8 The Eroding Congressional Budget Process

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The power of the purse is a fundamental power of Congress. Constitutionally enshrined to guard against executive branch overreach, Congress's role in taxing and spending decisions is a fundamental aspect of representative democracy in the United States. The 1974 Budget Act sets the broad parameters for the budgeting process, including the allocation of tax dollars to federal agencies. The budgetary process is supposed to exemplify congressional politics in routine matters. Much like the Senate's process of advice and consent (i.e., the approval of cabinet and other high-ranking executive branch officials, ambassadors, federal judges, and treaties) and both chambers' participation in setting defense policy and conducting oversight of executive agencies, the budget process is supposed to be predictable. However, partisan polarization and legislators' increased focus on short-term credit claiming has caused the process to become a less effective means for determining the nation's government spending priorities. What was once a process defined by the orderly formulation and passage of a series of individual appropriations bills is now characterized by brinkmanship and the packaging of these bills into a small number of massive omnibus and somewhat smaller minibus bills. Since 2010, a new normal has emerged, with changes to political actors' relationships, a revised appropriations cycle, statutory changes, and a ban on "earmarks," all of which is exacerbated by pandemic budgeting.

As an American Political Science Association Congressional Fellow, I participated in the budgeting process, on both the taxing and spending sides, and observed the incentives and time constraints that define it. I served as the tax legislative assistant for Representative Lloyd Doggett (D-TX), a senior member of the Ways and Means Committee, who worked closely with the ranking member of the biggest non-defense Appropriations subcommittee. Although considered mundane by some, budgetary politics help define the rhythm of life on Capitol Hill, and they have a major impact on executive agencies' planning and operations. Additionally, no matter how much Congress legislates, the success of just about any program depends on its funding. Originating in a statute and degraded by the efforts of ambitious legislators, the budgetary process creates winners and losers in American politics. As exemplified by the 5,593-page omnibus bill that combined the fiscal year (FY) 2021 and COVID-19 relief packages that Congress passed on December 21, 2020, these winners and losers include full deductibility for business meal expenses—widely panned as a "three-martini lunch" tax break—and stimulus checks of $600 to individuals making less than $75,000 per year, with an additional $300 per week in unemployment insurance for 11 weeks for those receiving benefits.

From the Old Order to the New Normal

Before shining a light on the budget process from my own experiences on Capitol Hill, a brief examination of how the process was intended to work and how it has changed in recent years

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is warranted. This sets a backdrop for how I saw budgeting play out on the Hill. The 1974 Budget Act took a previously ad hoc process of appropriations bills and created a comprehensive procedure for discretionary spending, replete with a new Congressional Budget Office and a new budget committee in each chamber of Congress. The Act provides for the president to release a budget in February, and the House and Senate Budget Committees to pass a budget resolution in April that indicates the federal government's total discretionary spending. By the end of June, the House Appropriations Committee is to decide how much money each of its 12 subcommittees has to work with, and the full House is to pass its appropriations bills. Next, the Senate begins its process, which is fraught with all sorts of potential hazards, including being held hostage by a filibuster. After the differences between the two chambers' legislation are resolved in conference committees and both chambers pass the final appropriations, the bills make their way to the White House for the president's signature. The process is to end on October 1, the start of the new FY.

This formal budget process has broken down. One aspect of this broad point is illustrated in Figure 8.1, which compares the percentage of appropriations bills passed on the House floor with the percentage passed by both chambers and signed into law by the president.[1] The Senate filibuster bedeviled the process initially, with a rough period in the late 1980s that became more typical by the late 1990s, as President Bill Clinton regularly clashed with congressional Republicans. With few exceptions (e.g., the aftermath of 9/11 and the Great Recession), the House passed most, and usually all, of its appropriations measures until FY 2011.

Whereas growing partisanship always made this process difficult, banning earmarks—carve-outs in bills for members' special projects back home—in 2010 truly kneecapped it, removing "sweeteners" that could have greased the legislative wheels. Not only does Congress often not pass single appropriations bills into law, but such measures regularly fail to pass on the House

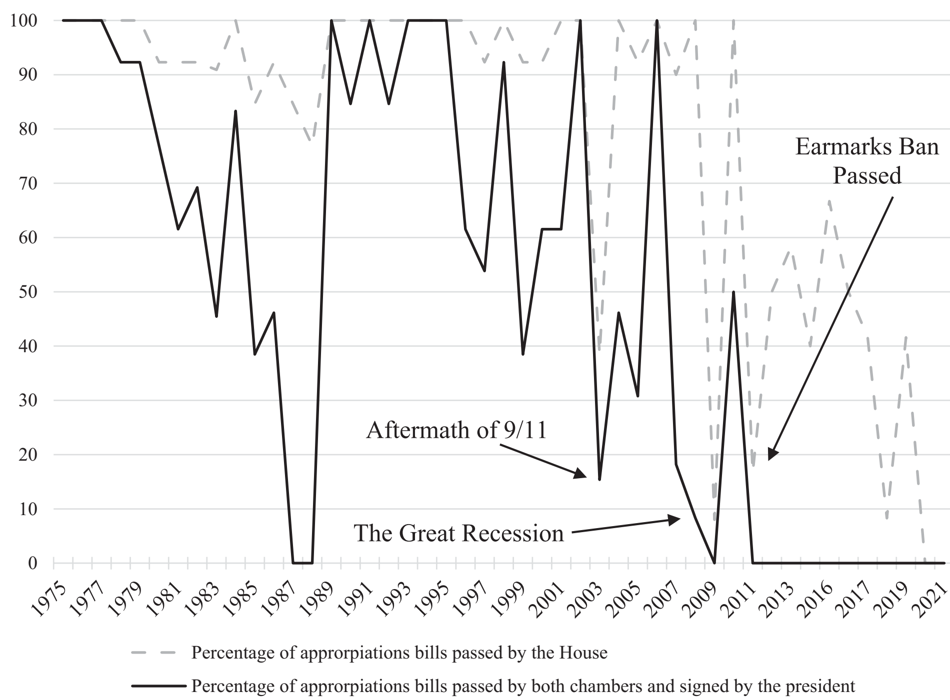

Figure 8.1 Percentage of Appropriations Bills Passed and Signed into Law, by Fiscal Year.

floor. Such failure has become commonplace—roughly half or fewer of these bills secure passage, never more than 7 of the 12. Most recently, even budget resolutions have failed. Since 1976, all such failures except FY 1999 have been in this century.[2] And while FY 1999, 2003, and 2007 did not see the passage of a finalized budget resolution with a conference report, this has been the general rule, not the exception, from FY 2011 on, falling neatly into our timeline of breakdown.

