Late Appropriations and Government Shutdowns: Frequency, Causes, Consequences, and Remedies

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This article reviews the history of government shutdowns and evaluates their effects. It first discusses the frequency of late appropriation bills, especially since the passage of the Congressional Budget Act in 1974. Then it examines the commonly suspected causes and the resulting consequences (the most extreme being government shutdowns). Remedies are suggested to alleviate financial, managerial and political costs of government shutdowns.

From December 16, 1995, to January 8, 1996, many federal agencies shut down their "non-essential" activities because they lacked appropriations. By far the longest closure in history, it followed a shorter one that spanned from November 14 to 19, 1995. Most citizens reacted to these shutdowns with disgust. They complained about the failure to enact appropriations bills by the beginning of the fiscal year, wondered why agencies were required to suspend activities, and were incredulous when they heard that employees required not to work were eventually paid.[1]

To those unfortunate few with more experience in federal budgeting, these outcomes were not shocking. Appropriations bills are often late and most previous closures compensated "unwork." The main surprise was that the recent impasses lasted so long.

This article begins by describing the frequency and causes of untimely appropriations bills and government shutdowns. It then discusses the consequences of late bills and shutdowns and analyzes proposed remedies. The emphasis is on the federal government after 1974 (when the Congressional Budget Act was signed), but footnotes make some comparisons to state experiences.

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FREQUENCY

Late appropriations bills have been routine for decades. For example, from fiscal years 1962 to 1976 (when the fiscal year began on July 1), 96 percent of the bills were enacted late. Over half of these bills (53 percent) were enacted more than three months after the beginning of the fiscal year. The Congressional Budget Act extended the beginning of the fiscal year to October 1, but this did not dramatically reduce the rate of lateness. All of the appropriations bills were enacted on time for the 1977, 1989, 1995, and 1997 fiscal years (during the calendar and election years of 1976, 1988, 1994, and 1996). For the remaining fiscal years—1978–1988, 1990–4, and 1996—85 percent were enacted late. Adding these performances produces a 68 percent late enactment rate. Note that the extension of the timetable allowed the Congress to spend three more months on appropriations bills before violating the "deadline." In other words, the percentage of bills enacted after October 1 of the calendar year *increased* after passage of the Congressional Budget Act.[2]

The proximate cause of a federal government shutdown is not passing an appropriation bill after the previous appropriation has expired. When a regular appropriation bill is not enacted by the beginning of the fiscal year, Congress usually enacts a "continuing resolution" (commonly abbreviated as a "CR"). CRs typically make appropriations available for only a short period of time. An intentional failure to adopt a CR, or a mistaken delay in doing so, leaves an agency without authority to spend funds.

The first CR was enacted in 1876, and many have been enacted since.[3] On numerous occasions, CRs were passed late, but agencies were still allowed to commit funds in anticipation of appropriations; the Congress often "ratified" these questionable obligations in the succeeding CRs. This policy changed in April 1980, when Attorney General Benjamin Civiletti decided that agencies lacking appropriations could only incur those obligations necessary to close down.[4] His ruling relied on Article I of the Constitution, which states "No funds shall be withdrawn from the Treasury but in consequence of appropriations made by law," and on the Anti-Deficiency Act, which makes it illegal for federal employees to expend funds or authorize obligations in excess of available appropriations.

Civiletti's ruling, which threatened criminal penalties, overruled a more lenient March 1980 opinion by Comptroller General Elmer Staats.[5] In 1981, shortly before the Reagan Administration took command, Civiletti and the Office of Management and Budget (OMB) gave agencies a bit more freedom to continue activities that protect life and property—for national security, air traffic control, direct medical care, prison operations, and so on. The Reagan administration continued this policy.[6] Over the years, agency and OMB interpretations have gradually expanded the percent of employees excepted from furloughs. For example, confusion over the proper treatment of administrative costs for mandatory benefit payments has been resolved by usually allowing this spending, and rationalized by tortured legalisms to hide what are essentially political reasons.[7]

There have been only eleven department-wide or broader shutdowns.[8] The first was on November 23, 1981, when 241,000 workers were sent home at noon after President Reagan vetoed a CR. Congress responded within hours, allowing workers to return the next morning. Three other shutdowns—on October 17, 1986, October 4, 1984, and December 19, 1987—had similar day-long effects. Five other times—twice in 1982, once in 1983, once in 1985, and once in 1990, shutdowns lasted over long weekends. The last one was set in motion by the refusal of conservative House Republicans (led by Whip Newt Gingrich) to accept the budget summit agreement in which President Bush acceded to tax increases. The shutdown forced the previously-apocryphal "close the Washington monument" tactic on the Interior Department. The National Zoo also closed, and tourists went up to what they called "the other national zoo" (that is, the Congress) to complain.[9]

