

The Federal Budget Process in the United States of America, or the Battlefield between the President and Congress

*Przemysław Pest**

INTRODUCTION¹

In the 1975, article entitled “The Battle of the Budget,” Allen Schick, one of the most prominent experts on the federal budget in the United States, observed as follows: “The budget is a perennial battleground of American politics. Everybody fights. Agencies strive for more money, and budget offices for more control over spending. The president announces one set of budget priorities; Congress enacts another. Within Congress, it is House versus Senate, authorizing versus appropriations committees, and spenders versus savers. It could hardly be otherwise. With tens of billions of dollars at issue every year, and with vital interests and policies hinging on the outcomes, the budget has virtually boundless potential for conflict.”² Hence, this article aims to outline the essential premises of the federal

* University of Wrocław, Poland, ORCID: 0000-0002-1168-0991

¹ The study includes a number of theses and conclusions formulated previously by this author in the monograph entitled *Równoważenie się władzy ustawodawczej i władzy wykonawczej w procedurze tworzenia i uchwalania budżetu w Stanach Zjednoczonych Ameryki i Rzeczypospolitej Polskiej* (Wrocław: PRESSCOM, 2019). The text relies on the material collected during 2017 research stay at the University of Wyoming, under a Fulbright scholarship.

² Allen Schick, “The Battle of the Budget,” *Proceedings of the Academy of Political Science* 32, no. 1 (1975), 51.

budget procedure in the United States of America in the light of conflict between the President and Congress, with particular attention to the constitutional regulations in this regard.

THE ORIGINS OF THE FEDERAL BUDGET PROCESS AND THE PRESIDENTIAL BUDGET PROPOSAL

The Constitution of the United States of America does not contain any extensive provisions concerning public finance. In fact, it is only Article I, relating to the legislature, which lists its pertinent powers in Section 8: “The 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,” while Section 9 states that “no money shall be drawn from the treasury, but in consequence of appropriations made by law.” The former prerogative, which empowers Congress to decide on the sources of public revenue, is referred to as the taxing power, whereas the latter, involving approvals of public expenditure, is known as the spending power.³ Together, they constitute the so-called “power of the purse” vested in the legislature, which represents one of the most important checks and balances against the executive.⁴

The fact that the authors of the US Constitution entrusted the power of the purse to Congress derived from the English parliamentary tradition, in which the foremost function of the legislature had originally been to decide on the levy of taxes, the revenue from which was then allocated to specific public ends.⁵ The legal culture and history of the United States, as well as the pragmatism of US legal and financial doctrine, resulted in the absence of general principles underlying the structure of the budget system. Neither does US legislation provide explicitly for budgetary principles.⁶ Moreover, the federal Constitution, apart from the aforementioned general provisions regarding taxing power and spending power, does not stipulate anything that would pertain to the federal budget itself or the budget procedure. The institution of the budget as it is understood today was not widespread at the time the US Federal Constitution was drafted. The earliest budget-like public financial plans were developed in European countries, first in England and then in Poland.⁷

³ Bill Heniff Jr., Megan S. Lynch and Jessica Tollestrup, *Introduction to the Federal Budget Process*, CRS Report to Congress 2012, no. 98-721, 1-5.

⁴ Aaron B. Wildavsky, *The New Politics of the Budgetary Process* (New York: HarperCollins Publishers, 1992), 36.

⁵ Ryszard M. Małajny, *Pozycja ustrojowa Kongresu USA* (Katowice: Uniwersytet Śląski, 1991), 1: 111.

⁶ Teresa Dębowska-Romanowska, *Realizacja jedności i powszechności w ustawie budżetowej* (Warszawa: Wydawnictwo Prawnicze, 1982), 51.

⁷ Natalia Gajl, *Gospodarka budżetowa w świetle prawa porównawczego* (Warszawa: Wydawnictwo Naukowe PWN, 1993), 16, 28.

