The Problem and the Process Are Both Problems: Why the Joint Select Committee on Budget and Appropriations Process Reform Failed

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Abstract

The Bipartisan Budget Act of 2018 created the Joint Select Committee on Budget and Appropriations Process Reform. This paper describes the committee's formation, its composition, and its actions through this year. It concludes with an explanation for the committee's failure to agree on a legislative proposal that would be sent to the floors of the House and the Senate, but also suggests that the committee's legislative charge still needs to be addressed by future Congresses.

INTRODUCTION

In the early 1980s, CBO director Rudy Penner first stated his famous aphorism about budget process reform: "the process is not the problem, the problem is the problem" (Washington Post, 1984). It has been restated many times by numerous commentators, with two intended messages: that we need better federal budget policies than current ones, and that budget process reforms, by themselves, will not guarantee those better policies. Yet the creation of the Joint Select Committee on Budget and Appropriations Process was driven by concerns about problems with both budget policy and the budget process itself.

Federal Budget Policies Should Be Much Better

Most claims about bad federal budget policies focus on the levels of federal deficits and debts. The budget has been in deficit in 45 of the past 50 fiscal years. Since the last balanced budget in 2001, the federal debt held by the public has risen from $3.3 trillion (31% of GDP) to $16.8 trillion (79% of GDP) at the end of fiscal year 2019. By the end of fiscal year 2028, CBO projects that debt, under current policies, would stand at $29.8 trillion, or 98 percent of GDP (Congressional Budget Office, 2020). And this was before the hole was made even deeper by the response of the federal government to the COVID-19 pandemic, which will add at least several trillion dollars to both short-term deficits and medium-term debt.

Economists have long pointed out that federal debt can "crowd out" resources that might be used for productive private investment, thus potentially compromising economic growth. Those who preach on the evils of debt should not, however, ignore the positive counter-cyclical contribution of deficits when economic growth is below its potential, and the positive role that borrowing may play in financing cost-effective public investments. The "secular stagnation" of the world's economy has apparently delayed the projected interest rate increase that would generate crowding out. Yet allowing the debt to grow very large will eventually compromise the ability of the country to respond to future policy shocks such as subsequent recessions, natural disasters, and national security crises.

Focusing on debt misses another important concern: at any level of debt, there can be significant misallocations within the budget. One version of this view argues that mandatory spending and tax preferences have easier procedural rides than does discretionary spending. The latter faces the annual discipline of the appropriations process, while mandatory spending and tax preferences do not. A qualifier to this is that when budget resolutions are enacted, then the reconciliation process can be used to enable tax increases and cuts to projected mandatory spending. Also, the PAYGO rule can limit the potential to create new mandatory spending and tax cuts by requiring that new mandatory spending or tax cuts be offset fully by savings in those categories. But those effects are completely dependent on whether Congress wants to establish and enforce comprehensive budget plans.

Budget Process Reforms Will Not, By Themselves, Guarantee Better Budget Policies

The search for a procedural silver bullet that would lead to better budget policies has been ever-present since at least the Balanced Budget and Emergency Deficit Control Act of 1985 (aka Gramm-Rudman-Hollings, or GRH). GRH was generally viewed as a failure. Its threat of automatic reductions (aka sequestration) should regular legislation not produce budget outcomes consistent with preset targets was avoided by accounting gimmickry and legislative amendments of the targets. It was replaced by a more sensible approach that established procedural controls over both spending increases and tax cuts that increased the deficit. Yet the failure fo GRH has not stopped many debt hawks from continuing to support the reform approach of the creation of a fiscal target, accompanied by a trigger for some automatic corrective action if the target was not met (Committee for a Responsible Federal Budget, 2018).

When elected politicians up and down Pennsylvania Avenue agree that deficits should be reduced, it is reasonable to expect that a fiscal target and a related trigger will have that desired effect (Peterson-Pew Commission on Budget Reform, 2011). But lacking such agreement, any mechanism put in place is likely to be ignored or circumvented. This conclusion was stated by CBO as early as 1993, based on the experience with GRH and the Budget Enforcement Act of 1990: “budget procedures are much better at enforcing deficit reduction agreements than at forcing such agreements to be reached” (1993; p. 86).

Nothing that happened over the next three decades should challenge this conclusion. When opinion supported reducing deficits, Congress and the President enacted laws in 1990 and 1993 that cut spending and raised taxes. The 1990 law, the Budget Enforcement Act (BEA), included procedures that made it more difficult to reverse course and adopt deficit-increasing policies: caps for discretionary spending, and PAYGO requirements for mandatory spending and revenues.

In contrast, the process created by the Budget Control Act (BCA) of 2011 was intended to force an agreement on deficit reduction when no such agreement had been reached between the competing parties. Members of a special “supercommittee” were first scheduled to specify policies that would generate deficit reductions. Their failure to do so would trigger automatic reductions through a sequestration process, which cancels previously approved spending. This threat was intended to force the parties to reach agreement, because the cuts were generally viewed as undesirable in their depth and across-the-board impact on discretionary spending. Yet the threat failed to produce agreement, so the automatic reductions actually took place. But in 2013, 2015, 2018, and 2019, the caps were then raised because in fact the cuts that would be required by the caps were politically unacceptable (Gullo, 2019). In fact, as Table 1 shows, between fiscal year 2013 and 2021, the difference between the original BCA caps and actual discretionary budget authority exceeded $500 billion.