Several of these shutdowns revolved around single but contentious issues, such as civil rights legislation and funding for the Nicaraguan contrast. In contrast, the 1990 shutdown was part of a major conflict between the branches over a broad range of budgetary issues. This was even more the case for the two closures of 1995–6; the major appropriations bills of Labor-HHS, VA-HUD, Interior, and Commerce-Justice-State all presented numerous points of strong disagreement. The closures put many employees—800,000 in the first, and 260,000 in the second—on real furloughs, not on symbolic ones that lasted over long holiday weekends.[10] Affected employees were prevented from working between 2 percent to 10 percent of their annual work years![11]

Another potential cause of a federal government shutdown is limited or expired authority for the Treasury to borrow. Since 1917, Congress has placed a legal cap on the amount of public debt, and at times, has also limited how long debt could be assumed (by passing "temporary" debt increases). An expired or unraised debt ceiling would cause Treasury to default on its obligations. The 1995–6 shutdowns were coterminous with an impending debt limit crisis; only some creative debt finance, accounting, and statutory interpretation by Treasury Secretary Rubin prevented default before the debt ceiling was raised.[12]

CAUSES

This article makes no attempt to test a multivariate explanation of lateness and shutdowns, but it will identify commonly suspected causes. And since this symposium focuses on budget procedures, the analysis begins with the issue of whether the Congressional Budget Act (CBA) is partially responsible for lateness and shutdowns.

Prior to 1974, there was no statutory schedule for consideration of appropriations. Some bills were long delayed as appropriators waited for authorizations, especially after the Congress began passing more authorizations on an annual schedule.[13] The CBA made the appropriations process somewhat more routine. It changed the beginning of fiscal year from July 1 to October 1, giving the Congress more time to consider appropriations bills, and its schedule stated that appropriations bills should be completed by early September. The CBA also established new enforcement controls on appropriations (committee and subcommittee allocations, scorekeeping, points of order). These changes caused the Appropriations Committees to begin hearings sooner, shortly after submission of the president's budget, and the bills moved more closely together through stages of the process.[14]

But as the data cited above show, extending the time available to the Congress for considering appropriations did not prevent late bills. Partly to blame was the human tendency to delay budgetary decisions, especially unpopular ones, until the approach of deadlines.[15] More responsible was the reality that the CBA was not designed primarily to improve timeliness. Although it was hoped that the new process would reduce intrabranch conflict over budgetary aggregates (particularly between the spending and taxing committees), the CBA also maintained most overlapping actions by authorization and appropriations committees, and it overlaid a new process on top of them. The CBA expanded participation within the Congress and gave members more technical information to digest. It created procedures that made spending constraint more possible and allowed the Congress to assert its power vis-à-vis the president. Finally, it increased congressional exposure to the public and the media. Given these features, it is no wonder that most budget actions by the Congress are perennially late![16]

Late appropriations have also been blamed on the appropriators. The accused should probably plead "no contest." Admitting guilt makes sense because of the overwhelming evidence that appropriators try to do too much with the process. One must only scan a few committee reports to be impressed with their fine detail, to put the case politely. More bluntly, appropriators include so many micromanagement directives and district-targeted earmarks that one might wonder how appropriations bills are ever completed by the beginning of the fiscal year.[17] Another count of this common indictment is that appropriators delay regular bills in order to access the procedural and political advantages of CRs. CRs are considered in a rush, and are portrayed as "must pass" bills unlikely to be vetoed. Unlike regular appropriations bills, they are not procedurally privileged in the House, which forces adoption of rules that prevent amendments. These features may encourage appropriators to delay some regular bills until a CR is required, in hopes that the CR will carry otherwise unacceptable pork and authorizing legislation (a charge made most famously by President Reagan in 1987).[18]

If appropriators plead "no contest," they have a strong case for receiving mercy. Partisan zealots and single-issue advocates load up their bills with riders (regarding abortion funding, most notably), making the appropriators work longer and harder than they prefer. The alternative vehicles for riders—authorizations bills—are not usually urgent, and often fail to be enacted at all. Like all legislative committees, appropriators have only a limited amount of control over which issues they must consider. Since legislators have multiple-peaked preferences on many issues, this weak agenda control allows majorities to cycle unstably and delays many legislative actions.[19]