Alas, budgetary politics rarely conform to statutory language, and both are fraught with shortcomings. First, the budget process focuses primarily on discretionary spending; it generally does not address Social Security, Medicare, and the other entitlement expenditures that make up roughly three-fourths of all federal expenditures—the major source of the federal deficit. Second, the congressional budget resolution—that represents a budget plan for the upcoming FY—lacks the force of law because the president does not sign. Third, the resolution has devolved into a vehicle for political messaging rather than a starting point for negotiations. Fourth, every step in the multi-stage process presents opportunities for partisan battles and intraparty skirmishes—including between moderate Democrats and liberals, but particularly between Republican party leadership and members of the conservative House Freedom Caucus.

Given these challenges, it should be of little surprise that Congress rarely completes its work on time. When failing to meet its deadline, Congress passes a continuing resolution (CR) that keeps the government running by providing spending at current levels. When Congress is unable to pass individual appropriations bills, it often combines them into must-pass omnibus legislation or some smaller combinations called minibus bills—which have grown in number and length in recent years. Combining appropriations bills into larger packages gives the majority party leadership in both chambers a greater hand, along with administration negotiators in the White House and at the Treasury Department. They lay out lines in the sand and veto threats, with party leaders aware of the number of votes they need to hold on to. This state of affairs creates losers, as well, particularly minority party members whose votes are not necessary for passage, and rank-and-file members in general. As such, within the House, there has been a major power shift from the Appropriations subcommittees to the Speaker's suite.

In addition to these outward manifestations of a flawed process are the less widely recognized internal ones. Simply put, budgeting this way wreaks havoc on members of Congress and their staffs, who sometimes get less than a day to wade through thousands of pages of legislative language. The less orthodox the process, the higher the strain on staff. While the hearings and various research done by committee staffers are laborious processes, it all can come screeching to a high-stakes denouement. Packaging deals that combine multiple bills and are negotiated by only party leadership and the administration can mean a string of stressful late nights. Rank-and-file members, by contrast, can be left in the dark. These members often take their cues from party leadership, committee leadership, and well-informed interest groups—information is a currency of the Hill. Members having little time to understand a bill is a feature, not a bug, for leadership. The challenges that members face, combined with the knowledge that they will have virtually no opportunity to recommend changes that could help their constituents and that they would undoubtedly face retaliation from the leadership if they tried, explain why so many throw in the towel and vote in lockstep with their party's leadership.

Seeing Difficult Politics Up Close

The budget process appears difficult from afar, and the fact that taxing is separately considered from spending presents more complications. Additional challenges present themselves when one experiences the process and lives it up close. The truth is that, even without the worrisome new trends that this chapter identifies, fiscal policy has never been easy. I saw this both as a tax legislative assistant for a senior member of the Ways and Means Committee, as well as by working with Appropriations Committee staffers.

American tax and spending policy has historically been unusually democratic in terms of the legislative system that produces it, with legislators having greater input on changes, at more points in the process. This openness to pluralistic influences and this larger hand for individual members and their constituencies tend to represent greater difficulties for budgeting. Committee leadership, constituencies, and access to expertise all structure the system and policy outcomes in profound ways.

The person serving as the chair of the Ways and Means Committee has the potential to be incredibly influential on the work of the panel. While committee chairs are not looking to challenge party leadership, they have considerable latitude to shape the work of the committee. I began my fellowship just as Representative Paul Ryan (R-WI) was taking the helm of Ways and Means from Representative Dave Camp (R-MI). The contrast was profound. Camp is a true tax-policy wonk who spent about two years leading the committee in formulating a serious tax reform plan. This tax legislation is unusual for recent history since, not only did the numbers add up, but the bill garnered bipartisan respect among experts and economists. Having gored too many sacred cows, it failed to secure passage, however; the concentrated costs and diffuse benefits of real tax reform creates enemies.

By contrast, Representative Ryan rose to fame with the "Ryan budgets" he created as chair of the Budget Committee, which distilled party talking points into budget resolutions criticized for rosy economic assumptions and for lacking detail. To be sure, all budget resolutions lack policy detail on some level. But Ryan's skill as a party spokesman, not wonkery, was on display at Ways and Means. His committee did not bring up the same bills as the Senate Finance Committee, which also had a Republican majority, preferring instead to pass bills that were too conservative to pass the Senate (e.g., a repeal of the "estate tax"). Another example of the Ways and Means Committee's shift to a more political posture was hearings where Internal Revenue Service (IRS) Commissioner John Koskinen was hauled in to be excoriated for reducing IRS services once their budget had been cut. While the IRS's policy of "courtesy disconnects" deserved oversight, making headlines and infuriating constituents, the repetitiveness of the hearings and the questions took on the quality of Kabuki theater. I shared this observation with a friend who worked for the Joint Committee on Taxation. She nodded, saying that the hearings reminded her of religious rituals. Interestingly, and underscoring the point, the same legislators who took to showing off during committee meetings were able to behave far more civilly in closed-door meetings with Koskinen. It should be noted, however, that Republicans are certainly not alone in this sort of performative combat.

