

The Billions in the White House Basement

by Timothy H. Ingram

By cliché, the power of the purse is now widely referred to as Congress' only remaining lever for redressing the balance between itself and the presidency. Increasingly, Congress is recognizing that its foreign affairs and treaty-making functions are mere ornaments, and that its traditional checks on the Executive are either unrealistic or meaningless. What is left is the appropriations power, and a handful of senators and representatives are invoking it in a muted but growing struggle to revive congressional strength.

Few appreciate, however, the extent to which even the power of the purse, that bulwark of legislative authority, is already controlled by the presidency. As Congress attempts to tame the Executive by threatening to cut off funds for things like war, it finds that the Executive has already developed innumerable devices for

getting the money, anyway. And far from successfully denying the President his money, Congress is even having a hard time getting him to spend what is appropriated.

The Constitution, of course, says that the appropriations power is the exclusive prerogative of Congress. But in the vacuum created by Congressional indifference to overseeing the bureaucracy's spending habits, and by the now empty ritual of blue-penciling the President's annual budget, the Executive has amassed a mound of spending prerogatives of its own: transfer authorities, contingency funds, lump-sum appropriations, reprogrammings, special waiver authorities, and covert financing.

A look at several discretionary spending options will give some idea of the extent of the Executive's grasp of the purse strings—and some indication of what Congress is left holding. For example, through secrecy, transfer powers, mislabelled military assistance, unauthorized commitments, and cloaked grants of excess war

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goods, the President and his national security managers are able to hire mercenaries, discourage a rump insurrection in Ceylon, promise South Korea \$3.5 billion, and turn over an unknown amount of equipment, helicopters, and bases to Vietnam. A simple budgetary procedure called reprogramming allows the Navy to quietly secure a behind-the-doors reversal of a congressional decision to defer production of the controversial F-14 fighter. And the pipeline, a huge reservoir of unexpended funds, permits the Pentagon to spend above the level of appropriations authorized by Congress. While lamenting the loss of its war powers, Congress consoles itself with the thought that it still maintains control over domestic priorities by its annual allotment of funds. But through impoundment, the President refuses to spend some \$12 billion in appropriated monies, placing a post mortem item veto on such programs as urban renewal, regional medical clinics, food stamps, and farm loans.

The panoply of deceptive devices available to the Executive's budgetary Houdinis was graphically illustrated in a memo submitted by the Joint Chiefs of Staff to Secretary Laird on August 30, 1971. According to *The New York Times*, the Joint Chiefs offered several ways of by-passing the limited military aid appropriated by Congress to generate an additional \$52 million or more, to increase the strength of the Cambodian Army.

The first would be simply to transfer \$52 million appropriated for economic aid to the military aid program. The second would be to use economic aid money to buy all "common use" items such as trucks and jeeps, which have military as well as civilian value, thus freeing the other funds for strictly military uses. The third would be to increase procurement for the U. S. Army by \$52 million and give the materiel to the Cambodians, for "repayment" later. The fourth would be to make some exceptions in Defense Department supply regulations, declaring equip-

ment to be "excess" and delivering it to the Cambodians.

In addition, the memo proposed, the Joint Chiefs would clandestinely provide for a mechanized brigade, an artillery brigade, and coastal patrol units, as well as ground troops and extensive logistic support. AID would help finance the paramilitary force of armed civilians, which the planners hoped would number 200,000 by mid-1973 and more than 500,000 in 1977. The CIA, with its secret budget, supposedly would help train and direct Cambodian military units, as it is now doing with Laotian and Thai troops in Laos, and would provide airlift support with its subsidized airline, Air America. The proposals represented a complete subversion of congressional authority.

But the real significance of the story was not reported: how commonplace these methods have become. The Executive devices are as widespread as they are ingenious.

Transfer Authority

The transfer authority allows a department head to shift a limited amount of funds within an agency's account. The Secretary of Defense, for instance, is permitted to shuffle up to \$600 million between defense programs, and he used that authority to its fullest in fiscal 1971 with 836 transfers totaling \$590 million. It can be a sensible provision for administrative flexibility. But in foreign aid, the transfer powers have been used so broadly that they have created a vast slush fund.