Moving to the systemic level, another cause of late appropriations and government shutdowns is the pattern of national voting, which in recent decades has usually divided control of government branches between the two major parties. Since most appropriations issues are not inherently intractable (that is, differences can be split), divided government need not cause major delays. Yet Gilmour provides convincing theoretical explanations for why parties may prefer "strategic disagreement" over cooperation—they "frequently reject compromise because the political advantages of maintaining disagreements outweigh the benefits of a modestly better policy achieved through compromise."[20] One of the parties may want to keep or increase its electoral distinction from the other party. Or a party may calculate that a disagreement will hasten the day when a more desirable policy could be adopted; delay also prevents having to justify compromises to hard-core supporters.

Gilmour argues that one way strategic disagreements are resolved is through "successive approximization." The strident side makes what it knows is an extreme offer, and the reluctant side rejects the offer. The strident side then makes another, just slightly-less extreme offer, and is rejected again. This continues through numerous iterations, until the two sides reach an agreement that is close to a "split the difference" result. The strident side "wins" to the extent that the policy split is not equal, and if the reluctant side sustains the collateral damage of appearing to be an uncooperative naysayer.[21]

Strategic disagreement clearly happened during 1995–6.[22] With the Republicans controlling the Congress for the first time in forty years and pledged to enact the provisions of their "Contract with America," they were not inclined to compromise with the president. Considering the Contract's provisions delayed the budget process by several months. Soon afterward the awkward metaphor of the "train wreck" became popular, as the large vanguard of freshmen regularly and aggressively announced they were willing to shut down Washington. The Republican leadership then negotiated like novices, repeatedly falling to President Clinton's strategy of compromising on symbolic principles but moving less on actual policy. In frustration, the Republicans precipitated the November shutdown by passing a CR that allowed only 60 percent of the previous year's funding for many of President Clinton's priorities, and the invited veto quickly followed.

House Budget Committee Chair John Kasich (R-OH), voicing his party's resolve, promised at this shutdown's beginning that "I'd be prepared to carry this thing until hell freezes over."[23] But the party quickly compromised, in part due to an ill-timed admission by the Speaker that he had agreed to the shutdown because he had felt snubbed by his "back of the bus" location on Air Force One during a flight back from Israel, a childish reason that did not play well with the public. As the first shutdown ended, the Republicans did extract a face-saving, ambiguous promise from President Clinton to propose a seven-year budget balancing plan estimated from Congressional Budget Office economic projections. He complied, at least on paper, and also vetoed the Republican's budget-balancing reconciliation package; this non-cooperation led to the second shutdown. Three weeks later, the Republicans gave in again, but the new

CR granted operating funds (beyond those for salaries) to only a select group of programs (e.g., Meals on Wheels, not Superfund). Ironically for federal workers in the Northeast, "back-to-work" day was then delayed by a massive blizzard. It was another three months until final passage of the last appropriations bill.[24]

While the political fallout from the shutdown cost the Republicans dearly (see below), they did reduce fiscal year 1996 discretionary spending to $533 billion, $20 billion below the cap. The following year, appropriations bills passed on time, and the discretionary cap was exceeded by $3 billion. This suggests a final cause of lateness—reducing spending takes more time than increasing it.

CONSEQUENCES

Even if the government does not shut down, late appropriations are still costly. Just anticipating a shutdown wastes a great deal of time—agencies must understand OMB and Justice guidelines, and then develop contingency plans for reduced activities. These plans must identify which employees are "excepted" from furloughs and which are not; those who aspire to "essential" status but do not get it receive an unwelcome message.[25] And when regular appropriations are delayed, uncertainty about final appropriations leads many managers to hoard funds; in some cases, hiring and purchasing stops. These effects are so unnecessarily counterproductive, it is surprising "Dilbert" has not devoted a month to this topic.

An interminable appropriations process costs the agencies' masters as well. It keeps members of Congress from doing other, arguably important things like oversight and spending more time in their districts. It delays executive branch preparation of next year's budget. And it further damages the public images of the Presidency and the Congress (if this is possible for the Congress . . .).

