5.
Tables VI and VII:

<table>
<thead>
<tr>
<th>Description</th>
<th>1985 actual</th>
<th>1986 estimate</th>
<th>1987 estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RECEIPTS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal tax and nontax receipts</td>
<td>345.7</td>
<td>360.1</td>
<td>392.1</td>
</tr>
<tr>
<td>Corporate profits tax accruals</td>
<td>67.5</td>
<td>84.8</td>
<td>104.1</td>
</tr>
<tr>
<td>Indirect business tax and nontax accruals</td>
<td>56.6</td>
<td>55.8</td>
<td>60.7</td>
</tr>
<tr>
<td>Contributions for social insurance</td>
<td>304.0</td>
<td>322.5</td>
<td>348.3</td>
</tr>
<tr>
<td><strong>Total receipts</strong></td>
<td>773.1</td>
<td>823.2</td>
<td>905.2</td>
</tr>
<tr>
<td><strong>EXPENDITURES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchases of goods and services</td>
<td>342.2</td>
<td>358.6</td>
<td>372.7</td>
</tr>
<tr>
<td>Defense</td>
<td>(255.7)</td>
<td>(269.9)</td>
<td>(289.4)</td>
</tr>
<tr>
<td>Nondefense</td>
<td>(86.5)</td>
<td>(88.7)</td>
<td>(83.3)</td>
</tr>
<tr>
<td>Transfer payments</td>
<td>373.0</td>
<td>393.9</td>
<td>407.9</td>
</tr>
<tr>
<td>Domestic (&quot;to persons&quot;)</td>
<td>(359.9)</td>
<td>(376.4)</td>
<td>(393.8)</td>
</tr>
<tr>
<td>Foreign</td>
<td>(13.1)</td>
<td>(15.5)</td>
<td>(14.1)</td>
</tr>
<tr>
<td>Grants-in-aid to State and local governments</td>
<td>128.7</td>
<td>139.8</td>
<td>146.1</td>
</tr>
<tr>
<td>Net interest paid</td>
<td>21.4</td>
<td>21.0</td>
<td>23.1</td>
</tr>
<tr>
<td>Subsidies less current surplus of Government enterprises</td>
<td>97.8</td>
<td>102.6</td>
<td>93.9</td>
</tr>
<tr>
<td>Wage disbursements less accruals</td>
<td>215</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total expenditures</strong></td>
<td>963.2</td>
<td>1,015.9</td>
<td>1,043.7</td>
</tr>
<tr>
<td><strong>Deficit (—)</strong></td>
<td>—190.1</td>
<td>—192.7</td>
<td>—138.6</td>
</tr>
</tbody>
</table>

Note: The estimates for 1986 and 1987 are preliminary. Revisions will be published in the February 1986 issue of the Survey of Current Business.

Actual and High-Employment Deficits in the Current Services and Proposed Reagan Budgets Assuming Potential Growth Rate of 2.9 Percent, Fiscal Years 1979–88

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Current services</th>
<th>At high employment</th>
<th>Actual</th>
<th>At high employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current services</td>
<td></td>
<td>Without standby</td>
<td>With standby</td>
</tr>
<tr>
<td></td>
<td>Actualb</td>
<td>Cyclical component</td>
<td>At high employment</td>
<td>taxes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Without standby</td>
</tr>
<tr>
<td>1979</td>
<td>27.7</td>
<td>...</td>
<td>27.7</td>
<td>27.7</td>
</tr>
<tr>
<td>1980</td>
<td>59.6</td>
<td>20.8</td>
<td>38.8</td>
<td>59.6</td>
</tr>
<tr>
<td>1981</td>
<td>57.9</td>
<td>41.4</td>
<td>16.5</td>
<td>57.9</td>
</tr>
<tr>
<td>1982</td>
<td>110.6</td>
<td>86.3</td>
<td>24.3</td>
<td>110.6</td>
</tr>
<tr>
<td>1983</td>
<td>208.5</td>
<td>131.5</td>
<td>77.0</td>
<td>207.7</td>
</tr>
<tr>
<td>1984</td>
<td>231.5</td>
<td>129.7</td>
<td>101.8</td>
<td>188.8</td>
</tr>
<tr>
<td>1985</td>
<td>253.1</td>
<td>122.5</td>
<td>130.6</td>
<td>194.2</td>
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<tr>
<td>1986</td>
<td>270.8</td>
<td>115.8</td>
<td>155.0</td>
<td>193.7</td>
</tr>
<tr>
<td>1987</td>
<td>291.7</td>
<td>101.6</td>
<td>190.1</td>
<td>191.1</td>
</tr>
<tr>
<td>1988</td>
<td>300.4</td>
<td>82.4</td>
<td>218.0</td>
<td>168.1</td>
</tr>
</tbody>
</table>