In the United States, the concept of drafting and enacting a uniform budget only became the subject of a broader debate at the beginning of the twentieth century.⁸

If one were to use Polish legal and financial terminology, the first stage of the budget procedure would be, in the case of the federal budget, the preparation of its draft by the executive and subsequent submission to Congress. However, the federal Constitution does not mention such a task in the catalog of the President's competencies.⁹ Throughout the nineteenth century and in the early twentieth century, the President did not prepare a unified draft budget for the entire federal executive apparatus; instead, individual federal agencies submitted their respective drafts of financial plans to Congress.¹⁰ However, due to abrupt surges in federal revenue and expenditure in the early twentieth century, particularly during the First World War, the need for a centralized drafting process became apparent.¹¹ Thus, the federal budget procedure was codified for the first time in the Budget and Accounting Act of 1921. The act required the President to develop a federal budget proposal annually and submit it to the legislature. Under the new law, federal agencies lost the ability to request to be apportioned specific public funds directly from Congress, except when this was called for by either chamber.¹² Although the Polish academic literature uses the term "federal budget draft," the President's Budget is merely a detailed petition stating the financial requirements of federal agencies and programs through which the President's policies are to be pursued. Its submission—unlike the draft budget bill submitted to the Sejm by the Council of Ministers in line with Articles 221 and 222 of the Polish Constitution—does not take place as part of legislative initiative.¹³ The presidential budget proposal conveys the priorities of the administration concerned and the values that the incumbent of the White House wishes to realize. The actual nature of the presidential budget proposal is well reflected in the words of President Joe Biden: "Don't tell me what you value. Show me your budget, and I'll tell you what you value."¹⁴ The budget proposal submitted by the President provides a point of departure for work on the federal budget in Congress, though it is not passed by Congress, as is the case with the budget bill submitted to the Sejm

⁸ Allen Schick, *The Federal Budget: Politics, Policy, Process* (Washington: Brookings Institution Press, 2007), 10.

⁹ Heniff Jr., Lynch, and Tollestrup, *Introduction to the Federal Budget Process*, 1–5.

¹⁰ Schick, *The Federal Budget: Politics, Policy, Process*, 14.

¹¹ Schick, *The Federal Budget: Politics, Policy, Process*, 14.

¹² Andrzej Pułło, *Prezydent a Kongres USA w świetle konstytucyjnych zasad podziału i równowagi władz* (Gdańsk: Uniwersytet Gdański, 1986), 115.

¹³ Pursuant to Article 221, Constitution of the Republic of Poland, the right to introduce legislation concerning a Budget, an interim budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers. Furthermore, Article 222 provides that the Council of Ministers shall submit to the Sejm a draft Budget for the next year no later than three months before the commencement of the fiscal year. In exceptional instances, the draft may be submitted later.

¹⁴ Hillary Rodham Clinton, *What Happened* (New York: Simon & Schuster 2017), 224.

by the Council of Ministers in Poland. The draft budget, or rather budgets (as formal uniformity of the budget does not apply in the United States), is prepared, as shown later on, by the House of Representatives.

The 1921 Act also established two new public administration bodies which were granted vital powers in the budget procedure. The first was the Bureau of the Budget, subordinate to the President, whose principal task was to develop the presidential budget proposal. The Bureau of the Budget functioned initially within the Department of the Treasury. In 1939, it was transferred to the Executive Office of the President of the United States. In 1979, its name was changed to the Office of Management and Budget. The Office collects spending requirements of individual federal agencies and then prepares the budget proposal for the following fiscal year.¹⁵ However, it is not just a straightforward aggregation of the financial requirements of the various federal agencies, since this office oversees the implementation of the President's programs, therefore the planned expenditure of the various agencies is assessed in the light of the presidential policies.¹⁶ The second body introduced under the aforementioned act was the General Accounting Office, which was renamed in 2004 to the Government Accountability Office. It is the supreme audit body in the United States, which is why it is referred to in the literature as the "controlling arm of Congress."¹⁷

THE BUDGET PROCESS IN CONGRESS

In the second stage of the budget process, the federal budget is passed by Congress. As already noted, according to Article 1, Section 9 of the federal Constitution, "no money shall be drawn from the treasury, but in consequence of appropriations made by law." This provision, encapsulating the congressional power of the purse, is reified in specific budgetary powers of Congress. Congress may: refuse to allocate funds to programs proposed by the President; cease to finance ongoing programs; make the allocation of public funds subject to the President's compliance with certain conditions; monitor the implementation of individual programs following allocation of requested amounts, particularly in terms of accomplishment of the intended objectives; also, it may grant higher spending limits (appropriations) than those proposed, thus seeking to compel the executive branch to carry out undertakings it finds preferable.¹⁸ It is also worth noting that, unlike in Poland, neither the Constitution nor

¹⁵ Michelle D. Christensen, *The Executive Budget Process: An Overview*, CRS Report 2012, no. R42633, 2–5.