Table 1—Difference Between Original BCA Caps and Actual Budget Authority

Fiscal Year	Original Budget Control Act Caps	Actual Budget Authority	Difference
2013	$1,090.0	$1,140.2	+$50.2
2014	$1115.0	$1,133.7	+$18.7
2015	$1,138.0	$1,116.7	–$21.3
2016	$1,161.0	$1,166.7	+$5.7
2017	$1,188.0	$1,220.0	+$32.0
2018	$1,216.0	$1,422.8	+$206.8
2019	$1,246.0	$1.321.0	+$75.0
2020	$1,276.0	$1,370.0	+$94.0
2021	$1,306.0	$1,372.0	+66.0
Total 2013–2021	$10,736.0	$11,263.1	+$527.1

Source: Calculation by authors from Congressional Budget Office, *The Budget and Economic Outlook* (various years).

Some advocates of action-forcing procedures point to the success of the 1990 BEA as evidence that the budget process can cause deficit reductions. While this has been the case recently with sequestration of Medicare spending, in general this argument is wrong. The BEA procedures were mechanisms that would not have been created absent the desire to enforce a tentative agreement to reduce deficits. Indeed, the caps and PAYGO only held as long as the consensus for debt reduction held. By the late 1990s, because of an extraordinarily strong economy, the policies adopted earlier in the decade, and the BEA's procedures, deficits were replaced by surpluses. But these surpluses strengthened political desires for tax cuts and spending increases. With debt reduction no longer a priority, discretionary spending caps and PAYGO were weakened by accounting gimmicks and procedural tactics, and by the early 2000s were allowed to expire (with the minor exception of one Senate PAYGO rule). Since that time, the competing parties have not agreed jointly to reduce deficits in a manner that would produce sustained debt reduction using stable procedures.

Concern That "The Process Is ***Also*** *the Problem" Leads to Creation of a Joint Select Committee*

Though the "problem is the problem" aphorism contains much truth, it can be taken too far, if interpreted to mean that <u>no</u> attempts should be made to repair the flaws of the budget process. A process that consistently enables bad results is by definition a bad process. It makes sense to develop a better budget process that could help politicians produce better results, should they want those results.

For years before 2018, in both Washington and the country, the consensus view has been that the federal budget process was fundamentally broken (Collender, 2018b; Joyce, 2012; Meyers, 2009). The last time all appropriation bills were passed and signed into law prior to the beginning of the fiscal year was for fiscal 1997. Congressional budget resolutions had become "hit-and-miss" affairs, having been adopted by both houses only about half the time in the last two decades. When adopted, the main purpose of these resolutions was not to set budget policy for the country, but rather to permit the Senate majority to use reconciliation and thus prevent the minority from using the filibuster to force inter-party compromises. In 2017, for example, two budget resolutions were enacted by Republicans with this intent. In July, their first effort failed, as Senator McCain joined two other Republican senators to kill their party's attempt to "repeal and replace" the Affordable Care Act. In December, however, Republicans were successful in using reconciliation to pass a deficit-increasing tax cut bill.

However, no regular appropriation bills were enacted by the end of 2017, and there were two short government shutdowns in January and February of 2018. Finally, in February 2018, five months into the fiscal year, extended negotiations between the opposing parties' leaders led to the passage of the Bipartisan Budget Act of 2018 (P.L. 115-123), which increased discretionary spending caps. This was followed by a consolidated appropriations act that incorporated all the regular bills.

The Bipartisan Budget Act also created the Joint Select Committee on Budget and Appropriations Process Reform. It was a late addition to the bill, from the House side. Among the proponents of creating the committee were Senator David Perdue (R-GA), who as a new Senate Budget Committee member had expressed great frustration with the budget process, and his Georgia colleague, Representative Doug Collins. The creation of this committee, and the promise that it would result in reforms that would promote greater fiscal responsibility, helped whip some votes from conservatives, who opposed the discretionary spending increases allowed by the law. Another action with a similar purpose of providing symbolic cover, at the insistence of the conservative Freedom Caucus, was a promised later vote on a balanced budget constitutional amendment. As expected, the constitutional amendment didn't pass,. The creation of the committee on process reform also balanced the creation of another joint committee to address the financial problems with multi-employer pension plans, which was an initiative of the Senate.

The law required the process reform committee to make a report, no later than November 30, 2018, that would include legislative language to "significantly reform the budget and appropriations process" (P.L. 115-123). It was no surprise to many expert observers of the budget process that the committee did not meet this goal. This article describes what the committee did and didn't do, and analyzes why it did not succeed. It is based on close observation of the committee and on conversations with committee staff and other participants.

