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Congressional Budget and Impoundment Control Act of 1974, Reconsidered

Nooree Lee

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The Congressional Budget Act, reconsidered:

The modern budget of the U.S. federal government is created through an annual, year-long process created largely through the Congressional Budget and Impoundment Control Act of 1974.[1] The Congressional Budget Act, or CBA, substantially shifted the focal point of budgetary control away from the Executive to the Legislature. Although substantial amendments to the CBA have been made since 1974, the basic structure of the CBA and the shift towards Congressional control has remained.

This briefing paper evaluates the historical and political context in which the CBA created the modern budget process. The first section provides a historical overview of the federal budget and the circumstances which precipitated the CBA. The second section takes a closer look at the legislative history of the CBA. The final section analyzes public opinion regarding budget issues by evaluating opinion polling data over time.

Historical context of the Congressional Budget Act:

The story of the federal budget process' development is one of shifting power between the Executive and the Legislature. In broad terms, Congressional control dominated from the Founding through the 1920's, when the Executive gained greater control.[2] The CBA shifted the dominant role back to Congress, as part of an overall resurgence of Congress in policymaking.[3] Still, while the CBA shifted some measure of control back to Congress, the role of the Executive has grown immensely since the Founding, as the modern-day President sets the political and fiscal agenda for the federal government.

[1] Congressional Budget and Impoundment Control Act of 1974, Pub. L. 93-344, 2 U.S.C. §§ 601–688 (1974).
[2] For a brief overview of budget process development, see ALLEN SCHICK, THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS 8–38 (2000).
[3] JAMES L. SUNDQUIST, THE DECLINE AND RESURGENCE OF CONGRESS 199–238 (1981).

The text of the Constitution establishes Congress as the body with controlling power over the federal budget. Only Congress has the power to levy taxes or borrow against the credit of the U.S.[4] Article I, Section 9 prohibits the drawing of funds from the Treasury without an appropriation through law. Combined with the absence of any budgetary authority in Article II, Article I set up a federal budget controlled by the Legislature, the result of a conscious decision at the time of the Constitutional Convention. That decision was based partly on the history of conflict between the British Crown and Parliament, as well as the near 200 years of colonial history.[5] The budgetary control of colonial governors in pre-Revolutionary America created a strong preference for legislative dominance.[6]

Early in U.S history, Congress exerted intense control over the budget, making detailed appropriations through line item expenditures.[7] As the federal government, and by extension the budget, was small in the early republic, such specificity was manageable. Unlike today, each body of Congress had a single committee (House Ways and Means and Senate Finance) to handle all budget related matters, including both revenue and spending.

The first series of major developments in the budget process was induced by the Civil War. President Lincoln unilaterally authorized $2 million in spending by the Treasury for public defense out the outset of hostilities, and for the first time Congress resorted to the use of supplemental funding.[8] As funding for critical departments ran out during the course of the fiscal year, Congress would appropriate additional funds, a budgetary procedure move that is still used today to fund the current operations in Iraq. Congress also subdivided its budget work by

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[4] U.S. CONST. art. I, § 8.
[5] SCHICK, THE FEDERAL BUDGET, *supra* note 2, at 10.
[6] HOWARD E. SHUMAN, POLITICS AND THE BUDGET: THE STRUGGLE BETWEEN THE PRESIDENT AND THE CONGRESS 18 (1992).
[7] For an example, see SCHICK, THE FEDERAL BUDGET, *supra* note 2, at 11.
[8] AARON WILDAVSKY & NAOMI CAIDEN, THE NEW POLITICS OF THE BUDGETARY PROCESS 29–32 (1997).

creating Appropriations Committees to complement the House Ways and Means and the Senate Finance Committees.

The period between the Civil War and the Presidency of Teddy Roosevelt at the turn of the 20th Century was one of Congressional dominance, not only in budget matters but in general policymaking.[9] During this time, the country grew in area and population, and so did the federal government. Federal spending in 1900 surpassed $521 million, as compared to $11 million in 1800.[10] However this growth was marked by unrest with the budget process, as overpowered Appropriations Committees amassed incredible control over other committees. As Congress struggled to adjust

> These changes became "a symbol of dysfunctional fragmentation in Congress and of waste and mismanagement, and would serve as a rallying point in the creation of an executive budget focused around presidential leadership."[11]

That shift towards Executive leadership came with passage of the Budget and Accounting Act of 1921, or BAA.[12]

A number of factors resulted in the passing of the Budget and Accounting Act.[13] One was the development of a stronger, more dynamic Presidency, beginning with Teddy Roosevelt and continuing later with Woodrow Wilson.[14] But this shift was not a simple wrestling of power away from one branch by another. The increasing complexity of the budget required Congressional delegation of authority on fiscal matters. In 1913, Congress delegated the power

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[9] Sundquist characterizes this era as "The Golden Age of Congressional Ascendancy". SUNDQUIST, *supra* note 3, at 25.
[10] SCHICK, THE FEDERAL BUDGET, *supra* note 2, at 12.
[11] WILDAVSKY, *supra* note 8, at 31, quoting Charles Stewart III, The Politics of Structural Reform: Reforming the Budgetary Process in the House, 1865-1921 (1985) (unpublished Ph.D. dissertation, Stanford University).
[12] Budget and Accounting Act of 1921, Pub. L. 67-13, 42 Stat. 20 (1921).
[13] In addition to these factors, Shuman points to a number of political factors, such as the rise of the Progressive Movement and the influence of affluent Senators concerned about waste. SHUMAN, *supra* note 6, at 31.
[14] SUNDQUIST, *supra* note 3, at 30.

to coin and regulate money to the Federal Reserve System[15], and in 1917, Congress gave the Treasury Department authority to pay debts and borrow money for the federal government.[16] During the same period, the country passed the Sixteenth Amendment, authorizing a federal income tax, a response to repeated budget deficits at the turn of the century.[17] The final factor was another war, World War I, which caused federal spending to climb from $726 million to $19 billion in just five years.[18]

The Budget and Accounting Act created the modern President's role in the budget process, and was a key step in the development of the modern Presidency. The BAA required the President to submit a budget to Congress on an annual basis. As remains the practice today, the President was charged with compiling the budgetary requests of the Executive branch agencies and forwarding them to Congress. To assist with this and other tasks, the BAA also created what would eventually become the Office of Management and Budget (originally the Bureau of the Budget).

Although Congress technically retained nearly complete control over the budget process, the period between the passages of the BAA and the CBA is generally regarded as one of Presidential dominance. The Great Depression and the development to of Keynesian economic theory led to tremendous countercyclical spending by the federal government in the form of the New Deal.[19] The result of the Great Depression was the enhanced scope and scale of the federal government, and its budget.[20] World War II only increased federal spending; in fiscal year 1944,

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[15] Federal Reserve Act, Pub. L. 63-43, 38 Stat. 251 (1913).
[16] First Liberty Bond Act, Pub. L. 65-3, 40 Stat. 35 (1917).
[17] SCHICK, THE FEDERAL BUDGET, *supra* note 2, at 14.
[18] Id.
[19] It is notable here that Franklin Roosevelt did not agree with Keynesian notions of abandoning balanced budgets, as that remained a priority during the New Deal. However, that goal could never be realized given the circumstances. WILDAVSKY, *supra* note 8, at 39.
[20] "At the eve of the Depression in 1929, federal spending totaled approximately 3 percent of the GDP; a decade later, at the eve of World War II, it was 10 percent." SCHICK, THE FEDERAL BUDGET, *supra* note 2, at 16.

federal spending accounted for 43.6% of GDP, and the deficit was 30.3% of GDP.[21] While the federal government scaled back after the conclusion of the war, the federal government was permanently expanded. During the 1950's, federal spending averaged 17.6% of GDP, as compared to 9.8% in 1940 (present day spending is roughly 20%).[22]

The increased size of the government, and the control exerted over that government by the President, led to the type of branch domination which Arthur Schlesinger would identify as the "Imperial Presidency". Although pre-CBA budgeting, also known as 'classical budgeting', managed to last for 25 years after the end of World War II, eventually the increased policymaking power of the President culminated in a fiscal conflict with Congress. This period, from 1966 to 1974, was dubbed the "Seven Year Budget War" by Allen Schick.[23] The result of this 'war' was the 'truce' that was the Congressional Budget Act of 1974.