¹⁶ Mariusz Jagielski, *Prezydent USA jako szef administracji* (Kraków: Zakamycze, 2000), 198–99.

¹⁷ Ryszard Szawłowski, "The General Accounting Office—najwyższy organ kontrolny Stanów Zjednoczonych," *Kontrola Państwowa*, no. 1 (1992): 109.

¹⁸ Małajny, *Pozycja ustrojowa Kongresu USA*, 111.

federal legislation provides for a separate discharge procedure whereby the actual implementation of the budget is granted or denied approval. Congressional supervision over public spending is exercised by the competent Congressional committees (the House Appropriations Committee and the Senate Appropriations Committee in the main) as part of their work on the budget for the upcoming year.¹⁹

However, in financial matters, the position of Congress relative to the President has not always been that strong. In the relationship between the legislature and the executive in budget matters we can distinguish three periods.²⁰ In the first, from 1789 to 1921, Congress had a decisive say in the matter. The beginning of the second period was marked by the adoption of the Budget and Accounting Act of 1921, which significantly extended the prerogatives of the President in the budget procedure. It was not until the widespread public backlash against the actions of the administration under President Richard Nixon that Congress was given the opportunity to pass legislation increasing its powers in the budget process.²¹ The Congressional Budget and Impoundment Control Act of 1974 was signed into law by President Nixon less than a month before he resigned from office. The act in question ushered in the third period, characterized by a relative balance in the relationship between Congress and the President in budget matters.²² Previously, Congress had not had the legal instruments to address budgetary issues in their totality. Admittedly, certain dedicated bodies did function at the time, including the House Appropriations Committee and the Senate Appropriations Committee, responsible for establishing limits on prospective expenditure, as well as the House Ways and Means Committee and the Senate Finance Committee, which were in charge of revenue, but their competences spanned only sections of the country's financial management, not its entirety. Nor did Congress possess a legal instrument that would have enabled it to approve, by virtue of a single bill, the global amounts of public revenue and spending. For this reason, Congress was dependent on the President's proposals, which clearly circumscribed its power of the purse and hampered the checks and balances of the executive branch.²³

Under the Congressional Budget and Impoundment Control Act of 1974, the start of the fiscal year was moved by three months (from July 1 to October 1) to give Congress more time to work on the federal budget proposal. In addition, new budget committees were introduced in both chambers (House Budget Committee and Senate Budget Committee) which are tasked with preparing the budget reso-

¹⁹ Marian Grzybowski and Andrzej Kulig, *Systemy ustrojowe Stanów Zjednoczonych i Kanady* (Kraków: Oficyna Wydawnicza Abrys, 2015), 5.

²⁰ Schick, *The Federal Budget: Politics, Policy, Process*, 9.

²¹ Patricia D. Woods, *Who Has the Power of the Purse: The Guide to the Federal Budget Process* (Washington: The Woods Institute, 2018), 75–76.

²² Schick, *The Federal Budget: Politics, Policy, Process*, 19.

²³ Abner J. Mikva, "The Congress, The Purse, The Purpose, and The Power," *Georgia Law Review* 21, no. 1 (1986): 7.

lution, a new legal instrument within the congressional power of the purse. Furthermore, the act established a specialized agency to assist members of Congress in analyzing the presidential budget proposal, namely the Congressional Budget Office.²⁴ This institution was intended as a counterpoise to the presidential Office of Management and Budget.

Section 300 of the Congressional Budget and Impoundment Control Act of 1974 includes the schedule for the congressional budget process for any fiscal year (see table 1).

Table 1. Schedule for congressional budget process for fiscal year

On or before	Action to be completed
First Monday in February	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after President submits budget	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	The fiscal year begins.

The first phase of congressional work on the federal budget consists in preparing the budget resolution, for which the Budget Committees of both chambers are responsible. The Budget Resolution, once voted through by both chambers of Congress, constitutes the core document for the legislature based on which the federal budget proper is developed.²⁵ The concurrent resolution on the budget sets forth appropriate levels for the fiscal year beginning on October 1 of such year and for at least each of the four ensuing fiscal years for the following, inter alia, (1) totals of new budget authority and outlays; (2) total Federal revenues and the amount, if any, by

²⁴ Cf. Philip G. Joyce, *The Congressional Budget Office: Honest Numbers, Power, and Policymaking* (Washington: Georgetown University Press, 2011).