So, while a committee's chair is extraordinarily influential, so too are various constituent groups. For fiscal policy in particular, the desires of various interested parties can steadily eat away at government revenue or otherwise aggregate into larger problems. During my time on the Hill, the Financial Services Committee saw plenty of Democrats participating in eroding the Dodd–Frank financial regulations, championing corporate constituencies to undermine a major policy victory for their party. The "Cadillac tax," for instance, which levied a luxury tax on high-value health insurance plans, slowly garnered a long list of Democratic co-sponsors in the "Dear Colleague" letters circulated via e-mail. Unions opposed this tax, having long compensated members with better health care coverage when they could not raise wages. Democrats seeking to please their union groups were a natural ally for Republicans looking to cut taxes in general. While the Cadillac tax would not be repealed until 2020, the writing was clearly on the wall. One can observe smaller-scale maneuvers that lead to revenue losses, which add up over time. One of these occurred in 2020 during the pandemic. When perusing the Coronavirus Aid, Relief, and Economic Security (CARES) Act to better understand aid during the pandemic, I came across language that exempted hand sanitizer producers from paying excise taxes for the rest of 2020. It should be noted that the large companies that make hand sanitizer were experiencing a boon in profitability, not hardship. I imagine that they must have good lobbyists.

Information and expertise are other important sources of power. Much of these processes play out in predictable ways, when one considers who has more policy expertise and access in a world where moneyed interests have more experts working for them, where the executive branch has more staff (and Congress keeps cutting its own, by the way), and rank-and-file members have lost a lot of power to party leadership and are constantly distracted by communications tasks. I encountered the imbalance between the executive and legislative branches when I considered crafting a statement to counter misinformation on the Organisation for Economic Co-operation and Development's base erosion and profit-shifting (BEPS) efforts. A committee staffer advised that, while she respected that such an effort sought to inform, Congress had largely been silent on the matter and taking it up would politicize it unnecessarily—a team of expert negotiators from the Treasury Department had this under control.

A legal code that can be influenced by litigation is another way that informational asymmetries can manifest. While I worked at Ways and Means, the research and development (R&D) tax credit was under review. Using the tax code to encourage R&D is an idea with wide support, but in practice the legislative intent of this policy has been substantially watered down by lawsuits. A staggeringly wide range of activities are now considered R&D; seeing these behaviors as incentivized is often dubious.

The imbalance in advocacy can also be profound. To say that the tax equity advocates I spent time with, and greatly respect, were at a disadvantage compared to anti-tax advocacy groups would be a massive understatement. Lobbyists and advocacy think tanks find far more clients seeking tax cuts than hikes.

Many of my observations about tax policy were also manifested in the appropriations process: the importance of the committee chair, the focus on constituencies, and the currency of expertise. Of course, members could be circumspect about the prospects for major tax legislation; meaningful tax reform typically is passed once in a generation, a legislative Great White Whale. Appropriators, by contrast, have to pass a bill in some form. Staff work hard on a variety of efforts, pulled by the cyclical nature of the appropriations process.

A lot of progress is made in closed-door meetings. Congressional staff have a real penchant for working and networking over coffee. This "latte" legislating is readily apparent when one walks through different eateries in the congressional complex. The tunnels connecting the congressional office buildings have various coffee shops. While the shop The Creamery in the basement of the Longworth House Office Building that sold coffee and ice cream when I was there has been replaced by a Dunkin Donuts, the flock of staffers hunched over nearby tables at all hours of the day has not changed.

The projects hammered out at these small tables in the basement range from major legislative efforts to minor member credit-claiming opportunities. I remember being approached to have my boss support an appropriations amendment on the floor. What initially seemed like a small matter to me turned out to be an important example of credit claiming; as a member of the minority party, the sponsor was unlikely to get major policy concessions, but her legislative director told me proudly that she had a "record of winning the amendment." On another occasion, a young staffer was so eager to write an appropriations amendment that would go after tax evaders and make his boss look good that he suggested language that, in identifying specific badly behaving companies, was a bill of attainder, which is unconstitutional. This kind of legislative overreach is not rare, however.

It is difficult to overstate how hard members and staffers work. Measured by legislative output, or specific policy aims, Congress has been excoriated as a "do-nothing" institution. But viewed from the inside, many work at a breakneck pace, in an inch-deep, mile-wide work environment, constantly responding to constituents and being called upon to make various statements. All of this is done while strategically trying to take on legislation, the nature of which is attenuated by the narrow range of what is politically possible in a highly polarized environment where it is difficult to pass anything that costs much money. Coalitions for policy, oversight, or any other activity do not just happen naturally; they require exhaustive coordination and many staff hours. The effect of all of this is to feel as if you are constantly walking against the wind, with it never at your back. All of this is done with staff that are bright and hardworking, but often are not paid enough to stay in their position long. The multitude of non-legislative pressures that members face with little in office funds make it harder to be a member of Congress than it should be.

All of these observations make for difficulties in preserving government revenue streams, efficacy of spending, and engaging in democratic deliberation around both, all while evincing normal modes of congressional politics that come with power imbalances and a focus on constituent groups. These observations are consistent with classic scholarly works on Congress that demonstrate that voters support their member but oppose Congress as a group, and that privileged groups frequently dominate congressional discourse.[3] Fiscal policy, and budgeting specifically, are very difficult, even without the worrisome new developments of the past decade.

The New Normal

The years since 2010 represent more than just "regular disorder."[4] Indeed, that decade has been a legislative graveyard for stand-alone appropriations bills. Starting in FY 2011, the new budget order has seen other legislative vehicles take their place: a variety of omnibus bills that include anything from some to all appropriations bills, and CRs, which continue funding of federal programs at current rates in the absence of other appropriations legislation, are seen as a success, rather than a failure. Neither omnibus legislation nor CRs are new, but the exclusive reliance on them is. Other aspects of the process have changed with the regular inclusion of the debt ceiling as well as regular summits between the executive branch and party leaders. New statutory language drives the process under the sequestration provisions of the Budget Control Act (BCA) of 2011, while the earmarks ban of 2010 has had a profound effect on the breakdown of the formal process. To understand the new normal, one must analyze the altered power dynamics, additional legislation, and new procedures, as this state of affairs created new norms and substantially altered the process and the incentives of members.