Of course, the consequences of shutdowns are larger. A quick and dirty OMB analysis, dated January 19, 1996, calculated the cost of the two long shutdowns at more than $1.4 billion, most of which was for back pay granted to furloughed workers. In other words, the "cost" was what the government paid for the outputs it largely did not get on time. The qualifier "largely" is used because some employees kept working while out of sight. It must also be noted that the big shutdown bounded the holiday party and vacation season, when output surely declines. And some employees caught up after the shutdown by working harder than they normally do.

Though it is common to focus on the outlay effects of federal budget policies, it is reasonable to wonder if the lost government output is properly valued at its input cost. Consider the Bureau of Economic Analysis and the Bureau of Labor Statistics, which had to postpone and reduce data collection on economic conditions and release this data later than usual. Was the cost to the economy only the salaries and expenses of collecting this data, or was it greater? Did delayed IRS revenue collections cost more than the bill for paying auditors to take a long Christmas break? What were the costs to those citizens who had to delay their enrollment for benefits, or to those who changed vacation plans due to closed national parks or unavailable passports? Absent more reliable information than currently available on the effects of a wide range of federal activities, quantifying the consequences of the shutdown is impossible.

Whenever the federal government stops spending money, there are distributional losers. Critics of the shutdown had little difficulty finding unfortunate examples, like the blind vendors who usually service federal office buildings. The Interior Department calculated that businesses and local governments lost $295 million from the closures of national parks.[26] While some of these losses were offset by substituted spending elsewhere, the remaining portion had a negative multiplier effect through the economy. Particularly vulnerable were the federal contractors who were told they should not work since they would not be paid. Similarly, grantees had to postpone or cancel activities. Those contractors and grantees that could not quickly use their temporarily-freed capacity to earn other revenues—that is, most of them—lost income. But the major macroeconomic effect was that it shifted economic activity into a later period; this increased the volatility of the economy, adding to the disruption from the severe winter weather.

Over the long run, the shutdown could cause additional costs. Now that contractors have learned they face a risk of interrupted work, they might charge the government a premium for this risk. Knowledge that furloughs are possible may also threaten the government's ability to attract and retain quality personnel.

On the positive side, the shutdown probably helped some managers determine that some activities and personnel were low priorities for budgetary support. It also educated many citizens that they take some government services, and employees, for granted. Federal unions picketed over being locked out, showing their anger about having their pay disrupted, and their dedication to public service. A well-publicized case was the "work-in" of William O. Fink, the superintendent of the Keweenaw National Historical Park in Michigan. Stating "My purpose is to serve. I am a public servant," Fink showed up at his office on the first day of the November shutdown. He and his three co-workers then spent much of their time "on the job" talking to members of the press and arguing with Park Service supervisors over whether they might be prosecuted for their actions.[27]

The broader political impact of the shutdown was that it stopped the "Republican revolution" in its tracks. Voters often have trouble determining which elected officials are responsible for legislative problems.[28] But polls show that the public clearly attributed blame, rightly or wrongly, to the Republicans in this case. Some Republicans accepted it—especially moderates, who did so on behalf of their party's conservatives. The party became much more accommodating towards President Clinton during the rest of the 104th Congress; this attitude was reinforced by Clinton's overwhelming victory in the 1996 election and the narrowing of the Republican's House majority.

While political memories are often short, these damages make it unlikely that another shutdown will occur in the near future. But there is nothing to prevent one—although none were passed, numerous bills were introduced in the 104th Congress with the avowed intent of preventing shutdowns.

REMEDIES

The problems caused by late appropriations and government shutdowns, while real, may not be the most serious flaws of the budget process. More worrisome might be its failure to accurately measure the effects of spending, a problem which many agencies are addressing in their attempts to implement the Government Performance and Results Act. If agencies and politicians learn to jointly set goals and compare results to spending plans, then that might be good even if it contributes to further appropriations delays.[29]

In addition, the reforms most likely to prevent shutdowns are also least likely to be adopted. The most radical approach would be to unify the governmental structure; late budgets and shutdowns are uncommon in countries with parliamentary governments. This is particularly true in Westminster-style democracies, where critical budget decisions are negotiated within the Cabinet, leaving Parliament only one to two months to debate and enact the budget.[30] But obviously, Madisonian government is here to stay in the United States. And since divided government seems likely to reoccur frequently, breakdowns seem inevitable.