²⁵ James V. Saturno, *The Congressional Budget Process: A Brief Overview*, CRS Report 2011, no. RS20095, 4–5.

which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees; (3) the surplus or deficit in the budget; (4) new budget authority and outlays for each major functional category, based on allocations of the total levels set forth pursuant to paragraph; (5) the public debt. The significance of the budget resolution is evinced in the fact that it is the sole bill passed by Congress in which global amounts of public revenue and expenditure are stated. Although prior to its introduction, Congress had indeed enacted bills that determined the limits on planned public outlays (appropriation bills) and tax bills concerned with the amount of public revenue, no legal instrument was available to Congress through which all federal revenue and expenditure may be controlled.²⁶ Consequently, the budget resolution needs to be recognized as one of the most important instruments enabling the exercise of the congressional power of the purse.

The preparation of the federal budget, comprising twelve separate bills, is delegated to the House Appropriations Committee. The principle arising from the Constitution extends the exclusive right of legislative initiative granted to the House with respect to all bills pertaining to public revenue (Article I, Section 7: "All bills for raising revenue shall originate in the House of Representatives"), inclusive of appropriation bills. The House Appropriations Committee is divided into twelve subcommittees, each of which develops one bill that sets the appropriations within its respective jurisdiction.²⁷ The subcommittees draft the budget bills to the extent of public appropriations which they have been allocated based on the amounts stated in the budget resolution.²⁸ Once all bills have been drafted by the subcommittees, they are passed by the Committee and referred to the House of Representatives. Having been approved in the House, the bills are subsequently referred to the Senate to be examined by the Senate Appropriations Committee. If the Senate introduces any amendments, the dedicated conference committee prepares reports containing consolidated versions of the bills. These bills, in identical versions, are then voted on by the House and Senate.

THE PRESIDENTIAL VETO AND IMPOUNDMENT

When such appropriation bills have been passed in identical wording by both chambers of Congress, they are submitted to the President, in line with Article I, Section 7 of the federal Constitution: "Every 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 approves it he shall sign it, but if not he shall re-

²⁶ Schick, *The Federal Budget: Politics, Policy, Process*, 119.

²⁷ Heniff Jr., Lynch, and Tollestrup, *Introduction to the Federal Budget Process*, 1–24.

²⁸ Schick, *The Federal Budget: Politics, Policy, Process*, 61.

turn it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered in the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.” From the moment the United States was established until 2016, presidents chose to veto appropriation bills eighty-three times, with twelve vetoes overturned by Congress. The record holder in this regard was President Bill Clinton, who vetoed fourteen such bills, with none overridden later by Congress.²⁹ The President’s prerogative to veto is a legal instrument that allows the executive to check and balance the legislative power in the course of the budget process, a counterpoise to the congressional power of the purse. In numerous states, governors have been granted the right to veto only selected provisions in the bills that they are submitted for signature, which is otherwise known as the line-item veto. At the federal level, however, the President has no such power at their disposal. An attempt to confer it on the President in the Line Item Veto Act of 1996 failed two years later as the instrument was declared unconstitutional under the federal Constitution by the Supreme Court in *Clinton v. City of New York*. Even so, President Bill Clinton made use of the instrument several times in 1997 before it was pronounced incompatible with the federal Constitution.³⁰

Another legal instrument that the President is entitled to use to limit the congressional power of the purse is the so-called “impoundment.”³¹ The term denotes the refusal of the President to expend public funds they are allocated by Congress in the appropriation bill,³² thus proceeding contrary to the will of the legislature. It is observed in the literature that the nature of the institution is actually not unlike the selective veto.³³ Impoundment was not often employed by American presidents in the nineteenth and first half of the twentieth century. However, it would see in-

²⁹ Meghan M. Stuessy, *Regular Vetoes and Pocket Vetoes: In Brief*, CRS Report 2016, no. RS22188, 5–7.

³⁰ Cf. Ireneusz Kondak, “Stany Zjednoczone: weto selektywne a konstytucyjny kształt procedury ustawodawczej (Clinton v. City of New York, i inni. Orzeczenie Sądu Najwyższego USA z 25 czerwca 1998 r.),” *Przegląd Sejmowy* 7, no. 1(30) (1999), 149–54.

³¹ Jagielski, *Prezydent USA jako szef administracji*, 214.

³² Ryszard M. Małajny, *Amerykański prezydenccjalizm* (Warszawa: Wydawnictwo Sejmowe, 2012), 476.