A Change in Actors and Relationships

The developments of the past decade come after a long softening of the power of appropriators at the hands of party leadership. Since the reforms of the mid-1970s, committee chairs have found themselves outmaneuvered by changes aimed at strengthening the Speaker and weakening the rank and file.[5] This trend has particularly affected the appropriators. Making spending decisions in the "favor factory" historically placed these committee members in a rarefied space ever since the Ways and Means Committee (which initially included Appropriations)—the oldest standing committee in the House—was created. Washington is replete with its own language and signposts of power. For appropriators, this includes committee rooms in the Capitol itself rather than those solely relegated to surrounding office buildings, as few have that vaunted proximity to power. Appropriations subcommittee chairs are called "Cardinals" because of the power they wield over the budget, similar to the College of Cardinals in the Catholic Church. Appropriations staff are fond of the expression "there are Democrats, there are Republicans, and then there are appropriators," which underscores both the relative bipartisanship of the committee and, more importantly, its influence.

Congressional reformers believed that centralized party leadership and a streamlined budget process would empower Congress.[6] To the contrary, the Budget Committees showed polarization before others, partly due to the more hardline members placed on the committee by party leadership.[7] While some Speakers gradually changed the process, as well as increasing polarization, Speaker Newt Gingrich (R-GA) was transformative in this regard.[8] He reduced the authority of Appropriations chairs, instituted a six-year term limit for all Republican committee chairs, and made committee appointments based on party loyalty and ideology. Appropriators had to report to and abide by party leadership, significantly shifting away from the freer hand they had previously enjoyed. The sudden addition to the Appropriations Committee of junior members destabilized existing arrangements and led to even more institutional changes—a trend very much evident after the 1994 elections but also in 2010.[9] While Gingrich was a major innovator, his changes have not been reversed by subsequent Speakers. At the beginning of each new Speaker's tenure, the leader customarily makes a speech—and with the regularity of the seasons, each new Speaker promises a return to regular order, with less top-down control of appropriations and legislating in general, and with more opportunities for committees and rank-and-file members. With the same predictability, just like Washington's inability to handle winter when it arrives, each Speaker pulls back from this pledge.[10] Another important aspect for understanding the loss of power to party leaders is a loss of congressional capacity vis-à-vis staffing. Since 1995 there have been major cuts to personal staff and Members' Representational Allowances, which fund personal offices. Cuts to committee staff have also been dramatic, going from 2,147 employees in 1993 to 1,164 in 2015. Put another way, in 2015 there were only 54 percent of the committee staffers that existed in 1993.[11] Only in the past handful of years has congressional staffing capacity garnered more widespread attention outside the beltway.[12] Appropriations staffers have considerable expertise and have enviable jobs on the Hill, but these staffers are spread increasingly thin, with large portfolios and an ever more unpredictable schedule. Whether it is the siren song of a high consulting salary or just being able to visit family on holidays, switching jobs is increasingly attractive to congressional staff.

Since the ban on earmarks in 2010, fewer members have been enamored by winning a seat on the Appropriations Committee.[13] What was once seen as a prized perch is today occasionally turned down.[14] With government spending attracting more ire with the influx of Tea Party fiscal hawks and their resonance with the GOP base, these positions are becoming less attractive. This new pattern speaks volumes about the growing difficulties of the appropriations process. And as Congress is increasingly characterized by weak parties amid strong partisanship, the budget process has become more volatile, even as party leaders' hands are strengthened.[15]

A Changed Appropriations Cycle

Beyond noting that the relationships between political actors are now different, it is important to understand how the process itself has changed. This is best illustrated by looking at the various steps in the appropriations cycle that show both the incentives of those involved in the process as well as how the process has evolved.

The budget process is designed to begin in earnest, with the president's budget delivered to Congress each February (the statutory deadline is the first Monday of February). Washington, of course, has its own language and shorthand for a lot of these documents. The military calls its congressional justification documents "J-books"; when the president's General Explanations of the Administration's Revenue Proposals (for taxes) is sent to the Hill, staffers refer to it as the president's budget request because of its green cover. It should be noted that the president's budget request is a budget in name only. It is only the president's suggestion of what Congress should adopt. Often, this document is "dead on arrival" because the party opposite the president is in the majority of one or both chambers of Congress, the congressional leadership wants to flex its muscle and pass its own priorities, or a mix of other factors.

After the president's budget is sent to Congress, staffers scurry to get their copy and prepare to defend their institution's prerogative. Institutional and personal loyalties are on full display at this point as the House and Senate rarely coordinate and often work at cross-purposes. This also applies to congressional committees as there is a rivalry between the Budget and Appropriations Committees in both chambers. However, there is usually consensus on one issue at this point in the process—virtually everyone feels that the total amount of discretionary spending under their control should be higher. I cannot begin to count the number of times I heard Appropriations staff first repeat the mantra "the president *proposes*, Congress *disposes*," and then make the case that their boss needs more money for some pet program.

The Budget Committees are first to go to work, crafting their budget resolutions that set spending targets for authorizers and appropriators. Open hearings are held for administration officials to justify the president's budget request and for other experts to weigh in on policy and funding levels. In recent years these have been derided as "show hearings" because not much beyond partisan grandstanding takes place. In addition, informal meetings with agency heads defending their budgets are held in which information is often forthcoming, off the record and without the cameras rolling. Closed-door meetings also occur with a variety of governmental actors, experts, and lobbyists, particularly with classified "black" budget items. Committee staff may take trips to research what federal dollars look like in practice and to ensure that appropriated money is spent properly. These staff delegations, or STAFFDELs, allow staff to see, for example, the effects on border patrol agents of not funding night-vision goggles.

The Budget Committee in each chamber disposes of its own resolution by voting it out of committee and to the floor where it is considered for final passage. Federal law stipulates that the budget resolution be complete by April 15, but this deadline is often missed; for several years a budget resolution did not pass at all.

