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**THE TRANSACTION COSTS OF THE U.S. CONGRESS'
FUNDING PROCESS: CHOOSING BETWEEN SEPARATE
OR COMBINED AUTHORIZATION/APPROPRIATION
COMMITTEE STRUCTURE**

BY

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PROCESS: CHOOSING BETWEEN SEPARATE OR COMBINED
AUTHORIZATION/APPROPRIATION COMMITTEE STRUCTURE**

PREPARED

FOR

THE UNITED STATES ARMY WAR COLLEGE

BY

LIEUTENANT COLONEL

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IN PARTIAL FUFILLMENT OF

MEL -1

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Abstract

This paper examines the following question: Are both the authorization and appropriation committees needed for the U.S Congress to fund the federal government? Before answering this question the processes, the concepts of transaction cost economics, and the transaction costs economics literature are reviewed. Then a transaction cost model similar to that suggested by Barry Weingast and William Marshall in their 1988 Journal of Political Economy article "The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets" is applied. The costs of keeping the two processes in separate committees rather than integrating them into one is explored. A conclusion is drawn that the combined costs of the congressional authorization and appropriation committees would be reduced by integrating the two committees into one.

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CHAPTER 1

INTRODUCTION

In December 1995, the struggle between Democrat President Bill Clinton and House Republicans over the federal legislative agenda was the focus of much of U.S. politics. However, in the midst of that very visible power struggle, the Executive Branch's Office of Management and Budget testified before the House Government Reform and Oversight Committee Civil Service Committee on the impact of no appropriated funds on the federal workplace. No mention was made of the need to authorize funds.

The absence of any need to authorize funds stems from the U.S. Constitution: Article 1 Section 9 requires only that the government *appropriate* funds for the continuation of programs. A requirement for *authorization* is mentioned nowhere.

In the midst of December 1995's political battles, the OMB testimony may have greater importance over the longer run than the struggles between Clinton and Gingrich. For the OMB testimony gave voice to concerns that Congress had raised just two legislative sessions before.

In the 1993 legislative session, Congress had questioned the need for both the authorization and appropriation committees during hearings of the Joint Committee on

the Organization of Congress.¹ No decision was made then but several questions were raised, including: Is the authorization process unnecessary? And, if it is, why not eliminate it?

More importantly, Congress never authorized funding for Fiscal Year 1996 and still the government survived.

Answers To Questions

To answer these questions an examination of both the authorization and appropriation processes using the New Institutional Economics approach to transaction cost theory is conducted. A school of thought originally introduced by Ronald H. Coase in 1937², it has been further developed by Douglass North³, Barry Weingast⁴ and Oliver Williamson⁵ in order to explain the complex relationships that are inherent in any institution. Coase introduced the concept so that he could explain the relationship and interactions of firms as they produce their goods or services. The then unique framework sought to explain the behavior of a firm by looking at its internal and external

¹ Joint Committee on the Organization of Congress, House Members, *Organization of the Congress: Final Report of the House Members of the Joint Committee on the Organization of Congress*, Washington, D.C. U. S. General Printing Office, December 1993

² Coase, Ronald H., "The Nature of the Firm", *Economica N.S.*, 4 (1937): 386-405. Repr. in G.J. Stigler and K.E. Boulding, eds., *Readings in Price Theory*, Homewood, IL: Richard D. Irwin.

³ North, Douglass, "Structure and Performance: The Task of Economic History", *Journal of Economic Literature*, 16 (September): 963-978.

⁴ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, *Journal of Political Economy*, 1988, vol. 96, number 1

⁵ Williamson, Oliver E., "Transaction-Cost Economics: The Governance of Contractual Relations," *Journal of Law and Economics*, 22 (October) 3-61, 1979.

agreements. These agreements can be company-supplier or employer-employee or investor-corporation.

According to Coase, a firm's decisions to produce or buy a good or service needed for its end product was extremely important because success or failure of the firm could depend on the agreements drawn up to effect these decisions. If the decisions are correct the firm is the winner, but if the decisions are not, the firm's future could be at risk.

Williamson has since examined and expanded the Coase concept to include not only businesses theory but also organization theory in general. It has recently been used to explain political interactions. Basically a theory on the relationship between individuals in a contractual or exchange agreement, current transaction costs theories study these same individuals' attempts to "protect themselves from the hazards associated with [those] exchange agreements."⁶ These efforts to protect can be elaborate or simple, selfish or egalitarian. Whichever way, they ultimately affect the organization and that affect must be included in determining what is needed to get the desired effect.

Organization

Before looking at the transaction costs involved in the authorization and appropriation processes, it is necessary to review some of the history behind Congress' use of committees to accomplish its work, the organization of those committees, particularly the authorization and appropriation committees and , the costs involved in

⁶ Shelanski, Howard A., Peter Klein, "Empirical Research in Transaction Cost Economics: A Review and Assessment", *Journal of Law, Economics & Organization* 11, no. 2 , 1995, p. 336.

making agreements so that our elected officials can transact the people's business using the "committee" vehicle.

In looking at those costs' realistic behavioral reactions will be examined to identify the committees' thinking, planning and "contracting" as they conduct business "of, by and for the people".