b. High-employment deficits are calculated at a constant 6 percent unemployment rate and a trend rate of growth of real GNP of 2.9 percent a year beginning in fiscal 1979.

c. Includes projected outlays under the president's defense program.

c. These figures differ from the published estimates in Budget of the United States Government, Fiscal Year 1984 (p. 2-18) because they exclude the off-budget deficit.

Source for Table VI: see supra p. 207, at B-2.
TERMs USED IN THE CONGRESSIONAL BUDGET PROCESS

Note: This is intended to be a glossary of only the most common terms used in the congressional budget process. For a complete glossary, see "A Glossary of Terms Used in the Federal Budget Process" published by the U.S. General Accounting Office.

Appropriation Act

A statute, under the jurisdiction of the House and Senate Appropriations Committees, that generally provides authority for Federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation act is the most common means of providing budget authority. Currently there are 13 regular appropriation acts for each fiscal year. From time to time, Congress also enacts supplemental appropriation acts. (See "Appropriations" under Budget Authority; Continuing Resolution; Supplemental Appropriation.)

Authorizing Committee

A committee of the House or Senate with legislative jurisdiction over laws that set up or continue the operations of Federal programs and provide the legal basis for making appropriations for those programs. Authorizing committees also have direct control over spending for entitlement programs since the Government's obligation to make payments for such programs is contained in the authorizing legislation. (See Entitlements.)

Authorizing Legislation

Legislation enacted by Congress that sets up or continues the operation of a Federal program or agency indefinitely or for a specific period of time. Authorizing legislation may place a cap on the amount of budget authority which can be appropriated for a program or may authorize the appropriation of "such sums as are necessary." (See Budget Authority; Entitlements.)

Baseline, Current Policy

A set of projections showing the levels of spending and revenues that would occur for the upcoming fiscal year and beyond if existing programs and policies are continued unchanged, with all programs adjusted for inflation so that existing levels of activity are maintained. (See Current Services Budget.)

Budget Authority

The authority Congress gives to Government agencies, permitting them to enter into obligations which will result in immediate or future outlays, except that budget authority does not include authority to insure the repayment of loans held by another person or government.

Budget authority may be classified in several ways. It may be classified by the form it takes: appropriations, borrowing authority, or contract authority. Budget authority may also be classified by the determination of amount: definite authority or indefinite authority. Finally, budget authority may be classified by the period of availability: 1-year authority, multi-year authority, or no-year authority (available until used).
Forms of Budget Authority

APPROPRIATIONS.—An act of Congress that permits Federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriations act is the most common means of providing budget authority.

BORROWING AUTHORITY.—Statutory authority that permits a Federal agency to incur obligations and to make payments for specified purposes out of money borrowed from the Treasury, the Federal Financing Bank, or the public. The Budget Act in most cases requires that new authority to borrow must be approved in advance in an appropriation act.

CONTRACT AUTHORITY.—Statutory authority that permits a Federal agency to enter into contracts in advance of appropriations. Under the Budget Act, most new authority to contract must be approved in advance in an appropriation act.

Determination of Amount

DEFINITE AUTHORITY.—The dollar amount of budget authority is contained in the law.

INDEFINITE AUTHORITY.—The dollar amount of budget authority is not contained in the law; instead the law would provide “such sums as may be necessary.”

Period of Availability

ONE-YEAR AUTHORITY.—Budget authority that is available for obligation only during a specified fiscal year.

MULTI-YEAR AUTHORITY.—Budget authority that is available for a specified period of time in excess of 1 fiscal year.