After convincing Congress of a crucial need for aid to a given country, the President can then turn around and use the money in an entirely different country, and for a different purpose. He can even shuffle funds from the economic aid program to military assistance, and back. Section 614 of the Foreign Assistance Act, for example, allows the President to waive requirements of the Act whenever such action is "important to

the security of the United States." There were 17 such waivers between July, 1970, and October, 1971, and in none was Congress notified before the fact. One of these pumped \$110 million of military aid into Cambodia following the 1970 invasion by siphoning money originally intended for Taiwan, Greece, Turkey, and Vietnam. Nixon didn't inform Congress until later that year when he asked it to replace the funds *ex post facto*. Another waiver was for \$3 million in military aid to Ceylon, given on an *oral* authorization by the U. S. ambassador last April 10, to help Ceylon put down a leftist insurrection begun five days earlier which had captured large sections of the country. Helicopters were supplied, and within a month government forces were again in control. Congress was finally notified of the transfer on June 25.

Excess Stocks

The annual gifts of "excess" stocks of military arms and equipment have long been a Christmas bonus for a select group of foreign nations. Grants of surplus war goods are not listed as current outlays for military aid. Thus, the Departments of State and Defense were able to keep Chiang Kai-shek's forces well stocked with excess aircraft, tanks, howitzers, and M-14s, even though Congress, busily voting reductions in Taiwan's regular military assistance, believed arms shipments were being diminished. When one looks at the budget documents of 1966-1971, there is an almost dollar-for-dollar increase in handouts of excess war articles as congressional appropriations for all military aid programs were being decreased. To conceal the trajectory of this rise, the Pentagon suddenly switched from listing the acquisition cost of excess armaments to something called "utility value," a rough approximation of market value which averaged out at about one-fourth to one-third the equipment's original cost.

Estimates of the present amount of

obsolete weapons and supplies available to Defense for military grant aid alone run well over \$9 billion. (With no guidelines, it is possible to declare an almost new weapons system "excess.") Surplus weapons can also be sold through the military sales program, where credit loans come close to being donations.

The largest dispersal of military equipment—involving hundreds of millions of dollars—is in Vietnam. No one in Congress has been told the value of the vast military bases, artillery, guns, ammunition, helicopters, and supplies being turned over to South Vietnam. Some of the equipment has been given in the regular \$1.8 billion in military aid funded through the Defense Department, but an unknown quantity has been given as surplus, and still more has been hidden in Defense procurement. When asked about these goings-on, J Frank Crow of the Comptroller's Office in the Pentagon replied, "Hell, man, that's my job: to lose track of it."



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Secret Funds

Withholding information and wielding a "secret" stamp are the Executive's weightiest weapons. As Senator Stuart Symington told *The Atlantic* recently: "They don't tell the truth. What is driving me up the wall is what on earth are they doing with the money I am turning over. If they won't put that on the record, we might as well stay home and just send in a batch of proxies." When Executive intransigence is combined with control over the contents and structure of the budget, the visors are completely pulled. Political scientist Louis Fisher cites an estimate that in the 1972 fiscal budget of \$249 billion, secret funds may amount to \$15 billion to \$20 billion. No one really knows, for example, in how many different ways foreign assistance is given, nor exactly how much it all adds up to. The only item in the budget clearly marked as military aid totals around \$400 million. That is a gross understatement. At Joint Economic Committee hearings last January, Senator William Fulbright introduced a table showing more than \$6.9 billion in military assistance and sales for fiscal 1972. Two Defense Department officials broke pencils while disagreeing with each other over the total cost, finally putting the figure at \$4.9 billion and later revising it to \$6.3 billion. As Senator Proxmire commented, military assistance is not an example of administrative flexibility, but complete "unmanagement," "a giant discount supermarket with no check-out counters, no cash registers, no store manager."