Another politically unlikely but otherwise logical reform would be to simplify the budget process, and more generally, congressional organization. Its highly redundant organizational structure leads to numerous duplicative actions being taken each year (e.g., separate, annual defense authorization and appropriations bills, each written in excruciating and often different detail). Instead, the Congress could restructure its authorizing and appropriations committees on a functional basis, allowing one committee to both authorize and fund each major function. As attractive as this reform might be in theory, seniority rights and established relationships between current committees, agencies, and interest groups will almost certainly prevent this from happening.

A third politically difficult remedy would be to start the budget process earlier. In a previous issue of this journal, I suggested the concurrent budget resolution be converted into a joint resolution, that is, a law which would require the president's signature.[31] Yet starting earlier will do little to force final action if the two branches are inclined to disagree.[32]

In May 1997, the two branches reached an informal agreement on the broad details of a plan to balance the budget over five years. One difficulty they faced was finding the acceptable *level* of agreement. Very detailed account level would take too long; it would abandon the two-stage process of setting macro goals first and then conforming micro actions to these goals. In contrast, a highly aggregated level of agreement (outlay and revenue totals) would not set enough bounds for later, account-level compromises. Without these limiting details, each side would be tempted to defect from the original "agreement" to gain advantage. A largely unjustified fear of this possibility led to a dispute between the branches over whether to adopt an automatic continuing resolution (ACR) procedure.[33]

The ACR procedure is the most commonly proposed remedy for shutdowns.[34] When appropriations bills are late, agencies would be granted authority to spend at a previously determined "reversionary" level, but only for previously approved programs and activities. Though the major bills proposing this procedure have been titled the "Government Shutdown Prevention Act," they could be subtitled the "Appropriations Tardiness Guarantee Act." The risk of automaticity is the loss of a real deadline—one with negative consequences—that forces determinative action. That is, when the failure to pass an appropriations bill would not lead to a government shutdown, members of Congress might be tempted to delay passage.[35]

The more general problem with the ACR procedure is what the reversionary level of funding should be if it is to be larger than zero. Over the past few decades, CRs have used the following alternatives:

- the "current rate" (last year's nominal funding),
- the "current operating level" (which allows for cost increases above last year),
- proposed law from many different stages of the legislative process—the president's budget, committee-reported, passed by one House, or by both, or,
- specified percentages of these levels.

Simple game theory suggests that if a negotiator finds the ACR-set reversionary level is closer to his preferred level than are the alternatives being proposed by other negotiators, that negotiator has a strong incentive to delay agreement. For example, if an ACR had set the reversionary level at the current rate in 1995–6, President Clinton could have guaranteed no cuts for any existing program below a nominal freeze by vetoing bills with such cuts (presuming he wanted this more than increases that would be offset by these cuts). Similarly, setting the ACR reversionary level at the level passed by a committee or branch of Congress potentially advantages those negotiators; they can propose, delay, and thus dictate.

But this analysis is too simple; it neglects that most negotiators have complex preferences about spending and long time horizons, and are likely to interact again. Consider what happened during 1997—the Republicans added an ACR procedure to the supplemental bill, the bill was vetoed, the veto was not overridden, and the ACR procedure was then stripped from the bill. The broad budget agreement set the context for this dispute by setting caps on the domestic discretionary appropriations total at the current rate over five years, and then adding a small increase for specific presidential initiatives. Clinton feared that if an ACR procedure was in place, he could first sign a reconciliation bill that adopted the bulk of the Republican's wishes, and then find the Republicans reneging on their support of his initiatives. Of course, in anticipation of this, he could refuse to sign the reconciliation bill until he got his wishes. That is, the potential for a president to act strategically weakens his claim that the ACR puts him at a great disadvantage. More generally, when the branches negotiate over budget totals in advance of appropriations, and since each branch can credibly punish the other for failing to comply with agreements, there is little need for an ACR procedure. And if they can not agree on totals beforehand, they will likely argue for a long time over appropriations, so the ACR procedure would only marginally delay those bills.

Another potential change would be to interpret Article I of the Constitution and the Anti-Deficiency Act in a much looser fashion, returning to pre-1980 practice. This remedy, like the ACR, would tend to remove any urgency for completion of regular appropriations bills. It also would seem to contradict some rather direct constitutional language on congressional power of the purse.