COMMITTEE COMPOSITION AND VOTING RULES

Under the statute, the committee was to be composed of 16 members from the House and Senate—four each selected by the majority and minority party leaders from each chamber. Table 2 lists the appointed members with their major committee assignments during 2017-2018. The JSC Chair was House Budget Committee Chair Steve Womack (R-AR); and the Vice-Chair was House Appropriations Committee ranking member Nita Lowey (D-NY).[1]

Table 2: Members of Joint Select Committee, by chamber, party and major committee memberships

House Republicans
Steve Womack (AR) – Budget (chair); Appropriations
Pete Sessions (TX) – Rules (chair)
Rob Woodall (GA) – Budget; Rules; Transportation and Infrastructure
Jodey Arrington (TX) – Budget; Agriculture; Veterans

[1] The most useful websites about the activities of the committee are: https://www.legbranch.org/research/budget-reform-committee/ and http://www.crfb.org/blogs/jsc-markup-amendment-tracker. See also Lynch and Saturno, 2019.

House Democrats
Nita Lowey (NY) – Appropriations (ranking minority member)
John Yarmuth (KY) – Budget (ranking minority member)
Lucille Roybal-Allard (CA) – Appropriations
Derek Kilmer (WA) – Appropriations

Senate Republicans
Roy Blunt (MO) – Appropriations; Science
David Perdue (GA) – Budget; Armed Services; Banking; Agriculture
James Lankford (OK) – Appropriations: Homeland Security; Interior
Joni Ernst (IA) Armed Services; Judiciary; Energy and Natural Resources

Senate Democrats
Sheldon Whitehouse (RI) – Budget; Finance; Environment and Public Works; Judiciary
Brian Schatz (HI) – Appropriations; Banking; Commerce
Michael Bennet (CO) Finance; Health, Education, Labor, and Pensions; Agriculture
Mazie Hirono (HI) Armed Services; Judiciary; Energy and Natural Resources; Veterans

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Given that the mission of the committee was to propose changes in the appropriations and budget processes, it was no surprise that the committees with these titles were well represented. This was particularly the case for appropriators, who held 7 of the 16 seats. Those included the two co-chairs, both of whom were from the House, indicating the Senate leadership's lower interest in this committee's activities. The chair and ranking member of the House Budget Committee served, as did four other budget committee members, but the leaders of the Senate Budget Committee were absent. Completely unrepresented was the House Ways and Means Committee, which has jurisdiction over taxes and major entitlement spending. There were two senators from the Senate Finance Committee, which has an even broader jurisdiction over entitlement programs.

The statute creating the JSC not only balanced the partisan membership of the committee, but it also required that for the committee to report a bill to the House and Senate, that report would have to be endorsed by a majority of Republican members and a majority of Democratic members. This requirement effectively meant that each of its provisions would have to have the support of both parties—a demanding requirement when there is a large gulf between the two parties on budgetary issues.

The extent to which this difference would hinder the committee members' ability to adopt a bipartisan proposal would be greatest if the members were at the extreme wings of their parties. That was not the case for this committee--but neither was the committee composed of legislators who were close to the center of the ideological spectrum. Table 3 lists the "DW-Nominate" scores for the "first dimension" of each committee member during the 115th Congress, and compares those scores to the mean score for legislators in each party and chamber group.

Table 3: DW-Nominate Scores for First Dimension, of JSC Committee members, and means for each party/chamber group, 115th Congress, 2017-2018

Roybal-Allard	-0.471
Lowey	-0.389
Yarmuth	-0.378
Kilmer	-0.308
Mean all House Democrats	*-0.392*
Womack	0.347
Arrington	0.549
Sessions	0.585
Woodall	0.643
Mean all House Republicans	*0.490*
Hirono	-0.485

Schatz	-0.415
Whitehouse	-0.397
Bennet	-0.207
Mean all Senate Democrats	*-0.335*
Blunt	0.430
Lankford	0.574
Ernst	0.514
Perdue	0.606
Mean all Senate Republicans	*0.490*

Source: https://voteview.com/data

These scores are produced by a statistical procedure that estimates the relative position for each legislator to other legislators based on their votes during the 115th Congress. It arrays those legislators on a dimension with scores that range from an endpoint of 1.0 for "conservative" positions on the size and power of government to -1.0 for the "liberal" endpoint.

Almost all committee members came from the centers of their parties. Only the scores for Woodall and Hirono fell outside of, and just barely so, the ranges of plus or minus one standard deviations from their party/chamber group means, and both legislators were widely viewed as loyal party warriors. Among the Republican members of the committee were the chairs of the House Budget and Rules committees, which are instruments of the party leadership, who were matched by the Democratic ranking members of the House Budget and Appropriations committees. Senator Blunt was an influential member of his party's leadership.

No JSC members had records of sustained interest in institutional reform, so this committee lacked legislators like former representative Richard Bolling (D-MO) and several other parents of the Congressional Budget Act (Schick, 1980). Some JSC members had been at least tempted to try working across the aisle--or to say that they were. For several years before the JSC's creation, Whitehouse and Perdue were members of an informal budget reform discussion group who had complained about the impotence of the Senate Budget Committee (see, e.g., Heckman, 2018).

Given these institutional factors, opinions about the JSC's prospects for success ranged from mildly optimistic to dimissive, with the balance of opinion on the pessimistic side (Strand and Lang; 2018; Butler and Higashi, 2018; Reynolds, 2018; Wallner, 2018a; Collender, 2018a; Shutt, 2018a).