The Administration's policy of increased subsidization of Asians to fight Asians is highly dependent upon these loopholes, particularly as congressional opposition to the war and foreign aid heightens. Heavier reliance on the use of mercenaries is likely. Reports are circulating that foreign military men will be hired to advise the Cambodian Army, to skirt the Cooper-Church amendment, which

bars American advisers. In 1970, Congress made it unlawful—it thought—to hire mercenaries to defend Laos and Cambodia. But the CIA continues to not so secretly recruit, train, equip, and virtually lead Thai forces in Laos. The Administration maintains that the Thais are irregular “volunteers” or “local forces.” In a discussion with Undersecretary of State U. Alexis Johnson before the Senate Armed Services Committee, Senator Symington asked, “Then you believe you could recruit Cambodians and Malaysians, Australians, or anybody you felt, by calling them local forces?” Johnson replied: “If they entered the local forces. I mean if they become a part of and were a part of the local forces.”

The arsenal of financial inducements available to the President to purchase foreign troops is staggering. By covertly diverting funds, the U. S. has already given South Korea at least \$2.5 billion in benefits for the 50,000 troops it sent to Vietnam.

Senator Allen Ellender, the 81-year-old chairman of the Senate Appropriations Committee, was a senior member of that committee’s five-man subcommittee on intelligence operations when the foreign troop arrangements were made in 1966. Ellender says he learned of the agreement, belatedly, in the newspapers. He now claims that a further quid pro quo deal has been made with South Korea. In exchange for the withdrawal of 20,000 American troops from South Korea last year, the United States has agreed to supply \$1.5 billion in aid for modernization and maintenance of the Korean Army over a five-year period ending in mid-1976. In addition, according to Ellender, the U. S. not only intends to turn over to South Korea all the equipment of the withdrawn U. S. division but also some of the surplus equipment stocks left behind in Vietnam. The State Department’s reply to Ellender is classified and now on file with the Senate Appropriations Committee.

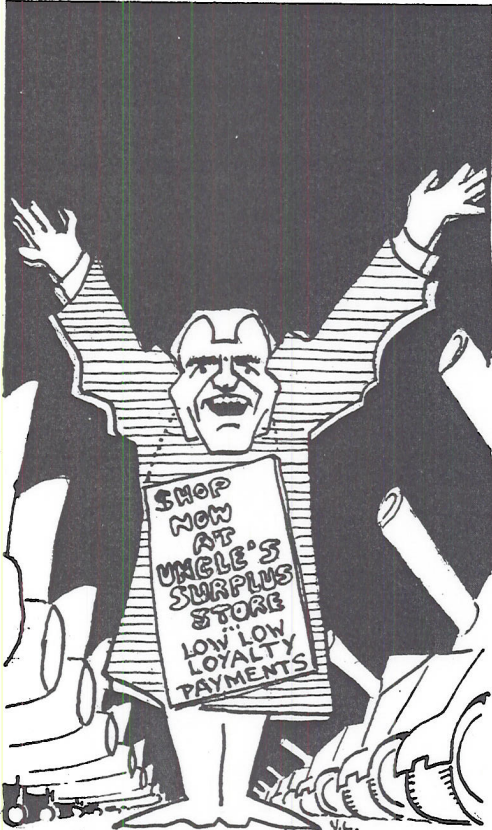
Senator Ellender’s own reactions to these events are most curious, and most important in terms of the future of Congress’ purse strings. When asked if he would oppose the new agreement, he replied:

What can you do? It’s out of our hands. I believe in having one, strong Commander-in-Chief. Once war materiel is ordered, no member of Congress—no one—is supposed to follow through to see how it’s used. It’s to be used by the Commander-in-Chief as he sees best. I wouldn’t want Congress to do a damned thing about it. If I were President, I wouldn’t want all these “arm-chair generals” around *me*.

The Pipeline

The Treasury’s largest suspense account is the enormous balance of funds which carry over each year, called unexpended authority, or more loosely, the pipeline. The question is whether this unspent balance might be tapped for purposes never intended—whether it, in effect, provides a second, hidden budget. During floor debate last October over the Symington ceiling on funds for Laos, Senator Fulbright voiced his suspicions: “I have never figured out how [Defense managers] are able to spend money that has neither been authorized nor appropriated. They have ways of drawing on unexpended funds. I imagine there is at least \$50 billion of unexpended funds in the pipeline as reserve for the Pentagon. So I would not be sure that even with a prohibition against appropriation of any money, they could not find some in a very short time.”