If committee actions were conducted by a private firm a simple contractual agreement would be developed to outline all rules, procedures, benefits, rewards, penalties and enforcement tools. The firm working as its own governance structure would seek to reduce the cost of transacting the business while trying to retain, as much as possible, control over rights and profit received. But in the public sector that is not always possible. First, because its difficult to get all relevant players in a "political contract" to agree to a proposed solution; second because of the political uncertainty that is inherent in each vote; and third, because the information made available to all parties is limited (sometimes on purpose).

This leads to concerns for the contract, the results achieved, the benefits obtained and the "back home" constituents reaction.

Congressional Behavior

Congress members must make their decisions in a short period, with limited information and with a great deal of uncertainty on the outcome of votes or constituents reactions. They must also realistically approach the impact political party influence will have on the public's perception of any and all actions they take.

What happens when the Honorable Congressman from Yourtown, wants to secure the vote of the Honorable Congressman from Mytown for Yourtown's new federally funded youth center? How does he approach her to win her support and how does he guarantee that she will follow through with a "yea" vote at the bewitching hour? Most importantly, how does he circumvent any opportunistic behavior (that behavior which seeks to determine the greatest self-benefit the player may obtain) on Congressman Mytown's part?

Congressman Yourtown also wants to make this transaction with it costing him as little as possible. But Congressman Mytown knows the system and, unless the facility is apolitical, she is likely to find a way for Mytown to benefit. She may also try to read into the transaction a means by which she may personally benefit as well.

If congress was a private entity the matter would be simple: control through written contractual agreements. The agreements set the rules and procedures by which the firm's transactions will be conducted, while seeking to reduce the costs involved with transacting that business and increasing the return received. The contracts work because they are enforceable by law or tradition and they cover all relationship from employer-employee to stockholder-company.

Again, this is possible because the firm is a governance structure in and of itself.

Congressional Structure

But with Congress, the governing structure is less obvious. However, given the reliance on committees to act as a conduit for the elected officials work, the committee is an obvious choice to consider. Committees are the lifeblood of the Congress. All policy making occurs there. Bills are discussed, drafted, amended, and reported out from there. The role of committees is so important that most funding and authorization for all federal agency activities occurs in that structure. So important is this structure that influencing groups both within and outside the federal government target committees to register complaints, seek redress, and argue for support of special projects.

The two committees of concern here, the Appropriations and Authorization Committees have a sphere of control that touches every federal agency and everyone affected by those agencies. Their control over the funds to run and authority to function for these federal agencies is so enormous, an agency's existence can rest with the wording reported out from one or both of these. Given that Congressman Yourtown and Congressman Mytown sit on the Appropriation and Authorization Committees, respectively, their behavior will exhibit the unwritten rules, procedures, benefits, rewards, penalties and enforcement tools involved in the authorization and appropriation's contractual agreements.

To identify those transaction costs a model similar to one developed by Barry Weingast and William J. Marshall⁷ in their 1988 article *The Industrial Organization of*

⁷ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1.

Congress; or Why Legislatures, Like Firm, Are Not Organized As Markets is applied.

This model will show that the current two committee structure gives members of Congress the opportunity to act with guile and to manipulate the limited information available in such a way that while individual interests are served, the public good --- that is the people's business--- is often undermined.

An alternative committee structure, based on the model, will then be suggested.

This alternative structure incorporates a realistic approach by acknowledging the problems of guile and manipulation of limited information. Then, after making this acknowledgment, the alternative offers to integrate the authorization and appropriation committees into a two process-one committee structure.

Review Opportunity

Review and reform of congressional committee structures seems to be timely. The recent delayed legislation led to several published editorial or speculation style reviews of the funding process, as a whole. But an extensive look at the two processes and the need for both has not been initiated.

In the past, studies of Congress from an organizational standpoint have centered on the committees as a structure and the impact each has. Budget reform studies, in particular, those that lead to the 1974 restructure, did not consider consolidation, nor did they consider the transaction cost economics aspects. Rather, they assumed an increase in committee number via the subcommittee structure. Reorganization of the 104th Congress reduced the overall number of committees, but it did not review the total

process to determine if the authorization-appropriation processes are valid, cost effective and necessary.

Both houses of the United States Congress describe the legislative process as a two-step procedure: authorization of programs as recommended by committee and funding or appropriating for those authorized programs afterward. In general, authorization bills should not contain appropriations and appropriation bills should not authorize. However, as dramatically demonstrated with the passage of appropriation funds in FY 96, authorization of programs is not actually necessary for the programs to continue to function, if Congressionally legislated funding is appropriated. Still, both Houses continue to profess a need for the separate processes, even though one, with changes, would suffice. This "one-step only" process-need is particularly apparent when the two processes are examined using transaction cost economics.

Transaction Cost Economics

What makes this review of congressional committee structure different is its theoretical perspective: transaction costs. This approach looks at the limits on information available to individual members, the resources and capabilities of those individuals and the potential of those individuals to act in a opportunistic manner. It seeks organizational solutions which minimize the costs of transacting business in such an environment.