The Budget War: 1960's to 1974

The budget 'war' is linked most commonly with the Nixon Administration, and President Nixon's actions did much to intensify the conflict. However, the origins of the budget crisis predate Nixon, and fundamentally the conflict was one of Congress attempting to reclaim some of the power it delegated away in the 1921 act. Furthermore, lack of Congressional budgetary discipline also contributed mightily to the problems underlying the conflict. Finally, the vying for control between the two branches of government became more acute during this era due to the pressures on the budgetary process from domestic economic effects and entitlement spending.

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[21] OFFICE OF MGMT. AND BUDGET, HISTORICAL TABLES, BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 2009, 26 (2008), *available at* http://www.whitehouse.gov/omb/budget/fy2009/pdf/hist.pdf.
[22] Id.
[23] ALLEN SCHICK, CONGRESS AND MONEY: BUDGETING, SPENDING, AND TAXING (1980). This text is considered the definitive authority on the 1974 budget process.

Table 1: Economic Indicators and Federal Budget during 'Budget Wars'

	CPI	Inflation	% Δ GDP (inflation adjusted)	Federal Spending as % of GDP	Federal Revenue as % of GDP
1960	29.3	-	2.5	17.8%	17.9%
1961	29.8	1.71%	2.3	18.4%	17.8%
1962	30	0.67%	6.1	18.8%	17.6%
1963	30.4	1.33%	4.4	18.6%	17.8%
1964	30.9	1.64%	5.8	18.5%	17.6%
1965	31.2	0.97%	6.4	17.2%	17.0%
1966	31.8	1.92%	6.5	17.9%	17.4%
1967	32.9	3.46%	2.5	19.4%	18.3%
1968	34.1	3.65%	4.8	20.6%	17.7%
1969	35.6	4.40%	3.1	19.4%	19.7%
1970	37.8	6.18%	0.2	19.3%	19.0%
1971	39.8	5.29%	3.4	19.5%	17.3%
1972	41.1	3.27%	5.3	19.6%	17.6%
1973	42.6	3.65%	5.8	18.8%	17.7%
1974	46.6	9.39%	-0.5	18.7%	18.3%

Control over the budget process became more important during this period due to the reduced size of the proverbial pie being split. Spending as a percentage of GDP remained fairly stable, fluctuating between 17-20% from the late 1950's through 1974.[24] However, GDP growth slowed in the late 1960's, meaning that federal spending could not continue to expand at the same rate (inflation adjusted GDP actually declined in 1974).[25] Coupled with this slowing of growth was a spike in inflation; from 1961-65, the inflation rate averaged 1.27%, but from 1966-1973, the averaged was 3.98%.[26]

Another budgetary constraint in this period was the growth in entitlement spending. The increased entitlement spending was due to the increased demand for old entitlements (such as Social Security and civil service pensions) and the creation of new entitlements (such as

[24] HISTORICAL TABLES, supra note 21, at 26.
[25] In 1966, the GDP grew 6.5% over the previous year. However that amount dropped to 2.5% in 1967 and dwindled to a mere 0.2% in 1970. BUREAU OF ECONOMIC ANALYSIS, NATIONAL ECONOMIC ACCOUNTS (2008), *available at* http://www.bea.gov/national/index.htm#gdp.
[26] Inflation rates computed from Consumer Price Index data. Each year's January CPI was used. This data set was normalized to 1982-84. BUREAU OF LABOR STATISTICS, HISTORY OF CPI-U U.S. ALL ITEMS INDEXES FROM 1913 TO PRESENT. (2008), *available at* ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.

Table 2: Entitlement Spending during 'Budget Wars':
(in billions, inflated adjusted at year 2000 dollars)

	Federal Employee Retirement/ Disability	Medicaid	Medicare	Social Security	Defense as % of spending
1962	9.1	0.5	N/A	66.1	49.0%
1963	10.4	0.7	N/A	71.9	48.0%
1964	11.6	1	N/A	74.6	46.2%
1965	12.9	1.2	N/A	77.3	42.8%
1966	14.8	3.4	N/A	90.1	43.2%
1967	16.4	5.1	10.5	92.3	45.4%
1968	17.9	7.6	18.1	97.9	46.0%
1969	19.1	9.2	21.3	107.6	44.9%
1970	21.2	10.5	22.1	113.9	41.8%
1971	24.1	12.4	22.5	129.2	37.5%
1972	27.1	16.3	24.6	139.4	34.3%
1973	30.3	15.7	25.8	164.4	31.2%
1974	33.9	18.4	28	173.6	29.5%

Medicare and food stamps).[27] These entitlement programs grew at alarmingly high rates, even when adjusted for inflation.[28]

As the last column of Table 2 indicates, it appears that increased entitlement funding coincided with a relative decline in defense expenditures.[29] While defense expenditure still grew in real terms (in part to fund the Vietnam War), defense spending as a percentage of total expenditures declined. The value of this insight is not just a speculative correlation between the two trends; rather, it is that that there was tremendous pressure on the federal budget during this period. The economy was not growing as rapidly, inflation became a problem, entitlement spending ate up a greater part of spending, and the largest discretionary spending area was already being scaled down (relatively speaking). This phenomenon, identified by Wildavsky as

[27] WILDAVSKY, *supra* note 8, at 68.
[28] For detailed data, see HISTORICAL TABLES, supra note 21, at 144.
[29] WILDAVSKY, *supra* note 8, at 69. Note that this insight, while still notable, a causal relationship between increased entitlement spending and decreased (relative) defense spending cannot be statistically established.

the 'lost increment', significantly increased tension in the budget process.[30] The result is a general lack of flexibility in fiscal policy to undertake new policy objectives, particularly social policy objectives.

Unfortunately (at least in fiscal terms), such social policy goals were on the agenda of the country. In his 1967 budget message, President Johnson outlined his dual commitment to social spending and providing funds for the Vietnam War.