There is nothing in the Constitution, however, that limits appropriations to only one year or that requires the Congress to vote on appropriations each year. These practices have been chosen by the Congress for many agencies and programs, but not for all. While appropriators believe these annual controls are absolutely required for keeping agencies responsive to the public and economical in their spending, the grounds for this faith are shaky. The model advocated by the National Performance Review and many public management experts is quite different. It would grant agency managers more flexibility to borrow from future funds and carry over from previous ones, allow them to spend freely from dedicated funds that are constrained by market-like pressures, and expect them to document their performance to oversight committees with reliable measures of outputs and impacts.[36] The reasons for accepting this model go far beyond avoiding the problems of late bills and shutdowns, but this certainly would be a benefit.

Incentives for timely passage might also be made more personal. Since the electoral incentive to go home to campaign is so strong, a potentially effective deadline would result from shifting to a biennial budget cycle with the biennium beginning on October 1 of the election year. One of the serious drawbacks of this timetable is that it asks the previous election's victors to wait nearly two years until they could put their policies into the budget.

A personal incentive often suggested by citizens is requiring politicians to forfeit their pay and benefits during the period when spending bills are late.[37] Yet the practical impact of this constraint is likely to be low, as most elected officials have adequate liquidity to cope with such cash flow interruptions; they might also piously publicize such "sacrifices." On the other hand, perhaps it is not coincidental that legislative branch appropriations are generally passed on time!

A less formal personal incentive is peer pressure. Several times during the 1980s, Silvio Conte (R-MA), ranking minority member of the House Appropriations Committee, tried this when he was forced to work on late appropriations as Christmas approached. He would show his frustration about being stuck in Washington by appearing on the floor wearing horribly mismatched plaid sports coats and slacks and then singing off-tune Christmas carols. Though some members publicly wished they were both blind and deaf, Conte's desperate attempts to force members home had little effect.

Then again, if the congressional leadership and the White House had more people with the sense and spirit of Conte, the 1995–6 shutdowns might never have happened. In recent years, the quality of personal relationships across the aisle and down Pennsylvania Avenue has often been very low.[38] "Negotiations" over the most important issues have frequently been conducted by charge and counter-charge in fast-paced media cycles. Long gone are the days when leaders from both parties, some of whom acted as the president's representatives, would gather in Sam Rayburn's legendary "Board Room" to cut deals.[39] In all seriousness, perhaps the best way to pass bills on time and end shutdowns is to encourage leaders to spend a bit more time sloshing down some bourbon together. Or to try the healthier Washington tradition of jogging together down to the Lincoln Memorial, and taking a break to reflect on the wisdom engraved on its walls.

NOTES

Thanks to Corina Eckl, Bob Keith, Ed Rea, and Sandy Streeter for information, and to Lou Fisher and Phil Joyce for comments.

1. Associated Press, "Shutdown Causes Public Disdain," November 18, 1995.
2. Data on timing of bills comes from Robert Keith and Edward Davis, "Continuing Resolutions and Funding Gaps: Selected Data for Fiscal Years 1977-1995," *Congressional Research Service*, September 25, 1995; Sandy Streeter, "Regular Appropriations Measures and Continuing Resolutions for FY 1960–FY 1995," *Congressional Research Service*, October 19, 1994; unpublished *Congressional Research Service* memos; and an OMB memo "Agency Operations in the Absence of Appropriations," November 17, 1981.
3. For a historical analysis of continuing resolutions, see Robert Keith, "An Overview of the Use of Continuing Appropriations," *Congressional Research Service*, September 26, 1980.
4. Benjamin Civiletti, Letter to President Jimmy Carter, April 25, 1980. The issue came up because of a dispute over authorizing and funding the Federal Trade Commission.
5. Felicity Barringer, "Behind the Shutdown, a Long Dormant Law," *Washington Post*, November 24, 1981, p. A15. See also Alan L. Feld, "Shutting Down the Government," *Boston University Law Review*, 69: November 1989, pp. 971–989.
6. See Opinion of the Attorney General, 43 OAG 29 (1981), "Applicability of the Anti-Deficiency Act Upon a Lapse in Agency Appropriations."
7. See successive OMB memos, "Agency Operations in the Absence of Appropriations."
8. Gaps in the 1960s and 1970s did not lead to shutdowns. The longest was for sixty-five days in fiscal year 1968 over foreign assistance. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, March 3, 1981, p. 12.
9. See entries on "continuing resolutions" in Congressional Quarterly's *Congressional Almanac* for these years.
10. GAO reported that the following percentages of agency employees were furloughed for these appropriations bills: Commerce-Justice-State—36.2 percent; Interior—47.3 percent; Labor-HHS—57.5 percent; and VA-HUD—21.9 percent.
11. In the states, the definition of a "late" budget or appropriations bills varies. A bill not passed by the beginning of the fiscal year is clearly late, but a bill may also be seen as late if it fails to meet some

stricter tests. Many state constitutions require that budgets be enacted by the end of the constitutionally permitted legislative session, which usually ends before the beginning of the fiscal year. In some states, legislatures are expected to finish the budget even before the session ends; their constitutions may give precedence to budget bills over all other bills if the budget bill is not enacted by the target date.