TESTIMONY BEFORE THE COMMITTEE

The JSC held five hearings. Four involved testimony from various experts on the federal budget, including former staff members (Bill Dauster, Bill Hoagland, James Capretta, Don Wolfensberger, Douglas Holtz-Eakin), former members of Congress (Leon Panetta, David Obey), former executive branch officials (Martha Coven), and outside experts (Maya MacGuineas, Joseph White) (references to this witness testimony are listed at the end of this article). The various salient points they expressed were:

- The committee needed to decide whether to stay within its statutory emphasis on process reform or expand its ambition to recommend different budgetary policies. Several witnesses suggested that agreeing on a fiscal goal was a prerequisite to solving the country's overall fiscal problems.

- Process reforms could be radical or incremental. The former category would include, for example, fundamentally changing the distribution of budgetary power between Congress and the President. The latter category would include reforms designed to affect the information that is provided to the Congress, and the budget concepts used by Congress.
- Agreeing with our argument above, several witnesses noted that the budget process has not proven to be very good at forcing particular budget outcomes, but has proven better at enforcing compliance with agreements that have been reached. Dauster counseled against overpromising what budget process reform could deliver.
- The failure to adhere to budget timetables, and repeated brinkmanship over the federal debt, had damaged the credibility of the process while simultaneously creating uncertainty for federal agencies, recipients of federal funds, and financial markets.
- Because of this record of uncertainty, and because Congress had moved toward a de facto form of biennial budgeting by increasing spending caps every two years, some witnesses proposed formalizing this frequency for making budget decisions. This timetable would match the congressional electoral calendar.
- Credible budget process reform, as with other major legislation, would have a greater chance both of passing and being followed in practice if it was adopted on a bipartisan basis.
- Congress should not ignore the role that better and more timely budget information, provided by credible sources such as CBO, can have on the public's understanding of fiscal problems and the development of solutions to those problems by Congress.
- Given projections of high levels of debt, many witnesses wanted to increase attention to the long-term, and to all of the sources of fiscal imbalance, including entitlements, revenues, and

tax expenditures. Some witnesses argued that the budget resolution might set targets for the long-term. In opposition was White, given the tendency of long-term projections to be wrong.

- Since recent uses of reconciliation have tended to increase rather than reduce deficits, the committee should limit this procedure to reducing deficits.
- Obey, a retired appropriator, cited increases in average deficits since 1974 as evidence that the Budget Committees have made things worse rather than better, and therefore advocated abolishing the committees.

The fifth hearing was dedicated to testimony from current members of Congress, including Speaker Paul Ryan and Minority Leader Nancy Pelosi (Ferris, 2018a). Some members wanted to strengthen the Budget Committees, while others agreed with Obey. Some were strong supporters of biennial budgeting, while others--notably appropriators--were strongly opposed to biennial appropriations. There were some ideas raised by legislators that experts had not earlier mentioned. Representative Warren Davidson (R-OH), for example, proposed that CBO make the models that it uses to prepare cost estimates more widely available. Another member suggested that his state had developed a good budget process, and that if the committee just replicated that, then many of federal government problems would be solved.

What the JSC didn’t do, at least in public, was explicitly refer to any lessons that could have been learned from a relatively large number of budget process reform hearings held by the House Budget Committee, especially in 2013-2014, and by the Senate Budget Committee, especially in 2015-2016 (Meyers, 2014, pp. 10-14; Senate Committee on the Budget, undated).

The Senate Budget Committee’s hearings never produced any bipartisan legislative proposals, after the failure of back room negotiations to produce anything more than agreement on several minor reforms (Shutt, 2018a). After extensive work, Republicans on the House Budget Committee released a comprehensive budget reform package in December 2016 (Committee for a Responsible Federal Budget, 2016), which included changing the fiscal year to coincide with the calendar year; biennial appropriations (but annual budget resolutions), stopping automatic adjustments to the baseline for inflation and mandatory spending, and creating fiscal targets to put the debt on a declining debt/GDP path. They also proposed having the budget resolution precede the submission of the President's budget, revealing that its authors had expected that Hillary Clinton would become president. After the shocking Trump victory, and the subsequent nomination of House Budget Committee chair Tom Price to be Secretary of Health and Human Services, the lame duck meeting of the 114th Congress didn't take up the House Budget Committee majority's proposal--nor did it pass any of the twelve outstanding appropriations bills.

Early in the Joint Select Committee's deliberations in 2018, its leadership voiced their preference for attempting the art of the possible, keeping its agenda intentionally small. This meant that there was little appetite for reform ideas that would threaten the status quo. There was virtually no chance, therefore, that a reform such as collapsing the committee structure so that authorizing and appropriating were combined would ever see the light of day. Similarly, an idea such as portfolio budgeting, which would lead to simultaneous consideration of different policy tools (such as tax preferences, appropriated programs, or mandatory programs) targeted toward particular policy objectives, would likely not receive serious consideration. The committee, similarly, was not likely to consider a reform such as converting the budget resolution from a concurrent resolution to a joint resolution, which would require the President's signature and thus create constraints that were legally binding (Meyers, 1990).