> We are a rich nation and can afford to make progress at home while meeting obligations abroad—in fact, we can afford no other course if we are to remain strong. For this reason, I have not halted progress in the new and vital Great Society programs in order to finance the costs of our efforts in Southeast Asia.[31]

President Johnson was not alone in his social policy goals, as Congress also shifted towards a more liberal makeup. The decline of conservative southern Democrats and rise of liberal Democrats and Progressive Republicans created a legislature more willing to spend and more interested in having control over that spending (as opposed to limiting spending by the Executive).[32] As Table 3 indicates, the deficit grew enormously in real terms during the 1960's, from a small surplus in 1960 to $25.2 billion dollar deficit in 1968.[33]

To fight these growing deficits, Congress attempted a number of proposals to limited expenditures.[34] In December of 1967, Congress passed Pub. L. 90-218, which made continuing appropriations for fiscal year 1968. While originally an ambitious budget control measure, the ultimate result was a surprisingly weak measure, a result of bickering between the respective

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[30] *See generally* WILDAVSKY, *supra* note 8. Wildavsky argues that within the budget there is a 'base' and an 'increment', with the base consisting of continued programs and increment consisting of new programs. Generally speaking, the increment creates more conflict than does the base, due to inertia, among other factors.
[31] BUREAU OF BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 1967, 7 (1966), *available at* http://fraser.stlouisfed.org/publications/usbudget.
[32] For a discussion of the shift in Congress during this era, see SHUMAN, *supra* note 6, at 218.
[33] HISTORICAL TABLES, supra note 21, 24-26. Adjusting for inflation, that $25.2 bn. figure is valued at nearly $120 bn. today. See Table 3 for more details.
[34] Congress attempted such proposals on five occasions between 1967 and 1973. *See* SCHICK, CONGRESS, *supra* note 23, at 32.

committees in the House and Senate as to how to handle President Johnson's tax increase proposal.[35] This act did not fix statutory amounts of spending, but directed that obligations and expenditures be reduced at set amounts below the President's Budget.[36] In effect, the plan was to carry over spending from the previous fiscal year with set percentage reductions to achieve the desired reductions. However, these reductions excluded entitlement spending. Although a budget surplus was achieved in 1969, as Table 3 indicates, that momentary surplus was due to a substantial revenue increase and not any effective Congressional limitation on spending.

Table 3: Federal Budget during 'Budget Wars'
(in billions, inflated adjusted at year 2000 dollars)

	Receipts	Exp.	Surplus/ Deficit	Receipts as % of GDP	Exp. as % of GDP	Sur./Def. as % of GDP
1960	528.5	526.8	1.7	17.9%	17.8%	0.1%
1961	525.8	544.4	–18.6	17.8%	18.4%	-0.6%
1962	552.8	592.5	–39.6	17.6%	18.8%	-1.3%
1963	568.9	594.3	–25.4	17.8%	18.6%	-0.8%
1964	592.7	623.8	–31.1	17.6%	18.5%	-0.9%
1965	605.9	613.2	–7.3	17.0%	17.2%	-0.2%
1966	662.8	681.5	–18.7	17.4%	17.9%	-0.5%
1967	734.6	777.2	–42.7	18.3%	19.4%	-1.1%
1968	727.4	847	–119.6	17.7%	20.6%	-2.9%
1969	838	823.5	14.5	19.7%	19.4%	3.0%
1970	815.9	828	–12.0	19.0%	19.3%	-3.0%
1971	742.9	834.3	–91.4	17.3%	19.5%	-2.1%
1972	770.7	857.6	–86.9	17.6%	19.6%	-2.0%
1973	814.7	867.3	–52.6	17.7%	18.8%	-1.1%
1974	857.4	877.4	–20.0	18.3%	18.7%	-0.4%

Congress attempted to curtail spending again through the Revenue and Expenditure Control Act of 1968.[37] In addition to some tax code adjustments to raise revenue, the act

[35] Specifically, the House Ways and Means was faced with an unpopular tax increase and demanded that Appropriations abide by a spending cap. Although the House Committees did finally reach a compromise spending cap, the Senate Appropriations Committee rejected the across-the-board spending cuts until the figure was drastically reduced. For greater detail, see SCHICK, CONGRESS, *supra* note 23, at 34.
[36] *Id.*
[37] Revenue and Expenditure Control Act of 1968, Pub. L. 90-364, 25 Stat. 251 (1968).

proposed a $6 billion reduction in expenditures in fiscal 1969 and a $10 billion reduction in budget authority. More specifically, § 203 stated that the budget authority was not to exceed $191 billion dollars. Unfortunately, actual expenditures overshot, totaling $195 billion.[38] This failure was a consequence of § 203(a), which provided exceptions for new authority for the Vietnam War, debt service, veterans' benefits, and Social Security. Additional exemptions were added by Congress through legislation.[39] These exemptions made it impossible for Congress to meet the targeted spending cap.

As these failed Congressional measures demonstrate, when President Nixon entered office in 1969, he was entering a fiscally troubled government. The continuing rise in entitlement spending and the lack of sufficient economic growth to sustain an enlarging federal government weighed heavily on the budget, and a 'treaty' to the 'budget war' would likely have been necessary eventually, even had President Nixon simply maintained the status quo. Furthermore, the Republican President faced partisan divisions with the Democratic Congress which his predecessor did not have to face. Unfortunately, President Nixon made decisions which alienated Congress more than partisan division and deficit increases ever could, and his actions greatly contributed to the crisis in the government which eventually necessitated the 1974 act.

The received wisdom on President Nixon's conflict with the Democratic Congress concerns his desire to undo or at least rollback some of President Johnson's domestic programs.[40] Certainly, those domestic policy changes instigated much of the conflict. However,

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[38] HISTORICAL TABLES, supra note 21, 22. This figure, once inflation adjusted, is that same as appears for 1970 expenditures on Table 3.

[39] SCHICK, CONGRESS, *supra* note 23, at 37. "Two exemptions were added in later legislation: $900 million in farm price supports and $560 in public assistance".

[40] Allen Schick, the authority on the budget war, focuses almost exclusively on domestic concerns, particularly impoundment.

it is impossible to separate out the effects of foreign affairs from any political battle during this era. Congress' attempt to regain budgetary control during this era was part of a larger trend of Congressional resurgence. The increasing unpopularity of the Vietnam War gave Congress the opportunity to push back against the dominance of the Executive in conducting foreign policy and war-fighting. The result of these efforts was the War Powers Resolution of 1973, which added an authorizing role for Congress in decisions to send U.S. troops abroad.[41] The Congressional will for the War Powers Resolution derived largely from the Executive-authorized military operations in Cambodia, which had been expressly rejected by both the House and the Senate.[42] In addition, the unauthorized operations in Cambodia had a budgetary impact. Since Congress never authorized any funds for those operations, the Pentagon redirected funds from foreign assistance programs intended for countries like Taiwan and Turkey.[43] This incident, along with other war-related budgetary abuses by President Nixon, increased the urgency of the Congressional Budget Act.[44]

President Nixon's domestic policy decisions were even more damaging to the uneasy relations between the branches. Schick describes the early years, before 1972, as follows:

> Nixon's early budget battles with Congress were tame, at least by comparison . . . The President proposed some program curtailments . . . . Nixon vetoed only a few appropriations bills, in the aftermath of which he usually managed to negotiate a compromise with Congress.[45]

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[41] War Powers Resolution, Pub. L. 93-148, 87 Stat. 555 (1973). The effectiveness (and constitutionality) of the War Powers Resolution has been questioned on numerous occasions, but it did represent a major attempt by Congress to limit the Executive's discretion in war-fighting.
[42] For a discussion on the War Powers Resolution, see SUNDQUIST, *supra* note 3, at 257.
[43] SHUMAN, *supra* note 6, at 220.
[44] Another wartime budgetary abuse identified by Shuman was the curious interpretation of the Feed and Forage Act, 12 Stat. 220 (1861). The Nixon Administration interpreted this Civil War era statute to provide critical supplies for soldiers in remote outposts to allow unlimited emergency funds for the Department of Defense. *See* SHUMAN, *supra* note 6, at 222.
[45] SCHICK, CONGRESS, *supra* note 23, at 43.

So while there was some conflict from the outset, the budget 'war' did not rise to acrimonious levels until 1972, when President Nixon placed the budget on his reelection campaign agenda. As the campaign season entered its final months in the summer of 1972, President Nixon attacked Congress' poor handling of the budget and challenged it to abide by a $250 billion spending cap for fiscal 1973. In a message to Congress in July, President Nixon charged the problem to be "the hoary and traditional procedure of the Congress, which now permits action on the various spending programs as if they were unrelated and independent actions" and further stated that "[w]ith or without the cooperation of the Congress, I am going to do everything within my power to prevent such a fiscal crisis".[46] President Nixon argued vigorously to convince the country that fiscal responsibility could lead to avoiding higher tax rates and inflation,[47] and he threatened to veto bills which ignored his target spending cap.