The fear had been expressed earlier during the 1969 attempt to halt the ABM when some supporters of the Cooper-Hart amendment, designed to postpone construction of the ABM for one year, doubted the amendment would actually work. Tom Halsted of Senator Alan Cranston’s office, then lobbying for Council for a Livable World, recounts: “Even though Cooper-Hart specifically said none of the funds in this or any other bill shall be used for construction, there still



was the question whether we could have gotten all those funds nailed down, or whether Defense could have built ABM sites anyway that year by grabbing carry-over funds authorized in prior sessions.”

It is impossible to accurately evaluate Fulbright's and Halsted's suspicions. This is an area of the black arts, and members of the society aren't talking. However, unauthorized transfers from surplus balances have historically been a problem, and some outline of these large reserves can be sketched.

The crux of the carry-over balances is the concept of full funding. Most appropriations are annual, and revert to the Treasury if unspent at the end of the fiscal year. However, full funding—mainly used for long-term procurement and construction—generally authorizes multiple-year funds which carry over for a specified period until spent. An aircraft carrier, for example, will often be on the books for six or seven years.

The advantage of full funding is that Congress knows the full cost of a project and, theoretically, isn't faced with an agency returning every year with a higher price tag. The problem is that when negotiations fall through, or contracts are terminated, the carry-over funds continue and accumulate. Depending upon the flex in the original authorizing language, an imaginative agency can apply these old unobligated funds to new and slightly unusual purposes. Presently, the Defense Department has \$43 billion in unspent authority, more than three-fifths the size of the \$71-billion annual Defense budget.

The most devastating aspect of these huge reserves is that they can kill chances of both accountability and economy. For example, for the last several years, the Pentagon's yearly spending has been higher than its appropriation. In fiscal 1971 it was \$3 billion more than that authorized by Congress. Congress, by focusing on yearly appropriations, never looks at the real level of outlays, and generally does not adequately review program monies authorized in previous years. This was painfully obvious when in October the Senate voted down the foreign aid bill, and it was announced that \$4.7 billion—one and a half times the total in the defeated bill—was still in the aid pipeline. Supposedly this would keep aid programs going for some time, though no one on the Hill seemed to know exactly what was in the pipeline, or indeed, what a pipeline was.

Reprogramming

Reprogramming is a little-known technique which can completely circumvent the legislative process. Originally designed as a check on an agency's shifting of appropriated funds among programs, it has promoted a shell-game deferral of approved projects and substitution of new ones. With no notice given to anyone in Congress outside the participating gamesters and senior sub-

committee members, there is simply no opportunity to learn of, let alone vote on, or object to, these moves.

Different congressional committees handle reprogramming in their own way. All that is ordinarily required is an informal clearance by four men: the relevant subcommittee chairmen of the House and Senate Appropriations committees and authorizing committees. Often, reprogramming is perfunctorily handled at the staff level by the subcommittee clerks. Sometimes congressmen are polled on the changes, and at best, a closed hearing is held.

After Congress grounded the SST, a reprogramming form was sent to Senator Robert Byrd, chairman of the Senate Appropriations Committee's transportation subcommittee, asking authority to transfer \$800,000 to the SST from a Department of Transportation research contract, until termination funds for the airplane were voted. Byrd gave his okay, and then informed some of the other subcommittee members that they could go directly to the Department of Transportation if they had any objection. Senator Charles Percy, a subcommittee member, says he, for one, was not consulted, causing him, as he puts it, "some concern."

Occasionally, one of these end runs will be intercepted. Last April, Senators Walter Mondale and Clifford Case learned that the Navy planned to finance construction of a third nuclear-powered carrier by reprogramming an initial \$139 million in shipbuilding funds already approved for an oil tanker and three salvage tugs. Congress had, over the previous two years, refused to provide advance procurement funds for a third Nimitz-class carrier because the Administration had not submitted a formal budget request. Mondale and Case, long-standing critics of the need for such a carrier, were alarmed that the \$800-million-plus project might be approved de facto.