THE COMMITTEE FAILS TO AGREE ON AN INCREMENTAL PROPOSAL

The committee's last hearing was on July 12, 2018, but the committee took no official action until after the 2018 midterm election, though staff and committee members did negotiate in private (Shutt, 2018c, 2018d). Those elections were a blue wave victory for Democrats in the House, who gained 40 seats, while Republicans picked up 2 seats in the Senate. Of the JSC committee members, only two were vulnerable: House Rules Chairman Sessions lost his re-election bid, while Woodall was narrowly re-elected--though he subsequently announced that he would retire after serving his term through 2020.

During the summer and early fall, and before the beginning of the fiscal year on October 1, Congress enacted, and the President signed, 5 of the 12 regular appropriations bills. This represented the highest percentage of appropriations in 22 years to become law prior to the start of the fiscal year. The five bills were packaged in two "minibuses,"; the Defense bill was paired with Labor-HHS, while the Energy and Water, Veterans-Military Construction and Legislative Branch appropriations were packaged together in a second bill. This success (at least in relative terms) was enabled by the aforementioned large increase from the statutory caps, with the defense spending increase higher than the domestic one. The Senate used a bipartisan process for these bills, with backroom negotiations on permissible amendments. The action in the House was purely with the majority, with the Labor-HHS bill not even going to the floor before the conference negotiations started.

After the first minibus passed, House majority leader Kevin McCarthy said: "The Republican-led Congress is committed to restoring the American People's trust in their government. That means restoring Congress to full working order." (McCarthy, 2018) In fact, Congress was still a long way from the "regular order." There was no concurrent budget resolution in place--one had been passed by the House Budget Committee on June 21, 2018, although without expectation of floor action; the Senate Budget Committee did not consider a budget resolution. There were also many outstanding policy disputes on the remaining bills--Financial Services; Agriculture; Interior-Environment; Transportation-HUD, Commerce-Justice-Science, and State-Foreign Ops; and most importantly, Homeland Security, with its simmering dispute over the president's advocacy of funding for a border wall.

Progress on authorizing legislation was also very slow, in part due to the Senate majority's preference for confirming judges rather than legislating, though during the lame duck session, Congress did pass bipartisan versions of the farm bill and criminal sentencing reform. The House Committee on Ways and Means reported three bills for what it called "Tax Reform 2.0", one of which would permanently increase the individual income tax cuts that had been passed under the Tax Cut and Jobs Act. This would have further added to the debt in the outyears, but there was no expectation that this bill would become law.

The Chairmens' Mark

The Joint Select Committee also came to life during the lame duck. It held three markup sessions. At the first, the chairmens' mark was unveiled. It included very little. The centerpiece, if one can call it that, was a version of biennial budgeting that would have required a budget resolution to be produced in odd-numbered years. In the first year of a session, Congress would lay out the fiscal path that it expected to follow, including two years of Section 302(a) allocations, the "top line" for appropriations. There would be a revision of the budget resolution in the second year of the session, for scoring purpose, following release of a new CBO baseline. The chairman's mark also made the (to us, ludicrous) proposal to move the deadline for completion of the budget resolution from April 15th to May 1, in order to provide more time for the Congress to complete its work on the resolution.

Appropriations bills would still be on an annual schedule, rejecting the "split-session" model of biennial budgeting that would have Congress complete appropriations by October 1 of the odd-numbered year. Since most supporters of biennial budgeting view the relative peace and certainty of biennial appropriations as the main potential benefit of biennial budgeting, the decision to retain an annual appropriations process failed to satisfiy them (Hoagland, 2018). The mark also rejected Senate Budget Committee Chairman Enzi's favored proposal to consider half the bills in the first year of a Congress and the remainder in the second year (the "stretch" model) (Meyers, 1988).

The chairman's mark also proposed the end of term limits for House Budget Committee members, in recognition of a need to have experienced and knowledgeable members in charge of budget policy. This proposed change was in reaction to the recent tendency of the Budget Committee to be made up of relatively junior members with little Congressional experience and almost no knowledge of the budget process. This does not go nearly as far as some suggestions to make the Budget Committees into leadership committees. This idea, following on an idea first suggested by Senator Nancy Kassebaum (R-KS), would create committees made up, to a much greater extent than currently, with more senior members such as chairs and ranking members of the committees controlling the vast majority of budgetary resources (Joyce, 2011a).

While the chairman's mark, as noted above, included a very limited set of reforms, several amendments were adopted in the committee markup that would have expanded the scope of the reform:

- Senate Budget Committee membership was expanded to include more Senators who also serve on either the Finance or Appropriations committees;
- Reconciliation could be used every year under a biennial budget resolution (current law restricts reconciliation to once per resolution);
- A "fiscal state of the nation" hearing would be held jointly by the Senate Committee on the Budget and the House Committee on the Budget, including a presentation by the Comptroller General of the United States;
- Tax expenditures could be included as an aggregate category in the budget resolution; and
- Creating an optional procedure for a bipartisan budget resolution in the Senate, meaning that at least 15 of the people voting in the affirmative must be from the majority.