President Nixon made good on his threats and vetoed nine appropriations bills, an action rarely taken by the Executive.[48] Just one week before the election, President Nixon announced these decisions in a single message, asserting that these bills "are nine measures which I cannot sign without breaking my promise to the American people that I will do all in my power to avoid the necessity of a tax increase near year."[49] Though eight of the bills were relatively minor, one, the appropriation for Department of Health, Education and Welfare, concerned a major government function.[50]

[46] The President's Message to the Congress, July 26, 1972. *Weekly Compilation of Presidential Documents* (1972), 1176–77.
[47] "I am not going to permit that to happen. I oppose higher taxes and higher prices. There will be neither if the next Congress will join me in acting responsibly on fiscal affairs." Statement by the President in Connection with His Visit to White Plains, N.Y., October 23, 1972. *Weekly Compilation of Presidential Documents* (1972), 1553.
[48] SCHICK, CONGRESS, *supra* note 23, at 44.
[49] The President's Memorandum of Disapproval of Nine Bills Passed by the Congress, October 27, 1972. *Weekly Compilation of Presidential Documents* (1972), 1578.
[50] In fact, Nixon pocket-vetoed an amended bill as well, requiring Congress to use a continuing resolution to fund the HEW programs. *See* SCHICK, CONGRESS, *supra* note 23, at 45.

The 1972 Presidential election intensified the conflict, as President Nixon won reelection by a landslide margin (60% of the popular vote). At the same time, the Democrats maintained their control of the House (239 to 192) and solidified control of the Senate by gaining two seats (57 to 43).[51] As a result, both the Republican President and the Democratic Congress felt they had the support of the American public. Despite his victory, President Nixon faced the political reality that even before gaining the additional senators, the Democrats in Congress overrode many of the vetoes. In response, President Nixon resorted to a budgetary measure beyond the ordinary control of Congress: impoundment.

Impoundment refers to a decision by the President to reserve the money appropriated by Congress instead of spending it. Impoundment was not unique to the Nixon Administration; in fact, when asked about impoundment at a 1973 press conference, President Nixon referenced the use of impoundment by past leaders such as Thomas Jefferson and Harry Truman.[52] While impoundment was historically used, the majority of legal scholars felt that, save situations where the appropriations bill specifically permitted impoundment, that withholding the funds was unconstitutional as a violation of separation of powers.[53] Despite concerns as to constitutionality, impoundment had been prior to and was at that time, a political reality.

Although President Nixon utilized impoundment earlier in his administration, his use of it became more contentious from 1972 onward. Whereas most past impoundments had been "deferment of expenses, Nixon's aim was the cancellation of unwanted programs."[54] More specifically, President Nixon utilized 'policy' impoundments more than past administrations,

[51] SHUMAN, *supra* note 6, at 223.
[52] The President's News Conference of January 31, 1973. *Weekly Compilation of Presidential Documents* (1973), 105.
[53] *See generally* Jon L. Mills & William G. Munselle, Unimpoundment: Politics and the Courts in the Release of Impounded Funds, 24 Emory L.J. 313 (1975); Wm. Bradford Middlekauff, Twisting the President's Arm: The Impoundment Control Act as a Tool for Enforcing the Principle of Appropriation Expenditure, 100 Yale L.J. 209 (1990).
[54] SCHICK, CONGRESS, *supra* note 23, at 46.

which had traditionally relied on 'routine' impoundments.[55] The Office of Management and Budget greatly underreported the use of impoundment by relying on an overly strict definition of impoundment,[56] but Congress was not fooled. OMB reported only $8.7 billion impounded at a January 1973 hearing, leaving out $6 billion for grants to States for water-pollution control, $1.9 billion for the Departments of Labor-HEW, and $441 million from public housing.[57] Having failed to force Congress to stay within his spending cap, President Nixon acted unilaterally to limit federal spending and impounded billions in appropriated funds. The self-restraint shown by past administrations in the exercise of impoundment was abandoned by President Nixon.

Outside of Congress, persons relying on the impounded funds brought various suits, and in 1975 the Supreme Court heard two cases concerning plaintiffs seeking to free impounded monies.[58] While the Supreme Court ruled against Executive discretion to withhold the monies, by this point, Congress had already acted in passing the Congressional Budget and Impoundment Control Act.

Passage of the Congressional Budget Act:[59]

In October 1972, while President Nixon was vetoing appropriations bills, Congress passed the Federal Impoundment and Information Act.[60] The act created the Joint Study Committee, a

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[55] These 'routine' impoundments were added in amendments made to the Anti-Deficiency Act in 1951. Pub. L. 81-759, 64 Stat. 595, § 1211(c)(2) (1951). The subsection reads: "In apportioning any appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the purposes of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations."

[56] LOUIS FISHER, PRESIDENTIAL SPENDING POWER 170–173 (1975).

[57] *Id*.

[58] Train v. City of New York, 420 U.S. 35 (1975); Train v. Campaign Clean Water, 420 U.S. 136 (1975). In these cases, the Supreme Court focused primarily on statutory interpretation issues, that is, whether the statutes included impoundment provisions.

[59] For full legislative history, see S. COMM. ON GOVERNMENT OPERATIONS, 93D CONG., LEGISLATIVE HISTORY S. 1541—H.R. 7130 (Comm. Print 1974).

thirty-two member panel comprised of Representatives and Senators. The goal of the JSC was to review and report

> on the procedures which should be adopted by the Congress for the purpose of improving congressional control of budgetary outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of the anticipated revenues for that year.[61]

The JSC was dominated by members of Congress from the finance and appropriations committees; only four of the Committee members were from outside of the four budget-related House and Senate committees.[62]

In its interim report, the JSC identified the key problem with the existing budget process as "[t]he fact that no legislative committee has the responsibility decide whether or not total outlays are appropriate in view of the current situation".[63] Part of this primary concern was the lack of coordination between the revenue and expenditure controlling committees, which often eliminated Congress' ability to form a coherent fiscal policy or controvert the Executive's decisions. The JSC was also concerned with "splintering off of spending authority from the Appropriations Committee"[64] and "[p]rograms which are relatively uncontrollable".[65]

In a CRS report accompanying the JSC's interim report, Allen Schick also identified a major problem as "lack of sufficient information, staff, and time to do the job . . . Congress appears to be underinformed and understaffed".[66] In the report, Schick points out that reliance on Executive agencies for financial information, particularly the OMB, weakened Congress vis-

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[60] Federal Impoundment and Information Act. 92 Pub. L. 599; 86 Stat. 1324 (1972),
[61] *Id.* § 301(b)(1).
[62] House and Senate Appropriations, House ways and Means, and Senate Finance.
[63] S. COMMITTEE ON GOVERNMENTAL AFFAIRS, 93RD CONG., IMPROVING CONGRESSIONAL CONTROL OVER THE BUDGET, Joint Study Committee on Budget Control, Interim Report, 174-207, 178 (Comm. Print 1973).
[64] *Id*. at 181.
[65] *Id.* at 182. This mandatory spending was also known as 'backdoor' spending.
[66] U.S. Congressional Research Service. Analysis of Proposals to Improve Congressional Control of Spending (Jan. 10, 1973), by Allen Schick. Text in: IMPROVING CONGRESSIONAL CONTROL OVER THE BUDGET, *supra* note 63, 217-236).