After the budget targets are set, the appropriations work begins. The 12 Appropriations subcommittees' expert staff engage in a tremendous amount of fact-finding and double-checking research before they "go dark" to write their draft legislation. Once staff finalize their drafts, they are released in what is commonly called the "chairman's mark."[16] Each subcommittee "marks up" the chairman's mark by going through the resolution line by line, making additional changes to the text before proceeding to consideration by the full Appropriations Committee, which typically adopts the bill without changes. What has increasingly happened over the past decade, however, is that these individual appropriations bills are bundled into omnibus bills for easier passage. For example, in FY 2020, two spending packages emerged after using CRs to keep the government funded: one that combined Defense; Commerce, Justice, and Science; Financial Services; and Homeland Security, and another containing the other eight subcommittees' measures. The combination of appropriations bills may vary by year, and the bills are often referred to as "minibuses," denoting that they are smaller than one large omnibus bill. While in the past, leadership would roll out a detailed schedule for when their chamber would consider each appropriations bill, today the process can appear to be, and is, a much more ad hoc and chaotic undertaking.

As noted above, the process is designed to culminate with all appropriations bills passed by both chambers and signed by the president before October 1 of each year. The dynamics noted here often get in the way of that. In addition, so-called "poison-pill" amendments, often partisan measures designed to embarrass the other party on controversial issues, can prompt party leadership to restrict amendments.[17] In a new measure of budget dysfunction, the Senate Appropriations Committee failed to mark up any of its FY 2021 bills, citing a concern for these poison-pill amendments.[18] This is the first time this has happened since 1945. Thus, the staffs' work and markup at the subcommittee level have become the epicenter for what goes into appropriations legislation, as traditional avenues for individual members to engage and participate have been attenuated or eliminated.

Throughout the process, party leaders play an increasingly strong hand, negotiating with the other chamber and the executive branch. Rank-and-file members both chafe at and benefit from such an arrangement. While members do not like being shut out of this part of the process, party leadership can provide cover and protect their members from taking difficult votes. With major legislation in general, the more times that party leaders diverged from regular order, the more likely the legislation was to pass—a consideration that paints them as pragmatists, not just power grabbers.[19]

Statutory Changes

There is a policy context that is important for understanding both the new normal of federal budgeting as well as the statutory changes to the system—namely, the increasing structural deficits, or the widening gap between government revenues and government spending. With the advent of trillion-dollar deficits at the end of the 2010s—in part, due to programs adopted to combat the "Great Recession" that resulted from the bursting of the housing bubble and the global financial crisis—many across the political spectrum thought it was time to get the American fiscal house in order. Notably, many who subscribed to this view avoided discussions of the debt ceiling. The United States is the only country with a debt ceiling, which requires Congress to raise the amount of money the Treasury Department is authorized to borrow, separately from taxing and spending legislation, with a failure to do so incurring a default on the nation's credit.

In the 2010 midterm elections, voters delivered House Republicans a 63-seat gain in a wave election, a number of which pledged to vote against raising the debt ceiling. Early in 2011, the Obama Administration's Treasury Secretary, Tim Geithner, sent a letter to Congress, instructing them to raise the debt ceiling before the government's borrowing limit expired, which was projected to occur sometime between March and May of that year. House Speaker John Boehner (R-OH) responded that major spending cuts would be required in exchange for an increase in the debt ceiling. This kicked off an attempt at a "grand bargain," an effort between the Obama Administration and Speaker Boehner to save $4 trillion in a combination of spending cuts and tax increases over ten years. Tying reform to the debt ceiling was not ideal, but both sides made valiant efforts and hoped a compromise could be reached.

What other accounts miss from this episode is the extent to which Republican promises to their voters to not raise taxes structured the outcome.[20] Most notable was the decision by Republican congressional negotiators Minority Leader Representative Eric Cantor (R-VA) and Senator John Kyl (R-AZ) to quit negotiations in July, and high-profile reminders from Grover Norquist, president of Americans for Tax Reform, about the legislators' anti-tax pledge. Resolving the debt-ceiling issue came right down to the wire, but no taxes were increased. The deal did not require that any revenue be raised. It passed on the hopes for a grand bargain to a newly created entity: the bipartisan, bicameral "Super Committee," which was created to cut $1.2 trillion from the deficit over a decade. Standard and Poor's, one of the two biggest credit-rating agencies in the world, downgraded the nation's credit rating anyway, even in the absence of a default.

This so-called Super Committee failed in its task. In its wake, the BCA of 2011 established a system of sequestration, or automated cuts, designed to result in $1.2 trillion in savings from FY 2012–FY 2021. Budget caps were established for both defense and non-defense discretionary spending, and the debt ceiling has become institutionalized as a regular part of the negotiations; while negotiators have not come to the razor's edge of default again like they did in 2011, they certainly came too close for comfort in 2013. However, Congress has not been able to stick to the schedule of cuts it proposed for itself in the 2011 law. These reductions have been widely derided as unrealistic since the beginning of this new statutory regime.

In particular, the fiscal hawks of the House Freedom Caucus have objected to spending levels and non-defense spending.[21] Members of the Freedom Caucus, while fulfilling campaign promises made to voters, caused great disruption for Speaker Boehner, who had other issues on his plate. In particular, congressional leadership had to take steps so that the debt ceiling was not violated, causing a default on the nation's debt. Boehner would later refer to Representative Jordan, the leader of the House Freedom Caucus, as a "legislative terrorist" for helping negotiations routinely go right to the brink.[22]

The Earmarks Ban

The new normal is particularly evidenced by the earmarks ban. This is likely the single most consequential change for breaking down the legislative process in recent years. Earmarks are officially referred to as "congressionally directed spending" and often derived as "pork-barrel projects." In layman's terms, they involve a specific amount of money, requested by a specific legislator, for a specific project/entity, in a specific geographical area (i.e., including their district/state). The classic example of an earmark is a road or bridge or water project, though these can vary wildly and include items that are not infrastructure projects, such as university centers.