They raised storm warnings with Senator Ellender, chairman of the

Senate Appropriations Committee, and Senator John Stennis, chairman of the Senate Armed Services Committee, both of whom agreed that for such a major project, reprogramming would be an improper procedure. Ten days later, Deputy Defense Secretary David Packard announced that the Department would abandon the reprogramming and would indefinitely postpone any formal budget request for the carrier.

No one knows how much reprogramming occurs during a given fiscal year. Office of Management and Budget (OMB) officials say they have neither the time nor the desire to standardize and record these "informal adjustments" within agencies. But Defense reprogrammings in fiscal 1971 alone involved 132 transfers totaling \$3.3 billion. All but 16 were approved.

Most appropriations committee staffers and budget people feel that some reprogramming is inevitable because of the year-and-a-half or more time lag between the drawing up of program requests, passage by Congress, and eventual expenditure of funds.

But as a recent House Appropriations Committee report on Pentagon spending stated, "The volume of reprogramming is a strong indication that much defense planning is superficial and without firm foundation." "The trade-offs are significant," observes Peter Murphy of the committee's staff, "because they came before Congress saying they really needed that money for that project, and now all at once it doesn't become that high a priority, and they can just take it away when they want to replace it with another 'must have.'"

Howard Shuman, Senator Proxmire's administrative assistant, says that Senator Ellender has been "pretty good" about notifying their office of upcoming action on major weapons systems. Yet with so deceptive a procedure, no one can be sure what slips by.

In December, 1969, one read in

the House Appropriations Committee's 1970 military budget report that the Navy was moving "too fast" in approving production of the F-14 fighter before structural tests were completed. Mindful of the C-5A and the fact that the Air Force had overhastily bought 331 F-111s—all lemons—before technical problems had been solved, the committee espoused a fly-before-you-buy policy. It slashed the requested \$275 million for purchase of the first six production aircraft, and ordered that "none of the funds provided are to be utilized for tooling beyond that needed for fabrication of the test aircraft." Critics of the F-14, such as Pete Stockton, then a staffer for Rep. William Moorhead, were pleased with this minor victory.

Imagine Stockton's pulse rate upon learning at an informal Navy briefing nine months later that the plane was in production. In the interim, the Navy had gone back to Rep. George Mahon's defense subcommittee in April and, in a morning session shuffled among many other reprogramming requests, gained \$517 million to build 26 production models. As is customary, no notification was given to anyone outside the subcommittee.

Impoundment

In October, Senator Lawton Chiles of Florida received complaints from the city of Jacksonville that despite the demands of its poor people it had been unable to switch from the commodity-distribution program to food stamps. The Department of Agriculture had told the city that funds were simply unavailable.

There were obvious reasons for the desire to get off the commodity program. The Senate Select Committee on Nutrition and Human Needs had only recently outlined its abuses. The commodity program's 3.5 million intended beneficiaries go once a month to a county-run warehouse to pick up whatever farmers and processors currently have in excess. Its aim is

more to absorb farm surplus and keep food prices up than to feed the hungry. The result is insufficient food, nutritional imbalance, dangerous shortage conditions, and red tape. Food stamps, though flawed, at least make food accessible.

Upon inquiry, Chiles learned that not only Jacksonville, but 40 counties in Florida and several hundred areas nationwide, had been denied money already appropriated by Congress and approved by the Department of Agriculture for food stamp programs. The snare was that the President's Office of Management and Budget was impounding, or refusing to release, \$200 million in funds specifically earmarked for the stamps.

Chiles further learned that a number of federal programs affecting his rural constituents were having funds withheld: research in nonchemical pest control, rural electrification, water and waste disposal grants, and \$75 million in direct operating loans from the Farmers Home Administration.

Chiles took to the Senate floor on October 20, castigating the growing Executive practice of impounding or "freezing" appropriations, and warning that the President, in hatcheting a legislative program because he considers it inexpedient or inefficient, twists constitutional principles and usurps Congress' funding power. The President is exercising, Chiles continued, an unconstitutional item veto over programs he has signed into law, without the danger of being overridden by a two-thirds vote of Congress. Chiles proposed adoption of a resolution which would say, in effect, when we passed that food stamp appropriation, we meant it.