à-vis the President and strongly suggested the creation of a congressional budget staff, as well as possibly having the OMB also provide services to Congress. While Congress had sufficient staff to understand overall budget issues, the Congressional staff lacked the ability to carefully analyze the budget proposals from the OMB and the individual Executive agencies.

Ultimately, the Joint Study Committee made two critical decisions, both of which were in large part determined by the composition of the JSC. First, the JSC recommendations sought to create a process based on Congress, not on the President. Eager to regain control of the budget process, the JSC recommended the use of a concurrent resolution which would not be submitted to the President.[67] Second, the recommendations created a budget process which was 'layered' on top of the existing budget processes in Congress.[68] The dominance of the spending and revenue committees on the JSC precluded any serious consideration of abandoning the existing power structure in Congress, as those members were loathe to give up their powerful committee assignments. The core of the JSC recommendations was the creation of the House and Senate Budget Committees, with a new congressional budget staff under their jurisdiction.[69]

Timeline for H.R. 7130 (1973)	
April 18:	Bill introduced
November 13:	Reported by House Committee on Rules
December 4–5:	Floor debate; 11 amendments proposed, two minor amendments accepted; vote on passage (386 ayes to 23 nos)

The recommendations of the Joint Study Committee were introduced to each house as bills (H.R. 7130 and S. 1541).[70] In the House, the bill was referred to the Rules Committee. Much of the work on the bill was spearheaded by Rep. Richard Bolling, a Democrat from

[67] SCHICK, CONGRESS, *supra* note 23, at 60.
[68] *Id.* at 59.
[69] H. REP. NO. 93-13 (1973).
[70] LEGISLATIVE HISTORY, *supra* note 59. For a fuller discussion of the legislative history, see SCHICK, CONGRESS, *supra* note 23, at 60–81.

Missouri.[71] Bolling faced concerns from within his own party, as liberal Democrats feared the new Budget Committee would be incredibly powerful and dominated by conservatives (as Appropriations traditionally had been). Ultimately, the House version incorporated this concern by reducing the overlap between Appropriations and Ways and Means over to Budget, and by having a rotating membership on the Budget Committees.[72] Also notable here is that Rep. Bolling pushed for the attached of H.R. 8480, an impoundment control bill; this would have major implications at conference. Due to the compromise worked out between Bolling, the liberal Democrats, and some conservatives in Appropriations, the committee report passed through floor with little opposition.[73]

Timeline for S. 1541 and Conference (1973–1974)	
April 11:	Bill introduced
November 20:	Reported by Committee on Government Operations
November 30:	Referred to Committee on Rules and Administration
March 6, 1974:	Reported by Committee on Rules and Administration
March 20–22:	Floor debate; vote on passage (80 yeas, unanimous); H.R. 7130 adopted and conference requested
April 9:	Conferees meet
June 12:	Conference report submitted
June 18:	House considers conference report and agrees (401 to 6)
June 21:	Senate considers conference report and agrees (75 to 0)
July 12:	Signed into law by President

In the Senate, S. 1541 was received by the Government Operations Committee, which was headed by Senator Sam Ervin of North Carolina. Before going to full committee, the bill was the source of some contentious debate within the Subcommittee on Budget, Management, and Expenditures. While the subcommittee, chaired by Sen. Lee Metclaf, agreed to expand

[71] SCHICK, CONGRESS, *supra* note 23, at 61. Schick adds two interesting notes regarding Bolling. Apparently, Bolling's personal antagonism to the leadership of the Ways and Means Committee led to the bill being written slightly more favorably towards Appropriations. Furthermore, Bolling insisted on attaching H.R. 8480, an impoundment control bill which would make up the latter half of the final bill's name.
[72] *Id.* at 64.
[73] There were only two amendments during floor debate, one to amend the title of the Bill and one alter the layover period for reporting of concurrent resolutions. LEGISLATIVE HISTORY, *supra* note 59 at XX.

membership in the Budget Committee to include more Senators not on Finance or Appropriations, they were deeply divided as to whether the new committee should act to check government spending or simply pass it through. Eventually, the parties reached a compromise and the full committee produced a complicated bill "combining ceilings and targets. Congress would be able to adopt appropriations in excess of the levels in its budget resolution, but not spending bill could take effect until Congress enacted special "triggering" legislation."[74] The committee bill included loopholes for backdoor legislation and new procedures for program authorization and test piloting which were not in the original JSC report.[75]

Concerned that Senators had not given this critically important bill due consideration, Senator Byrd moved to transfer the bill to the Committee on Rules and Administration. With the bill tucked safely away in a committee on which he served, Senator Byrd formed a working group to which representatives of all committees were invited. It was in this working group that the first budget resolution was made into a target and the reconciliation process was added as an optional procedure.[76] Senator Byrd was very active, proposing several amendments, including one which created the Congressional Budget Office.[77] When the bill emerged from committee, it was largely a 'consensus' bill, due to the level of involvement by so many Senators, and it passed unanimously with only minor amendments.[78]

After all the compromises made in the House and Senate, however, the Congressional Budget Act was delayed at conference due to Rep. Bolling's attachment of the Impoundment Control Act (H.R. 8480, S. 373).[79] The two houses had conceptualized impoundment control

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[74] SCHICK, CONGRESS, *supra* note 23, at 66.
[75] *Id.*
[76] *Id.* at 69. Part of the reconciliation procedure are the 'Byrd Rules', named after Senator Byrd.
[77] LEGISLATIVE HISTORY, *supra* note 59 at 1314.
[78] SCHICK, CONGRESS, *supra* note 23, at 70.
[79] *Id*.

quite differently, with the Senate bill limited impoundment to 60 days without Congressional approval, whereas the House measure put the burden on Congress to act; without Congressional action, the House measure would have allowed impoundment to continue. The houses eventually compromised, as 'rescission' impoundments were canceled unless Congressionally authorized within 45 days, while 'deferral' impoundments were allowed unless canceled by Congress.[80] The bill passed through both houses without incident and was signed into law by President Nixon on July 12, 1974, one of President Nixon's final major acts in office.

Polling America: does the public care about the budget?

The Congressional Budget Act brought an end to the budget 'war' between the two branches, and while budget conflicts would naturally continue, a new Congressional budget process was created which continues to form the basis of the modern federal budget. The budget 'war' was a struggle for control between the President and Congress, as well as an internal struggle within Congress, to determine each body's appropriate role in the budget process. A separate question, however, is whether the American public cared about the budget during an era when the government was so focused on budget issues.

A pre-budget 'war' (1962) survey revealed that only 44% of Americans understood the term 'balanced budget'.[81] Other polls from the era confirmed that only about half of Americans understood the concept of a balanced federal budget. This data betrays a general unfamiliarity among Americans of federal budget issues; it does not necessarily indicate a particular inability to understand budget concepts, simply an unfamiliarity with them.

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[80] *Id.* at 71.
[81] *Survey by Gallup Organization, June 28-July 3, 1962.* Retrieved April 20, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

What the data seems to indicate is that Americans did not have a strong set of preferences regarding the federal budget during this era. When a 1973 poll asked how important it is to balance the federal budget, 60% responded it was 'very important', while only 10% felt it was 'not so important'.[82] As a point of comparison, a 2004 poll found that 54% of Americans felt the budget deficit was 'very serious'.[83]

Such polling responses can be deceiving, however, as these questions do not require the polled individuals to choose between policy priorities.[84] For example, in 1972, a poll asked Americans to choose between "a balanced budget for the government, or a program to stimulate the economy even if it means a large deficit"; 47% chose the economic stimulus program, while only 36% chose the balanced budget.[85] So while many Americans may have believed a balanced budget was 'very important', only 36% believed it was more important than economic growth. A recent work on the political psychology of budget deficits by Jonathan Baron and Edward McCaffery revealed how readily and powerfully polling responses changed when the questions required the weighing of policy priorities against the value of fiscal responsibility.[86] Certainly, it is unclear that the public, either of 1974 or 2008, has strong, pre-formed opinions regarding budgetary issues.