For appropriating bills as well as authorizing legislation, earmarks resulted in classic "logrolling," providing much-needed grease for the legislative wheels and helping to build larger coalitions.[23] Earmarks were not all bad. They often helped create a closer connection between members and their districts; they helped the legislative branch keep some authority rather than allowing the executive branch to dictate how dollars were spent; and they led to individual examples of programs that members simply believed were good for society.[24] Earmarks were used by Congress as a regular part of legislative business since the very first appropriations bill, when lawmakers set aside money for a lighthouse in 1789, but they have only recently become a political lightning rod. President Jimmy Carter's quixotic fight against the beloved water projects of congressional Democrats was seen as a sign of his political ineptitude, and these efforts soured his relations with Congress early on. The 1980s also saw more minor, but just as ineffectual, attempts to limit earmarking. Earmarks gained greater attention in the mid-1990s, as Republicans made a more concerted attempt to cut the budget, and earmarks proliferated (both in number and value), raising their visibility.

Fiscal hawks gained greater traction in the early to mid-2000s, with Speaker Boehner embracing their destruction to entice more conservative members to his candidacy when he ran for Speaker in 2006. At that point, an earmark ban had the attention and backing of Republican leadership—though there were more strident true believers on this than Speaker Boehner, who mainly sought to build coalitions with more conservative members. A series of reforms followed, beginning with transparency rules in 2007 according to which each earmark had to be publicly attributed to its member. As fiscal battles intensified, both parties politicized the issue—while Republicans gained attention first, Democrats were only too happy to pile on when they found examples they considered evidence of Republican hypocrisy.[25] In the 2008 campaign, the alleged abuse of the 2005 "bridge to nowhere"—a project that would have connected Ketchikan, Alaska (population 8,900), with the airport on the Island of Gravina (population 50) and would have cost hundreds of millions of dollars—gained widespread attention. Designed to spur economic growth (becoming, in other words, a bridge to somewhere), those who had voted for it quickly backed away from the project. Appropriations staffers will readily identify, to this day, that this was included in a bill from the Transportation and Infrastructure Committee and did not start with the Appropriations Committee.

The 2010 elections delivered a thrashing at the polls for Democrats and a great victory for House Republicans, many of whom had run on fiscal policy, as the TEA ("Taxed Enough Already") Party wave swept into Washington. Earmarks were banned following Election Day, before the end of the calendar year, with lawmakers not waiting until the next Congress. In the House, Republicans inserted the ban into their conference's rules—when they came into the majority in January 2011 the ban ruled the chamber, given that it ruled the majority party. In the Senate, lawmakers inserted the ban into the rules for the chamber. As President Barack Obama geared up for what would be a bruising year for fiscal policy, he warily considered the new freshman GOP class. Having seen Republican legislators decry earmarks while simultaneously benefiting from them before, Obama announced that he would veto any budget that came to his desk that contained earmarks. If the change in policy was already writ in ink, it felt set in stone after this pronouncement.

To be sure, the ban on earmarks dealt a powerful blow to an appropriations process already significantly weakened by partisanship and concerns over the debt, and some argue that restoring earmarks will not fix this trend.[26] But congressional insiders believe that the restoration of earmarks would improve an otherwise hamstrung appropriations process. The value of enabling lawmakers to set aside funding for critical infrastructure or job-creating projects back home to help pass bills is not lost on Capitol Hill. As one observer of Congress aptly notes, "earmarks are the currency of the legislative process," and "if you remove currency from an economy, how well can you expect it to function?"[27] Even Speaker Boehner remarked on this subject, his own reform: "When it comes to things like the highway bill, which used to be very bipartisan, you have to understand it was greased to be bipartisan with 6,371 earmarks," he said. "You take the earmarks away and guess what? All of a sudden people are beginning to look at the real policy behind it."[28] There are a number of ripple effects of the earmark ban that are important for understanding the changed incentives for legislators. Legislators want to leave their mark on the process and engage in credit claiming back home with their constituents. This impulse, when it was channeled through using earmarks, resulted in more buy-in, higher rates of appropriations bills (and other legislation) passing, and greater bipartisanship. In its absence, the tools that members have at their disposal to demonstrate their efforts to their constituents are ones that drive the process further apart, not closer together. Poison-pill amendments, in the comparatively open amending process of appropriations bills, are designed to embarrass the other party, not to reach an agreement. Increasing focus is spent on communications efforts in member offices, and communications in a highly partisan media environment are characterized by prizing ideological purity and teamsmanship.[29] Compromise is a risk; it is disincentivized and often scuttled before such an effort can begin.

The earmarks ban also makes it far more difficult to control one's co-partisans as a party leader. This is more problematic when those bucking leadership are motivated to do so as an ideological block. A frequent target of their ire, as hardline fiscal conservatives, was appropriations bills, CRs, and budget resolutions.[30] Unable to control them with earmarks, revoking committee assignments was an ill-fitting tool for party leadership and one that often backfired. These members left little to no opportunity for a challenger to run to the right of them in a primary, nor could challengers easily offer earmarked funds for, say, a bridge to counter the ideological dopamine served up by these members.

Potential Reforms After a Tumultuous Decade

The decade 2010–2020 is notable for both its metrics of dysfunction and the additional worrisome tools that Congress created for itself, particularly the earmarks ban, the sequestration regime under the BCA of 2011, and the regular (and unnecessary) inclusion of the debt ceiling in budget negotiations. The challenges ahead are great, but reforms are underway that may improve the process. The budget caps from BCA 2011 extend through FY 2021—what will replace this system is uncertain. While many took a dim view of trying sequestration again, there is no guarantee that what replaces this will be beneficial.