Donna Willis recounts that while working for former Congressman Arnold Olsen of Montana last year, she received a one-line telegram from a tribal chairman asking what had happened to Indian health money. It turned out that \$2 million in Indian health funds had been frozen, thus cancelling immunization, contract

care programs, and all "elective surgery" (a little medical black humor, meaning cases where there is no *immediate* threat of death), Miss Willis spent the next two weeks gathering the signatures of 90 congressmen and senators to force release of the money.

It is in this way, usually only by accident, that a member of Congress learns that money has been withheld. The OMB jealously guards its figures on impounded funds. Calls to OMB are met with evasive answers and delays—for both reporters *and* members of Congress. When Senator Sam Ervin's subcommittee on separation of powers held hearings on the impoundment question last March, it was the first time in anyone's memory that a breakdown on impounded sums had been released. Bill Goodwin, of the subcommittee staff, remarks, "We had a hell of a time. We had been after the budget bureau for three and a half years before the information was finally released."

It presents a strange situation: members of Congress, hat in hand, pressuring to have appropriated monies spent. The typical congressional complaint runs, "I had thought that once the Congress passed the appropriation bill and the President approved it and signed it and said to the country that 'This has my approval,' that the money would be used, instead of sacked up and put down in the basement somewhere." Those were the words of Lyndon Johnson, speaking as a senator, in 1959. From the vantage point of the presidency, Mr. Johnson was as free as his predecessors in putting money in the basement, stashing as much as \$10 billion at one point. Since the mid-50s, Presidents have repeatedly negated programs by refusing to spend the money.

Impoundment has taken a different twist under President Nixon. In the past, it has usually been an Administration wanting to spend and a Congress not willing to appropriate. Now, with a Republican President and



a Democratic Congress, the impoundment of funds which conflict with the President's policy priorities has become more pronounced, and more routine. As of last June—when the latest figures were released by OMB—\$12 billion had been frozen.

The Administration has tried to seduce Congress with a little semantic foreplay, saying that the funds are not being "impounded," but are merely being "deferred" or "put in reserve," and will be released later "when circumstances warrant." The beauty of the ploy is that, for example, \$200 million appropriated for public housing for fiscal 1971 can be placed in the deep freeze, then "released" and applied to the budget request for fiscal 1972. The Administration comes out looking good both years—for having slashed \$200 million in 1971, and for getting Congress to appropriate less in 1972 because of the carry-over. The added advantage of impoundment to the President is that he can quietly cripple a program

without making embarrassing press statements. A veto is at least above-board, but with impoundment, as George Patten, Senator Chiles' legislative assistant, points out, "The problem is, you can't pinpoint responsibility. An agency can hide behind a budget bureau decision, or the President can veto something through the budget bureau, and then you have to play games with all three, getting the run-around."

Congress has not been totally supine. In 1970, a proviso in the hospital construction bill ordered that the entire appropriation be spent. Nixon vetoed it because of this "assault on presidential options," but he was overridden, and that mandatory spending language is on the books as precedent. The classic congressional solution in such a dispute is a little political blackmail, holding up programs the President wants. A little-noticed section of the Senate-passed foreign aid bill last November forbids expenditures abroad until the Presi-

dent releases urban development funds.

The strongest arm-twister is contained in Senator Sam Ervin's bill, submitted last September. It would require the President to inform Congress when he impounds funds, and why. The President would then have to release the funds after 60 days, unless Congress voted to ratify the impoundment. The bill has died quietly in committee, however, and any prospect of its passage in this, an election year, would seem farfetched, as the matter becomes one of high politics. Many observers predict the Administration will de-ice sizable portions of frozen dollars for districts with favored incumbents, and use it to coldnose others. Lobbying groups with the needed clout frankly admit they won't touch the issue.

The Nixon Administration has justified its impounding practices in two ways: through the power of apportionment and the broadest possible interpretation of the Executive power of the President.