NO-YEAR AUTHORITY.—Budget authority that remains available for obligations for an indefinite period of time (until the objectives for which the authority was made available are attained).

Budget Deficit

The amount by which the Government’s outlays exceed its revenues for a given fiscal year. (See Outlays; Revenues.)

Budget Resolution

A resolution passed by both chambers of Congress setting forth, reaffirming, or revising the congressional budget for the U.S. Government for a fiscal year. A budget resolution is a concurrent resolution of Congress. Concurrent resolutions do not require a presidential signature because they are not laws. Budget resolutions do not need to be laws because they are a legislative device for the Congress to regulate itself as it works on spending and revenue bills.

The budget resolution for the upcoming fiscal year is to be adopted by the Congress by April 15. Additional concurrent resolutions revising the previously established budget levels may be adopted by Congress at any time before the end of the fiscal year. It is the usual practice for Congress to revise budget levels for the current fiscal year as part of the budget resolution for the upcoming fiscal year.

Budget Surplus

The amount by which the Government’s revenues exceed its outlays for a given fiscal year. (See Outlays; Revenues.)

Congressional Budget

(See Budget Resolution.)

Continuing Resolution

Appropriations legislation enacted by Congress to provide temporary budget authority for Federal agencies to keep them in operation when their regular appropriation bill has not been enacted by the start of the fiscal year. A continuing resolution is a joint resolution, which has the same legal status as a bill.
A continuing resolution frequently specifies a maximum rate at which obligations may be incurred, based on the rate of the prior year, the President's budget request, or an appropriation bill passed by either or both chambers of the Congress.

A continuing resolution is a form of appropriation act and should not be confused with the budget resolution.

**Credit Authority**

Authority to incur direct loan obligations or to incur primary loan guarantee commitments. Under the Budget Act, new credit authority must be approved in advance in an appropriation act.

**Crosswalk**

Also known as "committee allocation" or "section 302 allocation." The means by which budget resolution spending totals are translated into guidelines for committee action on spending bills. The Budget Committees allocate the budget resolution totals among the committees by jurisdiction. Those committees, in turn, subdivide their allocations among their subcommittees or programs. Crosswalk allocations to the committees appear initially in Budget Committee reports on the budget resolution and finally in the joint explanatory statement accompanying a conference report on the budget resolution.

**Current Services Budget**

A section of the President’s Budget, required by the Budget Act, which sets forth the level of spending or taxes that would occur if existing programs and policies were continued unchanged through the fiscal year and beyond, with all programs adjusted for inflation so that existing levels of activity are maintained. (See Baseline.)

**Deferral of Budget Authority**

An action by the executive branch that delays the obligation of budget authority beyond the point it would normally occur. Pursuant to the Congressional Budget and Impoundment Control Act of 1974, the President must provide advanced notice to the Congress of any proposed deferrals. A deferral may not extend beyond the end of the fiscal year in which the President’s message proposing the deferral is made. Congress may overturn a deferral by passing a law disapproving the deferral. (See Impoundment Resolution.)

**Entitlements**

Programs that are set up in a way that obligates the U.S. Government to make specific payments to qualified recipients.

**Expenditures**

(See Outlays.)

**Federal Debt**

Consists of all Treasury and agency debt issues outstanding.

**Fiscal Policy**

Federal Government policies with respect to taxes, spending, and debt management, intended to promote the Nation’s macroeconomic goals, particularly with respect to employment, gross national product, price level stability, and equilibrium in balance of payments. The budget process is a major vehicle for determining and implementing Federal fiscal policy. The other major component of Federal macroeconomic policy is monetary policy. (See Monetary Policy.)

**Fiscal Year**

A fiscal year is a 12-month accounting period. The fiscal year for the Federal Government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends; for example, fiscal year 1986 is the year beginning October 1, 1985, and ending September 30, 1986.
Functional Classification

A system of classifying budget resources by major purpose so that budget authority, outlays, and credit activities can be related in terms of the national needs being addressed (e.g., national defense, health) regardless of the agency administering the program. A function may be divided into two or more subfunctions depending upon the complexity of the national need addressed by that function. (See Budget Authority; Outlays.)