Previous studies have examined issues related to Congressional committee structure from other perspectives. Most of these studies examined procedural matters, focusing on the relationship between committee structure and the likelihood that

congressional initiatives will survive the process and be passed; or sought to investigate the Congressional workplace environment.⁸

This transaction cost economics study is relevant to understanding a bill's likelihood of passage. But it goes further, it seeks to understand the cost of transacting committee business for such issues as: how well committee members represent all interests with respect to a bill, how well committee members interact with other committees, and how effectively committee members can resolve conflicts among themselves.

A transaction cost perspective is both economic and institutional, rooted in the history of American democracy. Committee members should represent and respond effectively to both their own self interests and the larger national interest, as well.

Another reason for this type of review is the realization that any attempt to attribute Congress' performance to changes in institutional structure alone will be subject to challenge. Rather it is necessary to look to three specific dimensions of congressional activity: the representation of interests, deliberation, and the resolution of conflict. This review does this by looking at the limits on information, the most needed assets, and the ability of members to function (act) opportunistically. Taken together, these can determine the institution's, and specifically, the two committees' overall capability to respond effectively to national interests.⁹

⁸ Quirk, Paul J., *Evaluating Congressional Reform: Deregulation Revisited*, Journal of Policy Analysis and Management, Vol. 10, Number 3, 1991, Association for Public Policy Analysis and Management, p. 408.

⁹Ibid., p. 408.

Structure of the Paper

To make these points in greater detail the paper is structured as follows: chapter 2 reviews the development of the congressional committee system; chapter 3, examines the appropriations and authorization processes (to include an overview of the budget process); chapter 4 presents an overview of transaction costs' principles and examples of congressional committee behavior for each; chapter 5 then applies transaction cost economics to the authorization and appropriation processes, using the model proposed by Weingast and Marshall; and chapter 6 identifies the benefits, trade offs and possible criticisms.

CHAPTER 2

DEVELOPMENT OF THE CONGRESSIONAL COMMITTEE SYSTEMS

In Chapter One the concept of transaction cost economics was introduced, and the impact its identified factors could have on the two committees' funding procedures. In chapter two, using Steven Smith and Christopher Deering's 1990 edition of *Committees In Congress* as a base, short history of the congressional funding system is presented, along with the impact of many of the changes that have occurred.

In the Beginning

As early as 1789, Congress used committees to accomplish its work, retaining them as a fundamental structure, even as the institution itself changed.

Most of the members of that first Congress came to the job experienced.- either as members of the first Continental Congress or as representatives in their colonial and/or state legislatures.¹⁰ And, of course, some members the British Parliament, particularly when it affected the affairs of the "New World". They used this experience base to implement a system they felt would more fairly represent all of their varied wants and needs.

¹⁰ Smith, Steven S. *Committees in Congress*, 2nd ed., Washington, DC, Congressional Quarterly Press, 1990, p. 24.

House of Representatives

The House of Representatives has always acted first on legislative matters. Even in instituting procedures, the House has started traditions that are later codified. For example, the “Committee of the Whole” started in the House. This concept permits all members to act as if they are in committee, to decide issues like policy questions in an environment of ideas and opinions.

The need to protect this free exchange of ideas governed this illustrious body’s efforts to control the number and use of committees. Using committees in a select or special designation, the legislators kept the full membership as the final say - with committees only submitting drafts for the full membership. Once the designated committee completed its work, it faded from existence. Hundreds of these specially tasked committees were used in these first years.

Despite this beginning, the House did relent and begin to depend on several permanent or “standing committees”. These committees were usually used for the more regular and continuously occurring policy arenas.

And as the nation expanded and Congress grew, the full membership’s committee of the whole (the then principal drafter of legislation) had to give way to smaller committee drafted legislation. Even correspondence between the Executive branch began to circumvent tradition and bypass the House designated leaders in lieu of direct committee communication. This ultimately reduced the influence the committee of the whole had on passed legislation.

Senate

Like the House of Representatives, the Senate started its tenure as a governing body trying to restrain the use of permanent committees. But its initial four housekeeping committees finally gave way to a number that crept ever upward. However, because the Senate is a smaller body, it was able to retain an extensive use of special or ad hoc committees for a longer period of time than the House of Representatives.

Serving their purpose, these temporary subgroups were specifically tasked to either draft legislation or recommend policy. But the entire Senate retained the standard of debating an issue before the legislation was referred to committee. However, by 1806, this standard became anachronistic. Committees needed to function beyond their stated date of termination, mostly because issues did not stop with the turn of a calendar page. The committees therefore evolved into bodies that made formation of permanent committees inevitable.

Committee Appointments

From its beginnings both Houses of Congress tried to make committee assignments considering geography, knowledge and area expertise. But soon party partisanship became a leading criterion. However, even as the party membership increasingly became a deciding factor in committee appointments, both Houses sought to make committees a vehicle to fully integrate the membership in the decision making process.

Committee chairmanships were also affected by party politics. At first the chairperson acted as a moderator, but as time and politics moved on the chair became a controlling factor on proceedings and bill movement within a committee was greatly affected by the chairman's actions (or lack thereof). By Jefferson's administration this problem reached a peak, particularly demonstrated when John Randolph, chair of the House Ways and Means Committee delayed legislation not considered Jefferson friendly. Because of this type of behavior, the House passed two rules: the first permitted committees to elect their own chairperson and the second permitted any two members of a committee to call a meeting. Still, try as they might, the party and its political trappings became a big player in committee transactions.