Other ideas were supported by at least half of the members, but not by majorities from both parties, which was the statutory requirement for inclusion in the final bill. One would have required reconciliation to be used every year; another would have required reconciliation bills to be deficit neutral (this was a Democratic goal given the Republicans' use of the process to cut taxes without offsets). Others would have created various negative consequences for failing to pass budget resolutions and/or appropriation bills--quorum calls, taking away recesses, and/or prohibiting travel. Finally, there was an amendment, supported largely by Republicans, to establish a permanent deficit reduction committee.

Some rejected amendments did not have the support of even half of the committee members. One was an amendment to change the fiscal year to a calendar year, based on the assumption that "timeliness" would be enabled by having more time to budget, and encouraged by the desire to leave Washington by Christmas. The 1974 Budget Act attempted to address the lack of timeliness by moving the start of the fiscal year from July 1 to October 1--but this has not, to state the obvious, had any effect on the timeliness of the process. The proposal would also sanction, during even-numbered years, passing appropriations after an election, further increasing the importance of lame-duck sessions and reducing Congressional accountability to voters (Wallner, 2018b).

Other amendments that failed to get sufficient support included ones that would limit baseline adjustments for changes in mandatory spending (CHIMPs), abolish the discretionary caps, eliminate a separate vote on the debt ceiling, and end the Senate's "vote-a-rama." The latter practice is where many amendments to the budget resolution are considered on the Senate floor in a marathon session, despite the fact that most are political statements that have no chance of passing. In fact, there was majority support for the latter amendment, but by the time it was considered in markup, the committee members were voting as partisans, opposing amendments because of the identities of their sponsors and the lack of support from the opposing party for previous amendments.

Anticipating Trouble on the Senate Floor

In sum, what the committee had agreed to by this time was the minimum needed to claim success and the maximum that could realistically be expected. However, partisanship prevented even the realization of this progress. The dark shadow that arose near the end of the markup was a concern voiced by Representative Lowey, supported by Senator Whitehouse, about the lack of a Senate floor agreement under which a committee-reported bill would be considered. The Bipartisan Budget Act--by now that name was incorrect--had already established these special procedures: the committee's proposed language was to be introduced by the majority leader of the Senate and reported without change by the Senate Budget Committee--as favorable, unfavorable, or without recommendation--within seven days. The motion to proceed on the bill could be debated for a maximum of ten hours, and would have to be adopted by three-fifths of the membership. Once the bill was the business of the Senate, however, it could be amended and debated fully. Democrats openly complained in the markup that this would allow Senate Majority Leader McConnell to engage in "parliamentary trickery," though they gave no potential examples (Krawzak, 2018; Elis, 2018). No such concerns were expressed about House procedures, which would likely follow the pattern of the Republican majority dictating how the bill would be treated on the floor.

Final votes on reporting the bill were seven "yea" (R--Womack, Sessions, Woodall, Arrington, Blunt; D-Yarmuth, Kilmer), five "nay" (R-Perdue, Lankford, Ernst; D-Bennet, Schatz), and four "present" (D--Lowey, Roybal-Allard, Whitehouse, Hirono). Lacking a majority from both parties, the committee reported no bill (Ferris, 2018b; Katz, 2018). Perhaps reflecting the disappointment of its Republican co-chair Womack, whose House Budget

Committee provided staff leadership, the website of the select committee was quickly closed down.[2]

THE ALTERNATE MEANINGS OF "THE PROBLEM IS THE PROBLEM"

When Penner meant by "the problem is the problem" was that sustainable budget policy can only be attained when politicians make realistic decisions about spending and taxes. After the JSC was formed, Penner made the same argument in a TaxVox blog entry entitled "Instead Of Seeking Budget Process Reforms, Congress Should Cut Spending And Raise Taxes" (Penner, 2018).

An alternative but strongly related interpretation of "the problem is the problem" is that modern-day partisan polarization on budgetary issues makes it very difficult to reach agreement not just on budget policies, but also on reforms to the budget process--because those reforms are perceived to affect the chances of winning policy conflicts. In other words, "the problem is the politics." This is particularly true in an environment where one political party is unalterably opposed to raising taxes, while the other is similarly opposed to cuts in entitlement programs. This creates a situation where "you can't get there from here" since most neutral observers would argue that both increased taxes and entitlement cuts are necessary ingredients in any serious debt reduction package.

Thinking only of the short-term politics of late 2018, most legislators got what they really wanted with the previous agreement to increase spending caps for the FY18 and FY19

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[2] It can be found, however, on the Wayback Machine internet archive at: https://web.archive.org/web/20181221214750/https://budgetappropriationsprocessreform.house.gov/. The House Budget Committee's report of its activities during the 115th Congress didn't even mention the JSC (House Budget Committee, 2019).

appropriation bills. There was nothing that required the JSC to actually reach a successful outcome, and there were no negative repercussions if it failed to do so.

There was a previous failure to agree across the aisle that illustrates the longer-term political differences: the BCA supercommittee that had the same makeup and requirement for bipartisan agreement established for the JSC. It was hoped then that the supercommittee would have a superpower: to be bipartisan during a hyperpartisan era. This era is one in which policy preferences and partisanship is strongly aligned. Republicans support lower taxes for businesses and higher income Americans, and a larger military, while supporting cuts in many entitlements and other domestic programs. Democrats want higher taxes on wealthy individuals and businesses, and support broad and generous benefit programs for aged and needy while opposing most cuts in entitlement programs, and want larger domestic government.