Notably, however, earmarks have been brought back in early 2021. This reform follows years of different proposals falling flat. House Appropriations Chair DeLauro initiated this reform by announcing in late February that earmarks would be allowed in appropriations bills, with a raft of rules to ensure transparency, ethics, and restraint in both the number of earmarks a single member can request (ten), and the total value of earmarks (not more than 1 percent of discretionary spending). In March, the House Republican Conference followed DeLauro's lead by lifting their conference ban on earmarks, allowing their members to request them. The Senate Republicans have retained their opposition to earmarks in their rules, but notably that rule is not binding.

Earmarks are not a silver bullet for congressional dysfunction, and the 117th Congress has a wider gulf of partisan distrust in the wake of the January 6 insurrection attempt on the Capitol. And yet it is difficult to not feel optimistic about this major reform after a decade of legislators denying themselves a powerful tool for achieving many goals of interest, including a more functional budget process. This reform has yet to play out in many ways—Will the GOP feel treated fairly and given a good percentage of earmarks (as historically has been the case)? Will major figures in politics and the media demonize earmarks, and how might this play out in primary-election politics? How quickly can members and staff relearn the atrophied skills for using earmarks well, whether that be logrolling in Congress or negotiations with district and state interests? Still, even with the potential to bring people together, the challenges we face now are greater than ever before, with the pandemic and tribal partisanship, and with likely divided government coming with the next election.

The Pandemic and the Budget

The late 2000s to the late 2010s saw remarkable developments in the budget process, in law, procedure, and norms. This period has also seen additional tax legislation of significance. The Obama Administration and a Republican Congress, for instance, passed the American Taxpayer Relief Act of 2012, which was projected to cost nearly $4 trillion over a ten-year window, extending 82 percent of the tax cuts that President George W. Bush pushed through in the early 2000s, notably allowing the lowered top marginal tax rate to expire as originally written into the legislation.[31] The Trump Administration and a Republican-controlled Congress pushed through the Tax Cuts and Jobs Act of 2017, which was projected to cost $1.5 trillion over the next decade when it was signed into law (the Congressional Budget Office subsequently rescored it as costing $2 trillion).

This new normal has been firmly established for some time. The 2018 Joint Select Committee on Budget and Appropriations Process Reform was unable to report out a single legislative recommendation for improving the process or what it might look like going forward.[32] The Select Committee for the Modernization of Congress, a bipartisan panel working to make Congress more effective, efficient, and transparent, has been a little more promising. The largest focus of its work was to recommend more and better-funded congressional staff (a crucial issue, to be sure) and biennial, rather than yearly, budgets. The panel could not agree on whether to recommend bringing back earmarks, however.[33] Another government shutdown was narrowly prevented in December 2019.[34] Meanwhile, on the other side of the world, in Wuhan Province in China, people were getting sick with a mysterious illness, with the first official reports coming at the end of the month.

The world has changed with the pandemic, and Congress, to its credit, responded quickly to COVID-19, with two supplemental appropriations bills (one totaling $8.3 billion and the other $192 billion) followed by the $2.2 trillion CARES Act in March 2020, with an additional $483 billion in relief following in April. This legislation garnered both bipartisan and widespread support; not a single member of Congress voted against the CARES Act. Roughly $900 billion in additional relief was passed in December 2020, again with broad bipartisan support, although the negotiations were quite contentions and dragged out for months. With the change in governing dynamics in early 2021—a new Biden Administration working alongside narrow Democratic majorities in both chambers—Republican votes are scarce. The $1.9 trillion American Rescue Plan Act passed in March 2021 with Democratic votes alone. With the total cost of pandemic aid mounting rapidly and a Democrat in the White House, fiscal conservatives are likely to continue to oppose further pandemic spending, with few exceptions. While significant stimulus has been necessary in the face of this crisis, it has substantially increased the nation's debt, promising that the next reckoning over our growing deficits will come sooner rather than later.

Conclusion

What might these larger trends and possibilities portend for the budget process, specifically? Unless the US significantly restructures its governing commitments (including entitlement programs like Social Security and Medicare), tax increases will be necessary to handle the ever-widening rift between revenues and spending. Yet this appears to be a political nonstarter. Far from having the political courage (or arithmetic competency) to raise taxes, Congress has proven itself willing to pass costly tax cuts even as the appropriations process groans under the pressures of sequestration intended to reduce deficits.

Congress often makes major reforms during times of crisis, and this is certainly true for fiscal policy. Major changes to both the appropriations process, as well as the substance of legislation, have tended to occur in response to wars or economic emergencies, or to a concern over spiking levels of debt. Congress will have the opportunity to go bigger with reforms than they might otherwise have considered. What political lessons have they learned? What behavior do they think voters will reward? What are their priorities for the nation? The looming reckoning of past choices is closer at hand than many previously thought, but Congress has a tremendous opportunity on their hands if they are ready to seize it. To do so, however, they must not only consider mathematical realities, but also counter the hyper-partisanship that currently characterizes the institution and legislators' pursuit of re-election—which drives most things that take place on and around Capitol Hill. Instead of looking for ways to build a better straightjacket for themselves, members of Congress should realize that they hold the keys.

They have a significant opportunity for reform on their hands; it remains to be seen what exactly they will do with it.

Notes

1 To show this breakdown, it was necessary to build a dataset of appropriations bills, using data from Congress.gov. Using the percentage of appropriations bills passed, going back to the beginning of the new budget process following the 1974 Budget Act, is the most wholistic way to look at the budget process. Considering the percentage and not the number of bills passed also allows us to compare years when there were 13 bills (up through 2005) with the current total of 12.

2 Bill Heniff, Jr., *Congressional Budget Resolutions*, Congressional Research Service Report RL30297 (Washington, DC: Congressional Research Service, 2015).

3 See Richard F. Fenno, Jr., *Home Style: House Members in Their Districts* (London: Longman Publishing Group, 1978); and Elmer E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (Boston: Cengage Learning, 1975).

4 American Political Science Association, "Report of the Task Force Project on Congressional Reform," 2019, www.legbranch.org/app/uploads/2019/11/APSA-Congressional-Reform-Task-Force-Report-11-2019-1.pdf.