Unfortunately, there is no database on how often state budgets are enacted late or on the extent of shutdowns. Expert informants argue, however, that late state budget bills are far less common than are late federal appropriations bills. The rate of state lateness does increase significantly during recessions; recessions decrease revenues, and many states must eventually raise taxes in response.

Wisconsin is a state where budgets are often late. The legislature typically passes the budget by the beginning of the fiscal year (July 1), but then the governor, who holds a very strong item-veto power, usually takes a month before signing it. But though late budgets are common in Wisconsin, shutdowns are not. Programs are automatically funded at the previous year's level, a practice also used by Rhode Island. See Ronald K. Snell, "State Provisions Addressing Late Budgets," National Conference of State Legislatures, mimeo, August 26, 1996.

Other states that routinely produce late budgets are California (in recent years) and New York (seemingly forever). New York's 1997 budget was 103 days late, though the state may be absolved from some blame because its fiscal year begins April 1.

12. See Linda K. Kowalcky and Lance T. LeLoup, "Congress and the Politics of Statutory Debt Limitation," *Public Administration Review* 53 (January 1993): 14–27; Congressional Budget Office, *Federal Debt and Interest Costs*, May 1993.
13. Louis Fisher, "Annual Authorizations: Durable Roadblocks to Biennial Budgeting," *Public Budgeting and Finance* 3 (Spring 1983): 23–40.
14. Louis Fisher, "Ten Years of the Budget Act: Still Searching for Controls," *Public Budgeting and Finance* 5 (Autumn 1985): 3–28, and especially pp. 22–3; Allen Schick, *Congress and Money*, Washington: Urban Institute, 1980, pp. 456–62.
15. Roy T. Meyers, "Biennial Budgeting by the U.S. Congress," *Public Budgeting and Finance* 8 (Summer 1988): 21–32.
16. Similarly, the sequestration procedure of 1985's Gramm-Rudman-Hollings encouraged appropriators to delay. If they made cuts on schedule, but authorizing committees did not cut mandatory spending or raise taxes to meet the fixed deficit targets, sequestration would cut appropriations again
17. If the enhanced rescission procedure survives constitutional challenge, the president may help the Congress control these urges. Yet enhanced rescissions might also delay final appropriations action. The Congress might hold back bills until the president promises not to make rescission proposals. See Philip G. Joyce and Robert D. Reischauer, "The Federal Line-Item Veto: What Is It and What Will It Do?," *Public Administration Review*, 57 (March 1997): 95–104.
18. Louis Fisher, "Continuing Resolutions: Can't Live With 'em, Can't Live Without 'em," *Public Budgeting and Finance* 8 (Summer 1988): 101–4; Joe White, "Continuing Resolutions: A Crazy Way to Govern?," *Brookings Review*, Summer 1988, pp. 28–35; Dale Tate, "Congress Loads Up Emergency Spending Bill," *Congressional Quarterly*, September 29, 1984, pp. 2355–8.
19. A good introduction to the vast literature on this subject may be found in D. Roderick Kiewiet and Mathew D. McCubbins, *The Logic of Delegation* (Chicago: University of Chicago Press, 1991).
20. John B. Gilmour, *Strategic Disagreement* (Pittsburgh: University of Pittsburgh Press, 1995), p. 3.
21. Ibid, 124. Gilmour's arguments are supported for the states by Alt and Lowry, who found that states with divided governments respond slower to recession-induced revenue losses than do unified ones James E. Alt and Robert C. Lowry, "Divided Government, Fiscal Institutions, and Budget Deficits: Evidence from the States," *American Political Science Review* 88 (December 1994): pp. 811–828. See also Alan Rosenthal, *Governors and Legislatures: Contending Powers* (Washington: Congressional Quarterly Press, 1990); Steven D. Gold, ed., *The Fiscal Crisis of the States* (Washington:

Georgetown University Press, 1995); Edward H. Clynch and Thomas P. Lauth, eds., *Governors, Legislatures, and Budgets* (New York: Greenwood, 1991).