This polarization has resulted from a long trend in geographical sorting of voters, dependence on different sets of interest groups that finance party campaigns, and redistricting that has prevented competitive elections in many districts. The effect of polarization on conflict is increased by greater competitiveness at the national level--"insecure majorities" are wary of deals across the aisle, particularly those that reduce the deficit (Lee, 2016). Each of the parties believes it has learned a lesson about its prior support of deficit reductions, since the 1990 agreement led to losses for the Republicans (it may have cost George H.W. Bush the Presidency) and the 1993 agreement (which, to be fair, was not bipartisan) cost the Democrats control of the House in the 1994 election. In contrast, both parties seem willing to accept higher deficits provided that they result from their respective budget priorities.

In addition, the increased centralization of decision-making in the parties' leaderships has made it difficult for groups such as the JSC, who might be willing to risk putting together a cross-party agreement, to finalize a deal. In the House, the majority party, whether Democratic or Republican, has used closed rules and other devices to silence the party that is out of power (Wolfensberger, 2018b). The situation has been made even worse by the erosion of the Senate's norms, which has included the delegation by the majority party of extensive power to the party leader. This is most clearly illustrated by the refusal of Senator McConnell to even permit a vote on the nomination by President Obama of Judge Merrick Garland (on this majority leader's general approach, see MacGillis, 2014).

The Longest Shutdown

Almost all of the above about partisan polarization was true even before the 2016 election of Donald Trump as President. That some of his campaign pledges were heterodox to recent Republican platforms (e.g., opposing cuts to entitlements, supporting high tariffs) might have suggested that the party's unity would decline in the 115th Congress, and that the President might reach agreements with Democrats. The opposite has happened. Congressional Republicans have moved towards the President's position rather than President himself compromising when there have been differences between the two. Republican budget hawks who focused on debt increases during the Obama presidency have been in lockstep with a President who was a self-proclaimed "king of debt," and has done little to suggest that he has any interest in deficit reduction.[3]

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[3] See Leonhardt, 2018, for an argument that this behavior is not new.

Some of this conformity within the GOP is due to the President's disruptive style and its attraction to the Republican electoral base that votes in the party's primaries. That style, and the electoral incentive for legislators to follow the President's lead, precipitated the longest government shutdown in U.S. history, which lasted for 35 days without ultimately resolving any of the basic budgetary disagreements that precipitated it.

The full story of that shutdown will be told elsewhere; for now, it is instructive to examine some comments by JSC co-chair Womack during 2018. At the beginning of the JSC's term, in an interview with a home state newspaper, Womack referred to his work on the JSC as "probably as important a work as I will do in whatever time I'm in Congress" (Lockwood, 2018). In July, Womack said "I'm happy to report that bipartisan, bicameral consensus is steadily growing with our group of 16," (Shutt, 2018b), and on November 1, he wrote an op-ed for *The Hill* in which he argued that the "Joint Select Committee on Budget and Appropriations Process Reform shows bipartisanship can still work in Congress."

After the reality of partisan polarization dashed that hope, Womack issued a bitter press release:

> Today, after a year of hard work, we had the wonderful opportunity to serve as an example to our colleagues and our country—the opportunity to prove that Washington can work together. We let them down. Despite the fact that the reforms agreed to by the Joint Select Committee and included in our proposal were all adopted with a bipartisan, bicameral supermajority of our panel, we couldn't get across the finish line. I am extremely disappointed in our failure and in my colleagues who lacked the 'political will' we have preached is so needed in Washington to vote out this good, bipartisan proposal. Their votes were on politics, not product and proved us deserving of Congress's low approval rating. (House Committee on the Budget, 2018)

And then just a month later, from a report about the discussion in the House Republican conference about whether to support the looming shutdown:

> House Budget Committee Chairman Steve Womack, a staunch leadership ally who hasn't spoken up in conference during eight years in Congress, stood to encourage leaders to fight for the wall.
>
> "War is an ugly thing, but not the ugliest of things," he read from a John Stuart Mill passage. "The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse." (Bade, 2018)

We believe that Womack sincerely held both of these positions. Like Womack, most members of the JSC were interested in improving the budget process. They were just as interested, and likely more so, in advancing the electoral prospects and policy goals of their parties and themselves. Absent the election of many more moderate members--from both parties--who are willing to work across the aisle, "war" is a better prediction than consensus building.