Institutionalization

Between Jefferson's administration and the Civil War select committees became permanent and took on the designation of "standing committee". Initially limited to a strategic few, the number of these standing committees grew: in the House the number went from ten before 1810 to 39 by the start of the civil War. In the Senate, the same proliferation occurred. In 1816 there were only 12 standing committees but by 1861 the number had swollen to 22. Still the actual number on each committee stayed relatively small -ranging from three to nine.

As the nation grew so did both chambers of Congress. The work load grew as well, causing members to realize that an increased use of committees was inevitable and that their work would be increasingly important. Even agencies became aware of the

importance of committees. Many developed mutually beneficial relationships with the members of their controlling committees.

Speaker's Role

A unique feature of the House of Representatives is the office of the "Speaker of the House". Even from its inception, the holder of this office influenced committee agendas. One of its most significant avenues to do so was through its power to decide committee appointments. One extremely powerful speaker, Henry Clay of Kentucky, served as speaker for six nonconsecutive terms. During that period, the role of the Speaker became one who controlled policy and committee activity. With this move, came the transition from the full House determining what legislation is written to a specific group of the Speaker's supporters writing what he deemed should be written and in a manner he approved. A major tool used to accomplish this maneuvering was strategic use of the standing committee.

By 1820, the "normal" procedure was to refer legislation straight to committee. Then the procedure to have formal permission to report a bill to the full chamber was discontinued. Next, the House passed rules permitting several standing committees to report their legislation on the committee calendar and finally, by the late 1830s, all House committees could introduce and report out actions at will. The stature of standing committees dramatically improved with these changes.

Senate Changes

The Senate felt less inclined to change since it grew at a slower pace than the House and followed the practice of waiting for the House's legislation to determine its agenda. In addition, the Senate's increased use of political party decision input steadily decreased committee importance, unlike the House. There was even a more independent streak in the Senate members so that opposing the majority party's position was not uncommon. The Senate's members could even avoid unfriendly committees altogether if need be. Henry Clay became quite adept at this when he was elected to the Senate and became Whig party leader.¹¹

Chamber Comparisons

As our nation expanded, both the House and Senate experienced growing pains. In the House, for example, the Speaker became a dominate factor, and the committee assignment became a more significant part of the legislative process. The use of the technique of bargaining for wanted results and the beginning of committee control of the final legislative agenda also came into existence. The Senate experimented with several methods including appointment by ballot and assignment by the president pro tempore.

By the 1860's the standing committee was an encrusted standard, for both chambers. Now its use is considered mandatory. As for the committee of the whole, there was no actual dismissal of it. Rather it was relegated to an entirely different decision making procedure. This freed the elected officials to mold that session's

¹¹ Ibid., p. 30.

legislative agenda in the specific committee to which it was assigned. These committees were admittedly influenced by the economy, constituents and geography. But the greatest influence began to come from the strength of political parties, party leaders and forces influencing the parties. These changes took on a life of its own and ultimately brought a new life into Congress: a life that no longer viewed congressional elections as a means to solving national problems by spending a short period on the legislative process. Instead it became a step to a new career, one that has its own idiosyncrasies.

With the above, a brief history of the many changes that have occurred in the congressional committee system has been provided . Next is an examination of the two processes themselves - the Appropriations process and the Authorization process.

CHAPTER 3

Chapter Two's short history set the stage for a review of both the appropriation's and authorization's processes. This chapter provides that review along with an overview of the entire Congressional budget process as well.

APPROPRIATIONS AND AUTHORIZATION PROCESSES

Appropriations - An Annual Event

The First Congress adopted the practice of annual appropriations. Each year, each agency would submit estimates of its needs and expected accomplishments. Committees (before 1867, mostly the Senate Finance and House Ways and Means committees, and, from 1867 on, usually the House and Senate Appropriations committees) would hold hearings to consider the estimates and write legislation providing, with conditions, funding (normally known as budget authority) for the coming fiscal year.¹²

The continued process of annual appropriations has allowed Congress to respond to the nation's changing demands. Thus it could raise spending on the space program in the 1960s and on drug enforcement in the 1980s. Congress also can reflect each year's budgetary constraints: for instance the need to balance competing desires for services, the wish to limit taxes, and the need to curtail deficits. Annual review may be used to try to

¹² White, Joseph, *Appropriations*, Congress A to Z: A Ready Reference Encyclopedia, Congressional Quarterly, Washington, D.C., 1993., p. 69.

increase the economy and efficiency of agency operations in order to best satisfy demands while staying within the confines of those budgetary constraints. Of course keeping an annual appropriations process also increases the control Congress has over the life or death of these same agencies.¹³

Program Categories

There are three types of programs funded by the Congress: entitlements, annual appropriated, appropriated entitlements.