Impoundment

A generic term referring to any action or inaction by an officer or employee of the U.S. Government that precludes the obligation or expenditure of budget authority in the manner intended by Congress. (See Deferral of Budget Authority; Rescission of Budget Authority.)

Impoundment Resolution

Section 1013(b) of the Congressional Budget and Impoundment Control Act of 1974 permits either chamber of Congress to adopt an impoundment resolution to veto a deferral of budget authority proposed by the administration. However, in 1983 the Supreme Court held that a one-House legislative veto is unconstitutional because it constitutes a legislative action without having been passed by both chambers of Congress and signed into law by the President. (INS v. Chadha, U.S. (1983).) As a result, Congress now disapproves deferrals in appropriations laws.

Mark-Up

Meetings where congressional committees work on the language of bills or resolutions. At Budget Committee mark-ups, the House and Senate Budget Committees work on the language and numbers contained in budget resolutions.

Monetary Policy

Management of the money supply, under the direction of the Board of Governors of the Federal Reserve System, with the aim of achieving price stability and full employment. Government actions in guiding monetary policy, include currency revaluation, credit contraction or expansion, rediscount policy, regulation of bank reserves and the purchase and sale of Government securities. (See Fiscal Policy.)

Offsetting Receipts

Income from the public that results from sale of products or services rendered (such as sale of timber from Federal lands or entrance fees for national parks). Offsetting receipts are deducted from total budget authority and outlays rather than added to Federal revenues even though they are deposited in the Treasury as miscellaneous receipts.

Outlays

Outlays are disbursements by the Federal Treasury in the form of checks or cash. Outlays flow in part from budget authority granted in prior years and in part from budget authority provided for the year in which the disbursements occur. The term "expenditures" is frequently used interchangeably with the term outlays. (See Budget Authority.)

President's Budget

The document sent to Congress by the President in January or February of each year, requesting new budget authority for Federal programs and estimating Federal revenues and outlays for the upcoming fiscal year.

Revenues

Collections from the public arising from the Government's sovereign power to tax. Revenues include individual and corporate income taxes, social insurance taxes (such as social security payroll taxes), excise taxes, estate and gift taxes, customs duties, and the like.
Reconciliation Process

A process in which Congress includes in a budget resolution "reconciliation instructions" to specific committees, directing them to report legislation which changes existing laws, usually for the purpose of decreasing spending or increasing revenues by a specified amount by a certain date. The reported legislation is then considered as a single "reconciliation bill."

Gramm-Rudman-Hollings provides for an accelerated form of reconciliation in the Senate as the method for developing a congressional alternative to a presidential reduction order.

Rescission of Budget Authority

Cancellation of budget authority before the time when the authority would otherwise cease to be available for obligation. The rescission process begins when the President proposes a rescission to the Congress for fiscal or policy reasons. Unlike the deferral of budget authority which occurs unless Congress acts to disapprove the deferral, rescission of budget authority occurs only if Congress acts within 45 days of continuous session to enact the rescission. (See Deferral of Budget Authority; Impoundment.)

Scorekeeping

Procedures for tracking the status of congressional budgetary actions. Scorekeeping data published by the Congressional Budget Office include status reports on the effects of congressional actions and comparisons of these actions to targets and ceilings set by Congress in budget resolutions.

Sequester

That element of a presidential spending reduction order that occurs by reducing defense and non-defense spending by uniform percentages.

Supplemental Appropriation

An act appropriating funds in addition to those in the 13 regular annual appropriation acts. Supplemental appropriations provide additional budget authority beyond the original estimates for programs or activities (including new programs authorized after the date of the original appropriation act) in cases where the need for funds is too urgent to be postponed until enactment of the next regular appropriation bill. (See Appropriation Act.)

Tax Expenditures

Revenue losses attributable to a special exclusion, exemption, or deduction from gross income or to a special credit, preferential rate of tax, or deferral of tax liability.

Unified Budget

Describes the way the Federal budget is currently displayed. This display includes revenues and spending for all regular Federal programs and trust funds except social security which was removed from budget totals beginning with fiscal year 1987. Prior to the creation of the unified budget in 1969, all trust funds were excluded from budget totals.