PERHAPS A HIATUS FOR BUDGET PROCESS REFORM, BUT A RETURN IS INEVITABLE

As the JSC was dissolved, some of its members argued that the silver lining in the dark cloud was a commitment to push at least some of its budget process reform proposals using regular order. At the close of the 115th Congress, House Budget Committee Chairman Womack and Ranking Member Yarmuth introduced the "Bipartisan Budget and Appropriations Reform Act of 2018." They did not introduce this bill for the 116th Congress, though Senators Whitehouse and Blunt did introduce a companion measure in the Senate. In the meantime, Senator Enzi announced his intentions to retire and to spend the remainder of his term emphasizing budget process reform, though his efforts up to then had not produced much progress. On November 6, however, the Senate Budget Committee marked up a bill jointly sponsored by Senators Enzi and Whitehouse (S. 2765). All committee Republicans supported the bill; Democrats split on it, with opponents arguing that the bill's creation of a special reconciliation process that could be used to cut entitlement spending (Kogan and Friedman, 2019). The rest of the bill would establish debt-to-GDP targets in the budget resolution, require biennial budget resolutions while retaining annual appropriations, and link the increases in the debt ceiling and the discretionary spending caps directly to the budget resolution. The bill also would explicitly add tax expenditures to the budget resolution, rename the Senate Budget Committee as the Committee on Fiscal Control and the Budget, place the aforementioned limit on CHIMPs, and permit a budget resolution with sufficient bipartisan support toe be considered in the Senate using expedited procedures (Senate Committee on the Budget, 2019). The bill was reported to the Senate on November 13, 2019, but has yet to be considered on the floor. It seems unlikely as of this writing that the bill will be considered in an election year in which responses to COVID-19 dominate the agenda.

And after the shutdown, there was a short period of attention paid to the idea of an automatic continuing resolution. Interest in it quickly plummeted, as it was opposed by appropriators, and projected by some to increase the likelihood of more--and longer--continuing resolutions (Joyce, 2012). And despite the August 2019 adoption of another Bipartisan Budget Act, which in this case substantially raised the discretionary budget caps for fiscal years 2020 and 2021, passage of the 2020 appropriations bills was delayed into calendar 2021, due to the continued dispute over wall funding, and the lack of cross-aisle agreement on subcommittee funding totals and a range of policy issues.

The House also created a Select Committee on the Modernization of Congress, chaired by Representative Kilmer, a member of the JSC. The committee's charge was to recommend changes on:

- rules to promote a more modern and efficient Congress;
- procedures, including the schedule and calendar;
- policies to develop the next generation of leaders;
- staff recruitment, diversity, retention and compensation and benefits;
- administrative efficiencies, including purchasing, travel, outside services, and shared administrative staff;
- technology and innovation; and
- the work of the House Commission on Congressional Mailing Standards.[4]

While the charge to look at rules and procedures stimulated advocates of budget process reform to supply the committee with proposals like those considered by the JSC, the modernization committee emphasized other issues; its hearing with the JSC's co-chairs in September 2019 appeared to be perfunctory for all involved. Originally scheduled to expire in February 2020, in November 2019 the House voted to extend the committee's term through 2020.

Impeachment, and Article 1 of the Constitution

By then, the agenda of the House was crowded with investigations of President Trump, which by late October turned into a formal impeachment inquiry. In response, among the strategies used by President Trump was complete unresponsiveness to Congressional demands for information, accompanied by assertions of presidential authority that exceeded even the constitutionally unjustified claims made by President Nixon. And as with Nixon's challenge to Congress, Trump's actions had sought to evade appropriations law. The president's holdup of appropriated security assistance to Ukraine, intended to prod the Ukrainian government to investigate the actions of Vice President Biden's son, was a deferral under the provisions of the Impoundment Control Act, one in which the administration failed to notify Congress of its action. The

[4] https://modernizecongress.house.gov/about/jurisdiction-and-rules

Government Accountability Office issued an opinion that the President's actions were clearly a violaton of the Impoundment Control Act (Armstrong, 2020).

This was not Trump's first challenge to congressional budgetary power. In the aftermath of the border wall shutdown, President Trump used an executive order to transfer and reprogram funds, to which the House Democrats responded with a lawsuit arguing those actions were unconstitutional. Ironically they relied on a district court decision giving the House standing to sue the President for spending unappropriated funds, from a lawsuit filed by House Republicans in opposition to the Obama's spending on cost-sharing reduction subsidies--a lawsuit that was opposed by House Democrats.

President Nixon's impoundments—a strong presidential threat to the congressional power of the purse--was a partial cause for adoption of the Congressional Budget and Impoundment Control Act. That law passed unanimously, in a period when partisan polarization was much lower than it is now. Yet concern among legislators about the weakening of congressional powers has remained. Prior to the 2016 election, a group of bipartisanship-oriented House and Senate Republicans were actively pursuing the re-establishment of Congressional authority through something called the Article I project (Article I Project, 2016). They abandoned the effort after the Trump election. The House Budget Committee did hold a hearing in March of 2020 in an attempt to highlight the challenges to the Congressional power of the Purse (House Committee on the Budget, 2020), leading to the introduction of legislation by Chairman John Yarmuth (D-KY) on April 29, 2020 (H.R. 6628) entitled the Congressional Power of the Purse Act.

Whenever and however the Trump presidency ends, there is no certainty that a bipartisan effort to assert congressional power will be revived, but is it certainly possible. The same goes for budget process reform. The failure of the JSC to produce significant reforms will not make the problems with congressional budgeting go away—to the contrary. Given the medium-term projections of federal budget policy under current law, which have gotten even more dire in the aftermath of COVID-19, pressure will eventually grow for deficit reductions. And in 2021, the (never honored) statutory spending caps established by the 2011 Budget Enforcement Act will expire. We expect that attention to budget process reform will return at that time. In the meantime, it would be helpful to think about how that effort could be more successful than that of the JSC.

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