OMB is able to lop off funds through its practice of apportioning, or setting quarterly allotments. Four times a year the OMB gives agencies a chunk of the amount Congress has granted them, in an effort to prevent agencies from spending their appropriations all in the first months and then having to return later for deficiency requests. But the apportionment process does not entail simply dividing the appropriation into four equal parts. Adjustments are made also for spending rates, inflation, and so on. More and more, such adjustments have come to be used to keep total amounts below those actually set by Congress.

The adjustments are made under the Anti-Deficiency Act of 1950, which provides that money may be reserved "to provide for contingencies," or "to effect savings whenever savings are possible through changes in requirements." The vagueness of that phrasing has provided the hook upon which to hang a defense for impound-

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ment. For example, the Administration interprets "changes in requirements" as granting broad authority to impound as a means of combating inflation.

There is no dispute about reserving, or replacing funds in the Treasury, whenever a program costs less than originally expected. But the area of dispute, as Senator Frank Church has written, is where funds are frozen not to effect marginal savings but to alter the purpose of a program or policy.

Aside from claiming broad appropriation discretion, the Administration also claims almost unlimited power over spending as a constitutional prerogative, inherent in the President's role as Chief Executive. Caspar Weinberger, Deputy Director of the OMB, said in March that a congressional appropriation was "a direction to be followed whenever it's possible to do so." He insisted that the President could not be placed in the position of automatically spending all money approved by Congress without exercising any discretion. "The President has to be more than a rubber stamp or a messenger boy running over to the Treasury," he said. Weinberger also suggested that the constitutional requirement that the President "take care that the laws be faithfully executed" could require him to withhold appropriated funds. On another occasion, when asked why the Administration was refusing to spend \$10 million already appropriated for a national aquarium in Washington, he responded: "The Administration decided not to fund the project and is giving Congress another chance to consider the matter." Weinberger also readily conceded that some of the items withheld involve "policy" determinations.

Budget examiners frankly admit that programs are cut back when the appropriated amount differs from the President's budget priorities. The most blatant examples involve the attitude toward congressional add-ons. The \$200 million impounded for mass

transportation is almost exactly the same figure by which Congress' appropriation exceeded the President's original budget request. There has also been an across-the-board freeze on all public works projects added by Congress, even though the price-benefit ratios of some of these are higher than the ones proposed by the President.

The most forceful answer to Weinberger is a memo written in 1969 by then-Assistant Attorney General William Rehnquist, of the Office of Legal Counsel. In Rehnquist's words: "With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent." Further, he wrote: "It may be argued that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them."

The Snatched Purse

No gentlemen's approach is going to settle many of the issues dividing Congress and the President. It's a question of power—and the will to use it. The Executive, of course, chooses to depict the struggle as between its visionary managers and the small and self-serving politicians in Congress. When Caspar Weinberger appeared before Rep. Joe Evins' subcommittee on public works to explain the impoundment of all the congressional add-ons (a term that itself illustrates Congress' back-seat role), he said:

There is no one in Congress who has the opportunity at any given point to see the overall effect of what a particular appropriation bill is going to do to the whole budget. That is our job and we have to do it, and we have that opportunity, or vantage point, if you like, all the time. Congress, because it considers 13 or 14 separate appropriation bills, can't have that.



Congress does its part to conform to this picture of its limitations. Under the present system, nowhere is there coordination or overall budgetary review, nowhere can the final spending total of all the individual appropriations bills be examined, and nowhere can competing or contradictory programs in different agencies be compared.

Furthermore, Congress' habit of being late in passing its money bills allows a jungle of evasive processes to grow by necessity. Informal deals between committee clerks and harried agency officials, not knowing what their allowances will be, supersede both statute and Executive discipline. To some degree at least, the Executive has been forced to make its own law by default, while congressmen have been unwilling to give up any of their personal power to the large staffs that would be necessary to do an adequate policing job on the budget. Beefed-up staffing, however, would be largely inconsequential as long as the presi-

dency follows its "need not to know" policy, keeping the most basic of information locked away in agency files.