Entitlements are those programs which require longer-term commitments to function effectively. Purchasers of federal debt would hardly accept a return that was subject to an annual vote. Social Security and the payroll tax that funds it would have less political support if benefits were voted on each year. These programs are designed to meet demands regardless of constraints. The largest entitlements have “permanent, indefinite” appropriations established in their organic legislation.¹⁴

Programs funded through annual appropriations require positive action each year not only by the separate Appropriations committees but by the entire congress and the President as well. They, therefore, are far more vulnerable to political attack than are entitlements.¹⁵

¹³ Ibid., p. 69.

¹⁴ Ibid., p. 69.

¹⁵ Ibid., p. 69

The third group of programs, the appropriated entitlements, are funded annually. Included in these programs is food stamps, funds to cover defaults of guaranteed student loans, and programs for which an agency has contract authority, that is, the power to make contracts that will later be funded by a revolving fund or subsequent appropriation. In the past this group had been considered mandatory to fund, however, that has changed in recent legislative sessions.¹⁶

Funding Category

Appropriations are normally made in general appropriations bills. However, supplemental bills have also been used. There are normally thirteen annual appropriation bills, one for each Appropriation subcommittee. Although, both the House and Senate have subcommittees for each of these thirteen areas (for a total of twenty six subcommittees), the final thirteen bills are compromises between both legislative bodies.

Supplemental appropriations are usually funds to support efforts needing one-time funding. Recipients of this type of help were the victims of African famine in 1985 or those in need after the earthquakes in the San Francisco area in 1989. The assistance provided by the U.S. military during the Somalia humanitarian effort also received funding through supplemental appropriations.

A third type of appropriating, a continuing resolution (CR), provides minimal funding if Congress does not complete action on a bill by the start of the fiscal year. Affected agencies are permitted to continue spending at the rate provided in the previous

¹⁶ Ibid., p. 70.

year's appropriations or in some other fairly conservative formula. Because population, prices, and revenues are normally increasing, the CR figure may seem overly frugal, but budget makers assume that an agency can maintain itself for a short period at those constrained levels, until the actual appropriated funds are approved by Congress and signed by the President.¹⁷

Appropriation Procedure

At the beginning of each legislative session, agencies prepare their support estimates for the House and Senate Appropriations Committees. Since 1921 those estimates have been first reviewed, then altered and submitted by the President's budget office (now the Office of Management and Budget). The final "adjusted" version is then submitted as the President's Budget.¹⁸

House and Senate subcommittees then conduct extensive hearings, involving not only representatives of the agencies but also interested groups and other members of Congress. The House, traditionally, reports its bill first. This tradition is based on the House's Constitutionally based priority on money matters, as identified by Article 1 Section 7 of the Constitution, placing this prerogative in that body and also making it part of the text for revenue measures.¹⁹ And even though the Constitution does not specifically say the House must be first in appropriation approval, the Senate subcommittees usually

¹⁷ Ibid., p. 70.

¹⁸ Ibid., p. 70.

¹⁹ Ibid., p. 70.

wait for the House version of their bill to clear the House floor before they mark up their amendments to the House measure.²⁰

The full committee rarely makes major changes to the subcommittee version, with the House version being more detailed than the Senate.

Both legislative committees have to stay within the total funding allocation imposed by the Congressional Budget Resolution. Any legislator who wants to add an item must propose an offsetting cut. This usually guarantees opposition from that program's supporters as well as from the members of the Appropriations Committee. It is therefore difficult to get money for a new program unless it is written into the bill by the Appropriations Committee.²¹

Funding Focus

Appropriators normally seek the minimum amount required to fund the ongoing activities of existing agencies. Committee staff look for justifications of concrete resources; they ask about items such as unit costs, change over time, cost per person, and administrative overhead. They also use data from the government auditing agencies like the General Accounting Office to determine if schedules are being met. If they are not then funding can be reduced by the appropriators rather than have it potentially go unused.²²

²⁰ Ibid., p. 70.

²¹ Ibid., p. 71.

²² Ibid., p. 71.

The committees' second focus is on distributing projects among districts and states. Dams and bridges, veterans' hospitals and visitor facilities in national parks, weapons contracts and blueberry research are among the thousands of items specified each year.

Each subcommittee serves as a broker for requests in its jurisdiction, and it is understood that, as brokers the appropriators collect a fee - more for their own districts or states - right off the top. They do reject requests, but do so without backlash as long as they are perceived as being fair by their colleagues. Which programs are favored in a given year depends on shifts in popular and elite support. Spending and priorities track the partisan balance in Congress fairly closely.²³

Appropriators simplify their extremely complex task by presuming that what had the analytical and political support for approval one year should, barring new information be continued in the next. In the language of incrementalism, they accept the base and are skeptical of changes, whether increments or decrements.²⁴

While the Appropriations committees do not set broad policy, they have immense effects on the detailed ways in which policies are realized. The Appropriations committees have long been considered among the most powerful in Congress.

The importance of the Appropriations Committees derives from the importance of the subject matter it considers and its temporal position in the appropriations process. The "power of the purse" is the most fundamental of legislative powers because

²³ Ibid., p. 71.