In the one poll available regarding impoundment, 45% of American felt President Nixon's decision to impound funds was the 'wrong thing' to do, while 38% believed he made the

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[82] *Survey by Gallup Organization, February 16-February 19, 1973*. Retrieved April 20, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

[83] *Survey by Quinnipiac University Polling Institute, January 28-January 31, 2004*. Retrieved April 20, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

[84] Jonathan Baron & Edward McCaffery, Starving the Beast, in Fiscal Challenges: An Interdisciplinary Approach to Budget Policy 221, 231 (2008). Baron and McCaffery show in much more recent polling data that respondents change their answers when presented with difficult policy choices requiring tradeoffs.

[85] *Survey by See note and Opinion Research Corporation, January 26-January 27, 1972*. Retrieved April 20, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

[86] Jonathan Baron & Edward J. McCaffery, *Starving the Beast – The Political Psychology of Budget Deficits*, *in* FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO BUDGET POLICY 221 (Elizabeth Garrett, Elizabeth A. Graddy & Howell E. Jackon ed., 2008).

right decision.[87] So despite President Nixon's efforts during his reelection campaign to convince Americans of the importance of budget discipline (and the need for impoundment), it appears that even just a few months after his landslide reelection victory, Americans were either deeply divided or, at best, merely ambivalent on the issue of impoundment. The sweeping support Nixon sought for his contentious use of impoundment was not forthcoming.

Two major polls taken during the budget 'war' seem to indicate that the public was not attuned to the dispute between the President and Congress. In a lengthy in-person poll conducted in 1970, respondents were asked "What do you think is the most important problem facing this country today?"[88] A total of 45 options were presented, including 'no answer' and 'miscellaneous'.[89] Of the 1573 respondents, 498 chose Vietnam, to make it the top selection. Other common responses included 'high cost of living, inflation, taxes, high prices, fiscal problems, economic situation' (256), 'civil rights' (196), and 'poverty' (75). On its face, these results may support a belief that the public was concerned about budget issues, with the inclusion of 'fiscal problems' within the second most common response. However, based on the results of the next poll, it appears more likely that 'high cost of living' and 'economic situation' was the primary concern there.

A poll conducted in 1972 asked the question "What are your wishes and hopes for the future of the U.S. If you picture the future of the U.S. in the best possible light, how would things look . . . ten years from now."[90] The poll presented 43 options for response. The most

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[87] *Survey by Gallup Organization, February 16-February 19, 1973*. Retrieved April 20, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

[88] *Gallup Poll # 797, Survey by Gallup Organization, January 15-January 20, 1970*. Retrieved April 15, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

[89] Respondents were welcome to select more than one problem.

[90] *State of the Nation,, Survey by Gallup Organization, May 1972*. Retrieved April 15, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. Note that the percentages on the table do not sum to 100%. The percentage indicates the percentage of respondents who included that response as a hope or fear. Also, not all responses are displayed.

popular responses were 'peace: no war or nuclear war' (358 of 669), 'employment: jobs for everyone' (118), 'law and order' (90), 'economic stability: no inflation' (83), and 'pollution, ecology' (81). Conversely, the greatest fear for the country was 'war: nuclear war' (214), with 'lack of law and order' (112) coming in second. 'High or increased taxes' (19) and 'miscellaneous worries having to do with the national political situation' (16) were far behind. Worries about a budget deficit and high taxes do not seem to be directly concern the American public, save an indirect link to economic instability. Therefore, the heavy campaigning by President Nixon on the issue of fiscal responsibility as a way to lower taxes (or, at least, not raise taxes) seems to have been of dubious effectiveness.

State of the Nation Poll (1972)

Question 7 - Hopes for the Future		Question 8 - Fears for the Future	
Peace: no war or nuclear war	53.5%	War: Nuclear War	32.0%
Employment	17.6%	Lack of Law and Order	16.7%
Law and Order	13.5%	**Economic Instability**	12.1%
Economic Stability	12.4%	Miscellaneous	9.4%
Pollution	12.1%	Drugs	9.1%
Improved Standard of Living	10.0%	Political Instability	9.0%
Social Justice	8.1%	Communism	7.3%
National Unity	7.5%	Unemployment	6.1%
Drugs	6.7%	Lack of Morality	6.0%
Racial/Integration	6.1%	Racial Matters	5.5%
Sense of Social Responsibility	5.4%	Aggression by Russia, China	5.4%
Efficient Government	5.1%	National Disunity	4.9%
Education	5.1%	Misc. Social Matters	4.5%
Public Health	5.1%	No Fear	4.5%
Morality	4.9%	Population Growth	4.2%
Miscellaneous	4.9%	**Inefficient Government**	4.2%
No answer	4.0%	No Social Responsibility	2.8%
Honest Government	3.9%	**High Taxes**	2.8%
Less Taxes	3.9%	Standard of Living	1.8%

Given the general lack of knowledge regarding the federal budget and the more pressing concerns regarding the Vietnam, the threat of nuclear war, and other domestic issues, it does not appear from the data that the American public had strong preferences regarding the federal budget. See appendix for further analysis.

APPENDIX: ANALYSIS OF PRESIDENTIAL APPROVAL RATING AND HANDLING OF BUDGET

Summary

To evaluate whether poll respondents had informed opinions about budget policy, it may be useful to compare polling data as to presidential budget policy with presidential approval ratings. The hypothesis is that if respondents had no independent opinions regarding budget policy, their responses approving or disapproving a President's budget policy would correlate would responses about that President's overall policy. Note that such a correlation would not necessarily demonstrate any causal relationship; it is undoubtedly true that if any causal relationship existed, it would be bilateral.

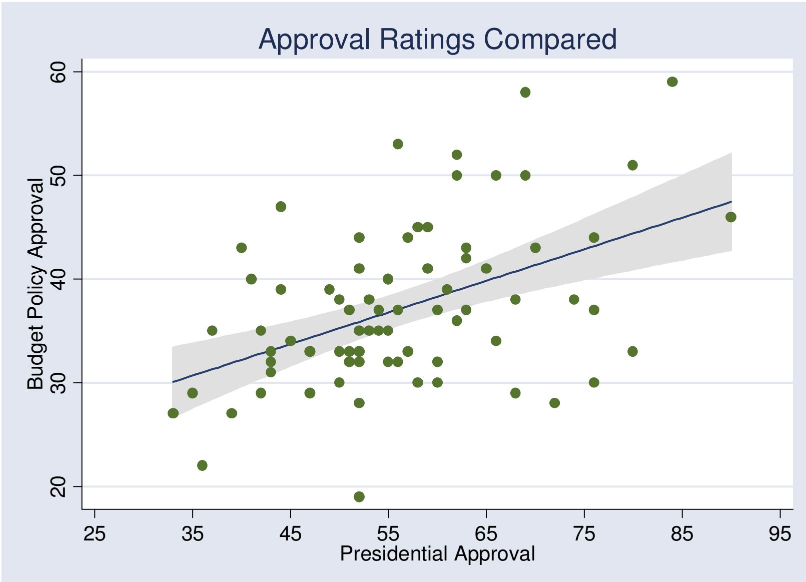
Unfortunately, the polling data is inconsistent in its availability. The polls chosen were those which asked the respondent to evaluate the President's performance in handling either the 'federal budget' or the 'budget deficit'. Only questions which asked for the respondent to respond affirmatively or negatively were tallied, although some gradation was allowed (strongly approve, approve, disapprove, strongly disapprove). In such case, the responses were grouped together in simply affirmative or negative responses. However, polls requesting a letter grade on the President's performance were not included.