Congress has not helped itself any by the way it has chosen to attack the growing presidential prerogatives. Mostly, the legislators have attacked such tactics as impoundment only to save a pet project, and often one of questionable worth. There are legendary stories about the abilities of subcommittee chairmen like Jamie Whitten to go to the source of authority and bargain—often continuing a program that everybody else wants killed.

And so much of the congressional reaction to presidential purse-snatching depends not on the vagaries of Executive power and constitutional rights, but rather on the practical question of what is being stopped or what is being continued. Pentagon critics don't say much about the \$1.3 billion in frozen military construction funds, even though in cutting them the President is ignoring Congress just as surely as he is in hiring mercenary soldiers. Nor did these critics intervene when President Kennedy sat on funds for the B-70 bomber. Conservatives like Rep. Charles Bennett of Florida condemned the "Louis XIV decision" of the President to block spending on the cross-Florida barge canal, while conservationist legislators did not voice their constitutional objections. Senator Charles Percy approves the deferring of public works and highway construction, always one of the principal victims of impoundment. At the same time, he says of welfare measures: "I would be very concerned if a program authorized and funded by Congress in the area of school lunches, nutrition for the elderly, education—if those were items not expended by the Administration. *There*, it's a question of whether the intention and desire of Congress as the elected representatives of the people is frustrated."

It would be very hard to find any congressional agreement over where to

place Senator Percy's "there," but then, most legislators, like the rest of us, are more concerned with results than with procedures. It is hard not to agree with Senator Percy, who can give up a little congressional power to stop the highways, but can find such a loss unacceptable when it comes to food stamps.

That leaves us with an inconsistent, unprepared, and sometimes petty Congress on one side of accountability. On the other side stands the Executive, in the view of Weinberger and others, the only branch with a dispassionate overview, and with sufficient expertise to bring coherence out of congressional chaos. It is such a vision of omniscience and efficiency that the Executive hopes will override any worries over lost principle or tradition, or any strict constitutional interpretations about congressional power. In defending its practices, the Executive appeals pragmatically to its superior machinery which produces superior results.

All this, however, ignores the fact that even the Executive budget managers are becoming increasingly political and tied to their own petty concerns. As power moves from Capitol Hill to the Executive, so moves the politics. The changes can be seen in the Office of Management and Budget, the new agency resulting from Nixon's reshuffle of the Bureau of the Budget.

To some degree, the budget bureau has always been a fiscal Swiss Guard—"the President's arm," one is repeatedly told by budget employees. Examiners are keenly aware that they are within an earshot of the President, and make cost decisions within a framework of what they conceive as the President's bidding. And Nixon's reorganization, which edged out the top civil servants, was an effort to place even more control of the budget process in the hands of presidential appointees, making OMB a direct political extension of the White House.

This issue, then, is not one of cold

efficiency versus bumbling democracy, but rather one of the relationship between two political contestants. If we have to decide between the Executive or Congress for control of the budget, it is certain that the congressional shortcomings cured by Executive lawlessness are far outnumbered by the disasters wrought by Executive lawlessness itself. If we had to give up the benefits of the President illegally holding up the highway trust money to stop the illegal war and defense funding, the bargain would probably be worth it.

But while the fight over the Constitution and the balance of powers is often presented as a case of taking one branch or the other, a choice may not be necessary. Restoring the purse strings to Congress does not mean that all the power will revert to Capitol Hill—things are too far gone for that. It does mean that at least a battle will be resumed, a battle which might limit the excesses of each side. It is such a hope on which the principle of accountability rests.

The Executive's increased control of government spending, then, is not so much a matter of the President overpowering the Congress, but rather that he is putting less and less power on the line to get what he wants. The old struggles over the budget, the veto, and the override are circumvented by all the techniques that have been described. When Nixon refers to Congress' growing demands that its appropriations laws be followed as "congressional games" he means not so much that they are frivolous, but that they are irrelevant.

It is here that the issue now stands. Congress can still play rough, if it wants to. It can threaten fund cutoffs, mandate the use of funds as directed, and exercise its oversight function. But as the Executive detours proliferate, Congress discovers that its problems go beyond relative weakness. Increasingly, Congress is less the underdog and more the old fighter who is no longer even invited into the ring. ■