²⁴ Ibid., p. 71

overseeing the expenditure of funds is typically the most efficient method of shaping the specifics of government programs.²⁵

The influence and prestige of these committees can be seen in the resources lavished on them by the two chambers. For example, in the 102d Congress (1991-1993) the House Appropriations Committee had more members and a higher budget than any other legislative committee. Between the 95th and 102d Congresses (1977-1993) no member of the House Appropriations Committee transferred to another committee, while sixty members transferred off other legislative committees onto Appropriations, making it the House committee that received the most new members through transfer.²⁶

AUTHORIZATION

Authorization legislation has two functions: to provide legal authority for federal programs and activities and to authorize subsequent appropriations to fund them. Authorizations are within the jurisdiction of all House and Senate legislative committees, except the committees on appropriations. The bifurcated process of setting policy through authorizations and then separately appropriating annual funding, in place since 1836, is not constitutionally required but was instituted under the rules of the House and Senate to facilitate both policy-making and annual appropriations. Congressional

²⁵ Stewart, Charles, *Appropriations Committee, House, Congress A to Z: A Ready Reference Encyclopedia*, Congressional Quarterly, Washington, D.C., 1993, p. 74.

²⁶ *Ibid.*, p. 74.

committee structure and procedure draw clear distinctions between authorizing and appropriating and the committees with those respective responsibilities.²⁷

The form, content, and scheduling of authorization bills vary from case to case. Language authorizing appropriations typically provides that “there are authorized to be appropriated” to the designated agency or department a specified amount of dollars for the particular fiscal year or years. The purpose of the authorization, whether for general operations or for designated programs, also is stated in the legislation. While a dollar limit for the authorization usually is set, occasionally a bill will authorize appropriation of “such sums as may be necessary”.²⁸

An authorization may be for one fiscal year, or two or more, but may also allow spending from an appropriation after the specified fiscal year by authorizing that the money “remain available until expended”. Authorizations for the Department of Defense are on a one-year cycle, others are for two and some for three or more. An example of a multi-year authorization is P.L. 103-43 of 10 June 1993 which amends the Public Health Service Act to revise and extend the programs of the National Institutes of Health. The bill authorized the enactment of appropriations for three years, fiscal years 1993 through 1996. Permanent authorizations do exist in law, but because periodic congressional review is a main purpose of authorization legislation, annual or biennial authorization is much more typical.²⁹

²⁷ Robinson, Peter D., *Authorization*, Congress A to Z: A Ready Reference Encyclopedia, Congressional Quarterly, Washington, D.C., 1993, p. 118.

²⁸ *Ibid.*, p. 119.

²⁹ *Ibid.*, p. 119.

Congressional Budget Act of 1974

In developing authorization bills through investigation, hearings, and markup, committees examine how well government agencies are performing in their assigned programs and how well those programs are working. Authorizations may redirect or restrict government activities and create new ones. Some authorization measures relate only to programmatic rather than funding issues, but it is a rare authorization that does not have a budgetary effect in some manner:

In the Congressional Budget Act of 1974, Congress attempted to regularize the scheduling of authorization bills by requiring that they be reported by 15 May preceding the fiscal year for which funds are to be authorized. The act envisioned early reporting and consideration of authorizations in order to provide timely funding. Compliance was spotty, impractical, and often waived; the requirement was removed in 1985.

The 1974 budget act does require authorizing committees to file views and estimates of spending programs within their jurisdictions with the Budget Committee by 25 February of each year. The views of the authorizing committees are taken into account as the Budget committee fashions a budget resolution specifying overall funding amounts for each broad budget function.³⁰

The authorizing committees are instructed by budget resolutions to produce spending cuts and receipts through reconciliation bills. Much of the work of the authorization committees is done through reconciliation when this process occurs. The

³⁰ Ibid., p.119.

goal of reconciliation is to have authorizing committees raise revenues or designate other types of receipts, such as user fees for government services, or to cut spending. In the balancing act encouraged by reconciliation, new authorizations and program changes may be offset by additional spending cuts. Entire entitlement programs may be rewritten in reconciliation to provide spending for priorities. Even simple authorizations creep into reconciliation, where they are protected from ordinary legislative scrutiny because votes on reconciliation measures do not permit members to vote on programs separately.³¹

When considered separately, authorizations are considered under normal House and Senate procedures on the floor; less controversial authorizations may be processed by unanimous consent, and many authorizations come up under suspension of the rules in the House. Authorization bills do not have the privileged procedural status (to be brought up at any time without a rule from the Rules Committee) that appropriation bills and certain other measures have under the rules. Authorization legislation may start in the House or Senate unless it also contains revenue provisions or direct appropriations, which are constitutionally required to originate in the House.³²

Vision vs. Reality

The separate authorization and appropriations processes envision that authorizations will actually be enacted into law before the relevant appropriation is considered by the House and Senate. It often does not work that way. Some

³¹ Ibid., p. 119.

³² Ibid., p. 119.

authorizations are passed by the House and Senate before appropriations are considered, but few are enacted before movement on appropriations. Typically, authorizations are enacted simultaneously with, and even later than, appropriation bills. Late authorizations still serve a fundamental purpose, however: they dictate in specific detail the policies and programs for which an appropriation is to be spent. And some appropriations provide that they are available to carry out authorizing legislation enacted later.