As a result of these requirements, only three datasets from before the Reagan years were available, with none from the Nixon years. Many datasets from the Reagan years onwards were available. In all there were 78 relevant datasets. The number of datasets per President, as well as average budget policy approval rating, are presented below. Due to the lack of data before the Reagan Administration, comparisons between eras is unfortunately not possible.

	Kennedy	Johnson	Nixon	Reagan	Bush I	Clinton	Bush II
Avg. Budget Policy Approval	30%	39.50%	N/A	38.20%	32.2	36.60%	38.40%
Sample Size	1	2	0	17	10	18	30

These budget policy approval figures were compared with the Presidential approval ratings recorded by Gallup. When possible, the two sets of data were matched up to the exact week of the polling; however, this was not always possible, so monthly pairings were the standard. This means that if the budget policy poll was recorded in May 1985, at the very least the approval rating data was recorded in that month, and if available, the same week. In four instances, Gallup polls were not available, and an average of all other polls during that time period were used. When multiple Gallup polls in the same time period were available, they were averaged.

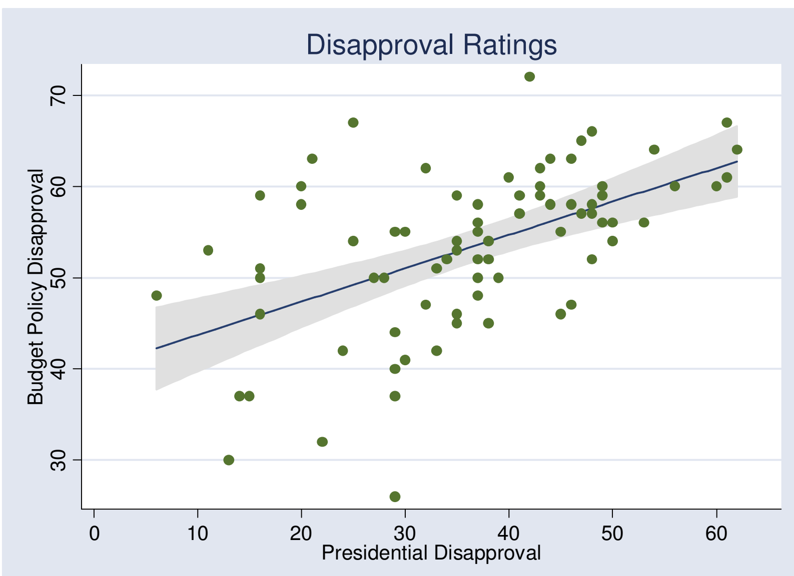
Overall data



Linear equation:
y = .304576x + 20.02346

95% CI:
For coefficient:
[.176062 .433090]
For constant:
[12.6687 27.3782]

R-squared: 0.2267
Adjusted R-squared: 0.2165



Linear equation:
y = .3658x + 40.0586

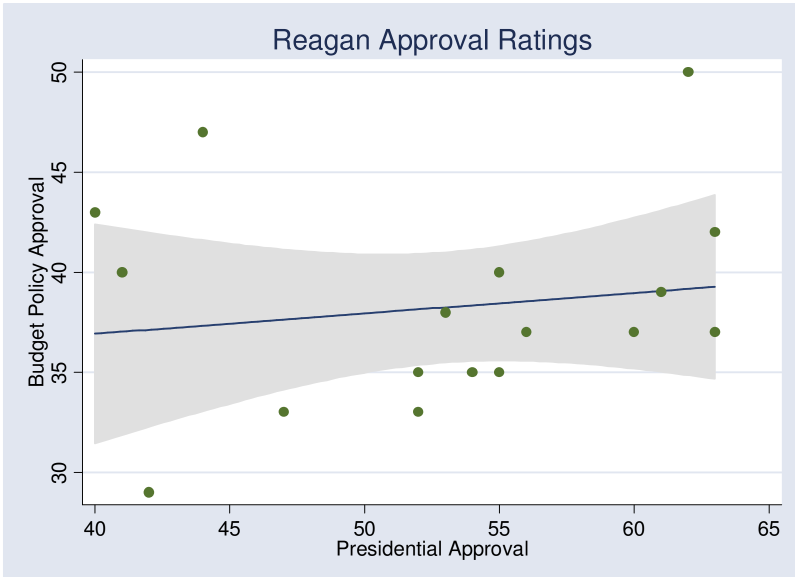
95% CI:
For coefficient:
[.229974 .501626]
For constant:
[34.8098 45.30729]

R-squared: 0.2746
Adjusted R-squared: 0.2651

Plotting the approval numbers on a scatterplot, there appears to be no strong correlative relationship between the two datasets. However, this does not necessarily end the analysis. When the disapproval numbers are plotted similarly, the correlative relationship is slightly higher, both based on visual evaluation of the scatterplot as well as the R-squared values. The difference between the approval and disapproval figures is due to the ‘no opinion’ or ‘don’t know’ response available in all of the polls.

Based on the aggregate numbers, there appears to be no correlation between the two approval or disapproval ratings.

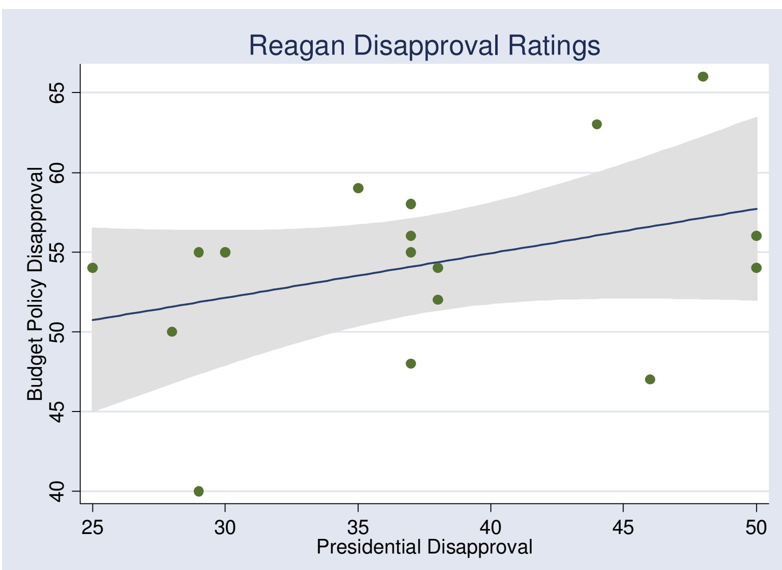
Data by Administration: Reagan



Linear equation:
y = .1018044x + 32.84565

95% CI:
For coefficient:
[-.263456 .467065]
For constant:
[13.3135 52.3778]