5 Barbara Sinclair, *Unorthodox Lawmaking*, 5th ed. (Washington, DC: CQ Press, 2016).

6 Lawrence Dodd, "Congress and the Quest for Power," in Lawrence Dodd and Bruce Oppenheimer, eds., *Congress Reconsidered* (New York: Praeger, 1977); and James Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution Press, 1981).

7 John Ellwood, "The Great Exception," in Lawrence Dodd and Bruce Oppenheimer, eds., *Congress Reconsidered*, 3rd ed. (Washington, DC: CQ Press, 1985).

8 Daniel Palazzolo, *The Speaker and the Budget: Leadership in the Post-Reform House of Representatives* (Pittsburgh: University of Pittsburg Press, 1992); John Aldrich and David Rohde, "The Republican Revolution and the House Appropriations Committee," *The Journal of Politics*, 62 (1) (2000): 1–33; Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3rd ed. (Washington, DC: Brookings Institution Press, 2007); and Frank Oliveri, "Cardinals with Clipped Wings," *CQ Weekly*, October 21, 2013.

9 Daniel Diermeier, "Commitment, Deference, and Legislative Institutions," *American Political Science Review*, 89 (1995): 8344–8355.

10 Sarah Ferris, "Ryan Changes Rules for Spending Bills," *The Hill*, June 8, 2016, https://thehill.com/policy/finance/282704-ryan-changes-rules-for-spending-bills.

11 See Table 5–1, Brookings Institution, *Vital Statistics on Congress: Data on the U.S. Congress* (Washington, DC: Brookings Institution Press, 2019).

12 Lee Drutman and Steven Teles, "Why Congress Relies on Lobbyists Instead of Thinking for Itself," *The Atlantic*, March 10, 2015, www.theatlantic.com/politics/archive/2015/03/when-congress-cant-think-for-itself-it-turns-to-lobbyists/387295/; and Lorelai Kelly, "Dumb by Design," *The Huffington Post*, November 29, 2011, www.huffpost.com/entry/newt-gingrich-congress-expert-knowledge-_b_1118297.

13 See Oliveri (2013).

14 These reportedly included Representatives Michele Bachmann (R-MN), Steve King (R-IA), Lynn Westmoreland (R-GA), and Jim Jordan (R-OH) after the 2010 mid-cycle election, and Senators Patrick Leahy (D-VT) and Tom Harkin (D-IA), who declined the Appropriations Committee chairmanship in 2013, with the gavel going instead to Senator Barbara Mikulski (D-MD). See Richard Cohen and Simmi Aujla, "Appropriations Panel Loses Its Luster," *Politico*, November 17, 2010; and Oliveri (2013).

15 Julia Azari, "Weak Parties and Strong Partisanship are a Bad Idea," *Vox*, November 3, 2016, www.vox.com/mischiefs-of-faction/2016/11/3/13512362/weak-parties-strong-partisanship-bad-combination.

16 Capitol Hill has a difficult time shaking gendered nomenclature, which may seem strange for professionals coming from other fields. You will occasionally see the chair of a committee simply referred to as the "chair," but it is almost ubiquitous to see "chairman," even if the chair is female. In the 116th Congress (2017–2019), the House Appropriations Committee was chaired

by Representative Nita Lowey (D-NY), and in the 117th Congress (2019–2021) it is chaired by Representative Rosa DeLauro (D-CT).

17 See, for example, Molly E. Reynolds, "The Personal or the Partisan? The Politics of House Appropriations Amendments, 1985–2016," *Congress and the Presidency*, 46 (1) (2019): 28–59.

18 Jennifer Shutt, "Long-Delayed Senate Spending Bills Ready for Close-Up Tuesday," *Congressional Quarterly*, November, 2020.

19 See Sinclair (2016).

20 Tim Alberta, *American Carnage* (New York: Harper, 2019).

21 Donald R. Wolfensberger, *Changing Cultures in Congress: From Fair Play to Power Plays* (New York: Columbia University Press, 2018); and Matthew Green, *Legislative Hardball: The House Freedom Caucus and the Power of Threat-Making in Congress* (Cambridge: Cambridge University Press, 2019).

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23 Diana Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress* (Cambridge: Cambridge University Press, 2004).

24 Scott Frisch and Sean Kelly, *Cheese Factories on the Moon: Why Earmarks are Good for American Democracy* (London: Paradigm Publishers, 2011).

25 Joseph White, "Jimmy Carter's and James Miller's Revenge: The Reasons and the Consequences for Presidential and Congressional Power of Measures to Ban Congressional 'Earmarks,'" *Case Western Reserve Law Review*, 65 (4) (2015): 1175–1199.

26 Diana Evans, "A Return to Earmarks Could Grease the Wheels in Congress," *The Conversation*, March 26, 2018.

27 Douglas Farrar, "Earmarks: The Bad Word for Making Good Things Happen," Aspen Institute, September 28, 2017, www.aspeninstitute.org/blog-posts/earmarks-bad-word-making-good-things-happen/.

28 Juliet Eilperin and Sean Sullivan, "How the Ban on Earmarks Killed the Gun Bill," *The Washington Post*, April 19, 2013.

29 Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).

30 See Green (2019).

31 See Dennis Ippolito, *Why Budgets Matter: Budget Policy and American Politics* (University Park, PA: Penn State University Press, 2015); Chye-Ching Huang, "Budget Deal Makes Permanent 82 Percent of President Bush's Tax Cuts," Center for Budget and Policy Priorities, January 3, 2013.

32 Erica Werner, "Congress's Special Committee to Fix the Broken Budget Process Has Broken Down," *Washington Post*, November 29, 2018.

33 In terms of topline spending, they would retain the yearly appropriations cycle. See Select Committee on the Modernization of Congress, *Final Report*, October 2020, https://modernizecongress.house.gov/final-report.

34 Mike DeBonis, "Congress Finalizes $1.3 Trillion Spending Deal Ahead of Friday Shutdown Deadline," *Washington Post*, December 16, 2019.