The record of successful completion of authorizations has waned since the 1970s and many programs are funded without authorizing legislation. One reason programs go unauthorized is the increased complication and overlap in committee jurisdiction since that time. Authorizations for the Department of Energy, for example, are within the jurisdiction of a number of House committees and several in the Senate. No discrete Energy Department authorization has been enacted in the last ten years. Another reason for inaction on authorizations is the congressional budget process itself: program and funding decisions often are made through the budget process rather than through the authorizing committees. Finally, the appropriations process has remained viable and has become a forum for program and policy decisions, sometimes, but not always, with the encouragement of authorizing committees.³³

In 1837, the House adopted a rule, now clause 2(a) of Rule XXI, prohibiting general appropriation bills from containing appropriations not previously authorized by law. The rule also prohibits amendments that include unauthorized appropriations. The Senate has no such general prohibition. The lack of authorization is no legal bar to

³³ Ibid., p. 120.

appropriating. However a variety of statutes prohibit, for particular agencies and programs, the obligation and expenditure of appropriations unless previously authorized by law. The Department of State is one such agency. For such an unauthorized appropriation to be spent , the appropriation bill must specifically override the provision of law.³⁴

BUDGET PROCESS

The power of the purse granted to Congress by Article 1 of the Constitution has long been Congress's role as a policymaker. In recent years the budget process has become the central feature of the internal operations of Congress. It affects the relative power of committees, the resources of majority party leaders, the rules and floor procedures, and Congress's ability to negotiate with the President.³⁵

Three important factors help explain the evolution of the congressional budget process and judgments about its performance. First, congressional budget reforms were in part spurred by basic changes in the nature of the budget itself. From the 1960s on, as outlays became dominated by entitlements and mandatory spending, discretionary spending shrank as a share of total outlays. The budget become increasingly sensitive to

³⁴ Ibid., p. 120.

LeLoup, Lance, Budget Process, Congress A to Z: A Ready Reference Encyclopedia, Congressional Quarterly, Washington, D.C. , 1993, p. 213.

³⁵ Ibid., p. 213.

macroeconomics changes. Taxing and spending decisions were no longer strictly annual choices but were increasingly multiyear commitments.³⁶

Second, the development of the congressional budget process reflects the constitutional separation of powers and institutional combat between the executive and legislative branches. Interbranch conflict was exacerbated in the late twentieth century by the prevalence of divided government (one party ruling Congress, another party in the White House). The major changes in the budget process after 1982 in large part occurred in response to growing deficits, procedural attempts to resolve prolonged institutional conflict, and divergent policy preferences.³⁷

Third, apparent inconsistencies in Congress's budgeting performance reflect the tension between two basic roles of members of Congress: that of responsible national policymakers versus that of local district representatives concerned about reelection and oriented toward providing tangible benefits for constituents. Often the reality facing role of local district representative makes it difficult for Congress to collectively act. As a result, even when Congress imposes strict rules and requirements on itself members use gimmicks to avoid fiscal discipline.³⁸

Attempt to Control Congressional Spending

Congress continued to act in a manner that made agreement impossible on several occasions, and shut down of nonessential operations a reality more than once.

³⁶ Ibid., p. 213.

³⁷ Ibid., p. 213.

³⁸ Ibid., p. 214.

Increasingly, both authorizations and appropriations were lumped together in “megabills”. A growing number of appropriations were even enacted without authorization legislation. And the frequency of supplemental appropriations to restore cuts or avoid discipline increased.³⁹

Enough members felt sufficient concern that changes were enacted. Called the Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings), these changes established maximum allowable federal deficits, revised the congressional budget process, advanced the timetable for completing the process and attempted to strengthen enforcement procedures.⁴⁰

Problems, however, quickly arose. The first, and a most significant one, was the realization that once all exempt programs were totaled, only 25 percent of outlays were subject to sequestration. In addition, the timetable proved impossible for Congress to meet. It struggled to reach the targeted \$144 billion deficit for 1987 but could not. Ultimately, the members agreed to avoid sequestration and used a few budgetary tricks to avoid across the board cuts. First, because Gramm-Rudman-Hollings allowed a \$10 billion cushion, budgetmakers simply shot for \$154 billion rather than \$144 billion. Next they used devices such as unrealistic economic assumptions, the proposed sale of government assets, and the elimination of an unspecified amount of government waste to reach the target. Even with this, deadlock occurred and an omnibus spending bill had to be enacted.⁴¹

³⁹ Ibid., p. 219.

⁴⁰ Ibid., p. 219.

⁴¹ Ibid., p. 220.

Changes were made to the process; attempts were initiated to keep the good of Gramm-Rudman-Hollings and correct those portions of it that needed adjustment.

Among the changes incorporated were the: elimination of deficit targets, creation of separate appropriation caps for discretionary spending, and dividing discretionary programs into three categories (domestic, defense and international).⁴²

Entitlements, too, were examined. Their treatment was placed on a pay-as-you-go basis. This demanded that increases had to be offset by spending cuts or tax increases elsewhere in the budget.⁴³

The new system was more flexible and realistic but it did not resolve the fundamental political and ideological conflicts between parties and members that still exist today.

Now that the actual processes have been examined, transaction cost economics will be applied to the processes to identify possible changes.