22. On divided government and policy outcomes, see James A. Thurber, ed., *Rivals for Power: Presidential-Congressional Relations* (Washington: Congressional Quarterly Press, 1996); Morris P. Fiorina, "The Causes and Consequences of Divided Government: Lessons of 1992–4," in Galderisi, Peter F., ed., 1996. *Divided Government: Change, Uncertainty, and the Constitutional Order* (Lanham, MD: Rowman and Littlefield, 1996, pp. 35–60); and David R. Mayhew, *Divided We Govern* (New Haven: Yale University Press, 1991).
23. *Congressional Quarterly Weekly Report*, November 18, 1995, p. 3505.
24. The year's events are described in wonderful detail in David Marannis and Michael Weisskopf, *Tell Newt to Shut Up!* (New York: Touchstone, 1996). See also numerous reports by George Hager and Alissa Rubin in *Congressional Quarterly Weekly Report*, and Sandy Streeter, "Recent FY 1996 Continuing Resolutions," Congressional Research Service, May 22, 1996.
25. This effect on morale has caused a shift from characterizing once "essential" employees as now merely "excepted," in normal times, everyone is essential. . . .
26. Helen Dewar, "Still Suffering From 1995's Shutdowns," *Washington Post*, December 30, 1996, p. A9.
27. Stephen Barr, "Showing Up During the Shutdown," *Washington Post*, December 22, 1995, p. A17.
28. R. Douglas Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1990).
29. For a discussion of such budget process tradeoffs, see Roy T. Meyers, "Is There a Key to the Normative Budgeting Lock?," *Policy Sciences*, forthcoming, Spring 1997.
30. Some of these countries (Canada, Ireland) have fallen into the habit of enacting budgets during the early part of the fiscal year. They use last year's budget as a provisional budget until the final budget is enacted. Organization for Economic Cooperation and Development, *Budgeting for Results*, Paris, 1995.
31. When the budget resolution is just a congressional rule, the president can send the Congress a rhetorically attractive but fiscally unrealistic budget, where it is declared "dead on arrival." Then the president can argue that it is not his job to write the spending laws and that the Congress should get on the ball (that is, take political responsibility for imposing losses). While the Congress may take the bait once in a while, it will normally delay. Were there to be a statutory expectation that branches reach agreement on macro-goals relatively early in the process, then both sides *might* respond by beginning real negotiations earlier in the process. Roy T. Meyers, "The Budget Resolution Should be Law," *Public Budgeting and Finance* 10 (Fall 1990): 103–112.
32. A group of state budget experts recommends that a governor submit the budget early in the session and that the legislature hold budget hearings before the governor submits a budget. Foundation for State Legislatures and National Conference of State Legislatures, *Fundamentals of Sound State Budgeting Practices*, Denver, May, 1995, pp. 30–1. This appears to work in Maryland. Because the constitution gives the governor strong budgetary powers, the legislature created the "spending affordability" process, through which legislative leaders spend part of the fall scoping the state's budgetary situation. They then send a message to the governor about which budgetary parameters they desire, and the governor usually takes this message very seriously.
33. See weekly articles on the supplemental appropriations bill by Andrew Taylor in *Congressional Quarterly Weekly Report* during April through June 1997.
34. General Accounting Office, *Continuing Resolutions and an Assessment of Automatic Funding Approaches*, January 1986.
35. An example of a similar perverse incentive is from Illinois, which allows passage of all bills by simple majority until June 1; after that, a three-fifths supermajority vote is required. Snell, 1996.
36. Australia's "running costs agreements" give this kind of arrangement to most managers.
37. In California, the state's controller withheld paychecks from state legislators when they failed to

enact a budget by the beginning of the 1995–6 fiscal year. Associated Press, "No Budget, No Paychecks, California Tells Lawmakers," July 13, 1995. Washington State statutes make failure to pass a budget on time a misdemeanor, but no penalty has been applied. Snell, 1996.

38. On long-term causes, see Eric M. Uslaner, *The Decline of Comity in the U.S. Congress* (Ann Arbor: University of Michigan Press, 1993).
39. D. B Hardeman and Donald C. Bacon, *Rayburn* (Lanham, MD: Madison Books, 1987).