³³ Pułło, *Prezydent a Kongres USA w świetle konstytucyjnych zasad podziału i równoważenia władz*, 133.

creasing use after the Second World War, which peaked during the presidency of Richard Nixon, escalating into the so-called “impoundment war” during his term in office.³⁴ President Nixon impounded between 17 and 20% of all appropriations passed by Congress in the successive fiscal years, using the funds thus obtained for purposes that Congress did not approve, such as financing military interventions abroad. When Congress overrode his veto of the Federal Water Pollution Control Act Amendments of 1972, which provided, for example, for allocating public funds to water conservation, President Nixon declared that the monies in question would not be spent in any case, which was tantamount to a double veto. Impoundment became a weapon in the hands of the President to combat the congressional power of the purse and, quite openly, undermined the spending power that is constitutionally granted to the legislature.³⁵ Using that legal instrument, the President would create budget reserves and place a limit, as he saw fit, on the public funds for federal programs that had been allocated by Congress in appropriation bills.³⁶ Congressional control over public spending was restored by virtue of the aforementioned Congressional Budget and Impoundment Control Act of 1974, the last chapter of which is devoted to impoundment. The act made it possible for Congress to effectively counteract impoundment on the President’s part, though, at the same time, it sanctioned the impoundment instrument itself.³⁷ Consequently, the President may still temporarily suspend the funds passed by Congress, exploiting that peculiar “chink” in the power of the purse vested in the legislature. Even so, its practical importance has clearly diminished following the enactment of the 1974 law.

CONCLUSIONS

To recapitulate, the power of the purse granted to Congress under the US Federal Constitution places the legislature at the forefront of the budget process. The actual federal budget, which comprises appropriation bills, is developed by Congress on the basis of the budget resolution, which also originates with that body. The strict structural and personal separation between the legislature and the executive, as well as the fact that Congress is entrusted with the exclusive right to determine appropriations, translate into the actual significance of the congressional power of the purse: one of the crucial systemic checks and balances in the United States of America. The so-called presidential budget proposal is, in fact, only a request stating financial requirements, but it is not a budget bill equivalent to what the Polish

³⁴ Małajny, *Amerykański prezydencjalizm*, 479.

³⁵ Małajny, *Amerykański prezydencjalizm*, 478–79.

³⁶ Andrzej Kulig, “Stany Zjednoczone Ameryki,” in *Systemy ustrojowe państw współczesnych*, eds. Stanisław Bożyk and Marian Grzybowski (Białystok: Temida 2, 2012), 75.

³⁷ Małajny, *Amerykański prezydencjalizm*, 482.

Council of Ministers submits as part of the exclusive right to legislative initiative in Poland. Congress may allocate funds in an amount less than that requested by the President, or even decide not to finance a particular federal program. Within the framework of checks and balances, the congressional power of the purse is offset by the President's power to veto the budget bill(s) passed by Congress. Such reciprocal checks and balances ensure a relative systemic balance between the legislative and the executive branches in the federal budget process. Attempts to augment the budgetary prerogatives of the President, by, for example, granting them the recourse to line-item veto or impoundment, were met with opposition from the other two powers, the legislature and the judiciary. Still, it is worth noting that the tremendous increase in the number of federal programs that rely on appropriations seen in recent decades, as well as the complexity of procedures through which the latter are determined, have a palpable adverse effect on the ability of Congress to balance the executive. Members of Congress do not have sufficient knowledge and time to assess in-depth whether the amount of public funding requested by the President for individual programs is justified. It is often the case that the process of determining appropriations amounts to "capping" presidential proposals automatically by a default percentage.³⁸ Moreover, the power of the purse is also constrained by the decreasing share of discretionary spending, which is subject to the budget procedure, in the total amount of public expenditure. Currently, it accounts for a mere 30% of public spending. The remaining 70% of the outlays, known as mandatory/direct spending, remain outside the annual budget procedure.

Summary: The article discusses the essential premises of the federal budget procedure in the United States from the standpoint of conflict between the President and Congress, with particular emphasis on the pertinent constitutional regulations. The article outlines the nature of the congressional power of the purse, as well as describes a number of involved instruments, such as the presidential budget proposal, the congressional budget resolution, appropriation bills, the presidential veto, and impoundment.

Keywords: federal budget, power of the purse, appropriations, checks and balances

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³⁸ Małajny, *Pozycja ustrojowa Kongresu USA*, 147–48.

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