R-squared: 0.0230
Adjusted R-squared: -0.0421



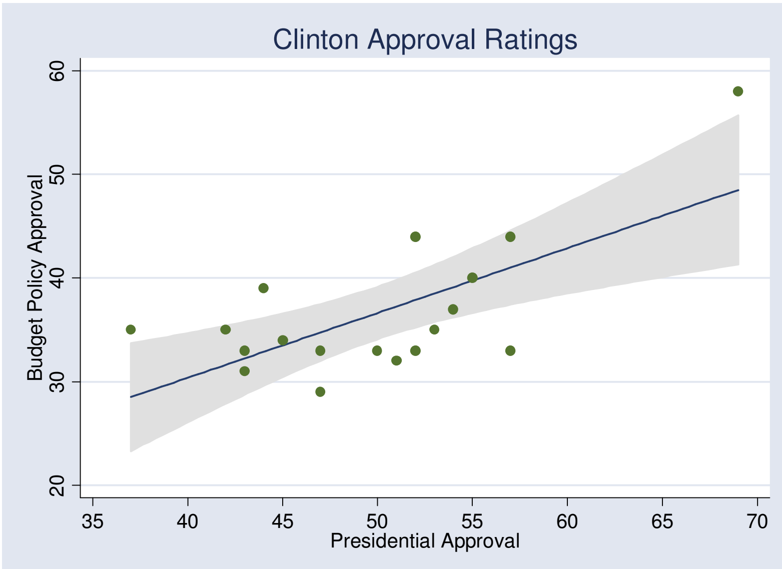
Linear equation:
y = .27905x + 43.76275

95% CI:
For coefficient:
[-.11154 .669636]
For constant:
[28.8036 58.7219]

R-squared: 0.1339
Adjusted R-squared: 0.0762

The figures for the Reagan Administration correlate even more poorly than the aggregate figures. Note that only Reagan, Clinton, and Bush II regressions were computed separately, due to sample size.

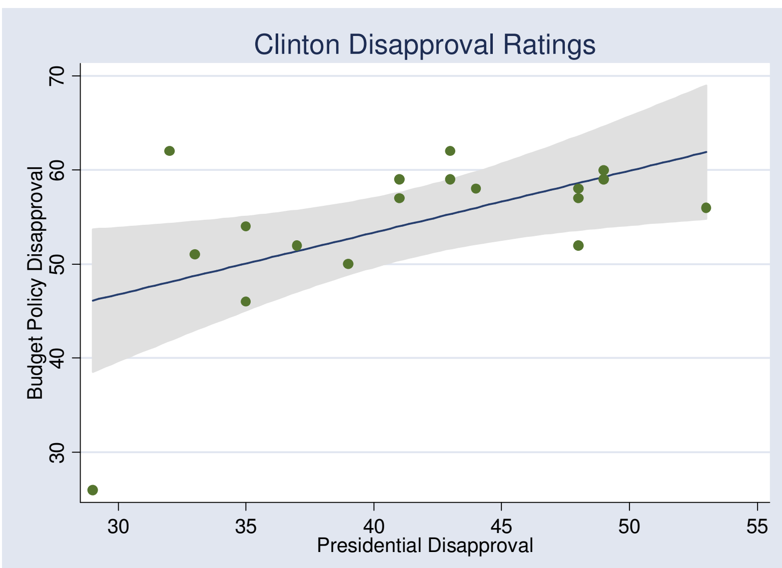
Data by Administration: Clinton



Linear equation:
y = .6252695x + 5.361557

95% CI:
For coefficient:
[.272221 .978318]
For constant:
[-12.4331 23.15621]

R-squared: 0.4684
Adjusted R-squared: 0.4351



Linear equation:
y = .657231x + 27.05826

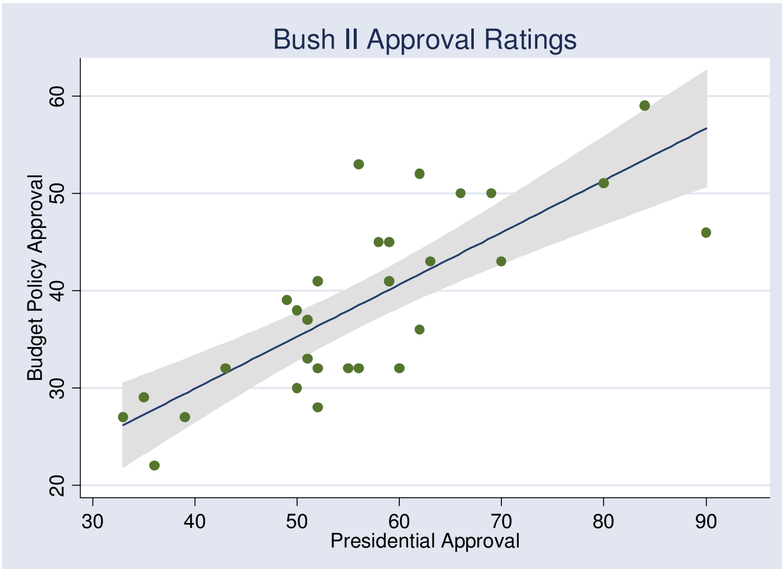
95% CI:
For coefficient:
[.124477 1.18999]
For constant:
[4.66111 49.4554]

R-squared: 0.2995
Adjusted R-squared: 0.2557

As compared to the Reagan Administration figures, the Clinton years show more correlation, particularly for the approval figures. It is notable that the Clinton figures are strongly affected by two outliers, one in each regression pattern. However, removing the outliers did not produce a stronger linear regression fit.

Although the R-squared values remain low, a mild correlation between the approval ratings can be said to exist.

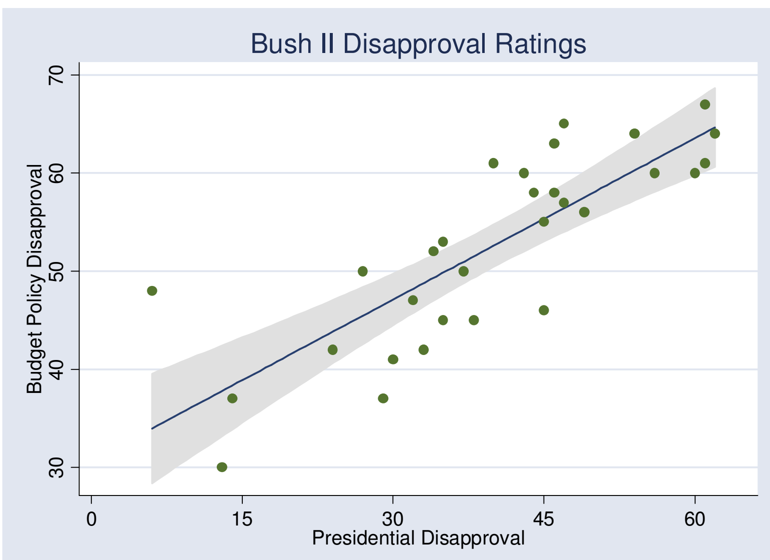
Data by Administration: Bush II



Linear equation:
y = .534624x + 8.55016

95% CI:
For coefficient:
[.373897 .695351]
For constant:
[-.69395 17.7943]

R-squared: 0.6238
Adjusted R-squared: 0.6103



Linear equation:
y = .547738x + 30.68495

95% CI:
For coefficient:
[.395419 .70006]
For constant:
[24.2584 37.1115]

R-squared: 0.6596
Adjusted R-squared: 0.6475

The Bush II figures most strongly support the hypothesis that a correlation exists between Presidential approval rating and budget policy approval rating. The confidence intervals are fairly tight, and the R-squared values are over one-half. This is still far from a decisive correlative relationship, but seems to suggest that in the past eight years, responses to budget related questions have loosely tracked responses to Presidential job approval questions.

The Bush II Administration is unique in two respects. First, it features an enormous data set, with 30 surveys from this time period, as compared with 48 total surveys before Bush II. Also, the Bush II Administration has seen an enormous range of Presidential approval ratings, ranging from historic lows to historic highs. The particularly polarizing nature of the Bush II Administration may contribute to this particularly strong correlation.