⁴² Ibid., p. 222.

⁴³ Ibid., p. 222.

CHAPTER 4

This chapter asks if congress accomplishes its mission in an environment most conducive to that mission. The argument is then made, using transaction costs economics as it applies to a public policy institutional framework, that Congress, with its exchange of votes and agenda control capability is actually in a contractual relationship and the funding process should be viewed from that standpoint.

TRANSACTION COSTS ECONOMICS

Congress has, over the last two decades, drastically altered its structure and processes. However, the recent shut down brings into question whether those changes have sufficiently moved the institution and its mechanisms so that it can produce the desired effect set in motion by our Founding Fathers: representation of the people.

Does Congress do this? In its own way, yes.

But how can this be true, with all of the above taken into consideration? Quite simply, the organization of congress meets remarkably well the electoral needs of its members.⁴⁴

⁴⁴ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1., p. 132.

It must be remembered that this institution, like others in our nation, is an economic institution of capitalism, and as such, it is set up to determine the best result that can be obtained from several competing constituencies. This result, though, is not always obtained in a non-problematic environment. The fact that it is a capitalistic environment gives sufficient basis for using transaction cost economics to review and suggest change.

The real question that must be asked is: Does Congress achieve the appropriation of authorized funds using the most economical transaction costs possible. This is not to say the most efficient. Rather it is questioning the legislator-effected cost involved in producing the bill. Are the costs involved, from a “vote garnering-individual legislator career affecting” criteria, the most “cost effective”?

Transaction Cost Economics - An Overview

Originally an explanation for the existence of the firm, transaction cost economics is now a study of a variety of economic relationships. It analyzes the relationship motivations and behavior of individuals who are engaged in a contractual relationship. That contract need not be written, as a matter of fact, when relationships are not written is when the contract is most interesting. For this paper, the contract is the agreements arranged between legislators to garner votes for passage of desired projects.

In transaction cost economics, the contracts are typically incomplete. This incompleteness can be, as mentioned above, an arrangement to vote for a dam and bridge project with a promise to vote for a specific agency later. This decision to cast this “later” vote can be affected by many things. But if the agency falls victim to bad

publicity it may not behoove the later vote caster to follow through. The “contract” does not specify that the vote must be cast under any circumstance, nor does it require casting the support vote if the legislation is changed to reflect a position not in the original legislation. It especially doesn’t address the situation that arises if the legislator who is to vote at a later date realizes how important the issue is to the first legislator and demand more “rent” for that vote- that rent could take almost any form, like additional support for another program, or more money for a constituent’s project.

To counter such behavior a variety of methods to govern the contract can be used. One is reciprocal “buying” arrangements, where each party exposes itself to form a mutual exchange of “hostages” another is partial ownership agreements. Whatever the final agreed upon structure, it should offer the relationship-specific-asset invested the most protection at the lowest total cost.⁴⁵

Asset Specificity

The assets over which the most concern would be raised would be those assets that are absolutely needed to conduct business. The specificity refers to the ability of the asset to be moved to an alternate use or alternate user without sacrificing its productive value.⁴⁶

⁴⁵ Shelanski, Howard A., and Peter G. Klein, *Empirical Research in Transaction Cost Economics: A Review and Assessment*, Journal of Law, Economics and Organization, volume 11, number 2, 1995, p. 336.

⁴⁶ Williamson, Oliver E. *The Mechanisms of Governance*, Oxford University Press, New York, NY, 1996, p. 59.

The assets to be considered can be a person, a place, machinery, information, a brand name or even an industrial plant .⁴⁷

Uncertainty

Another point is the concept of uncertainty. This means more than not having all the information needed to be perfectly clear on the alternative to choose, but also not having information on all the hazards that could occur. This lack of information contributes to the contract being incomplete-not all information or contingencies is known. Transaction cost economics tries to mitigate those hazards and is aware that such mitigation can be a source of mutual gain.

Opportunism (Guile)

The concept of opportunism is used to explain behavior that is self-interest oriented with subtle or blatant forms of deceit added in. It involves the incomplete or distorted disclosure of information, especially efforts aimed at misleading, distorting, disguising or confusing.⁴⁸

Vertical Integration

Although not always the solution, vertical integration is an approach to reducing the chance of losing control of an asset or having someone act opportunistically. It, quite

⁴⁷ Ibid., p. 59-60.

⁴⁸ Williamson, Oliver E. *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, The Free Press, Yale University New York, New York, p. 47.

simply, means producing the components or product “in-house” so that control is no longer an issue. Usually referred to as a “make or buy” decision, vertical integration is an attempt to remove some of the hazards of a governance structure.⁴⁹

Asset specificity and uncertainty can be big factors in deciding if the production is controlled and maintained through vertical integration.

Additional Concepts

Other concepts attached to transaction cost economics include bounded rationality, property rights, trade offs and exchange. Each is explained later in the paper.

Application to U.S. Federal Legislature

The firm provides a set of contractual mechanisms. And like firms, the Congress has contractual mechanisms that reflect the characteristics of an individual’s goals and preferences and transactions that occur with imperfect information.

Application to the Authorization and Appropriation Processes

The use of transaction cost economics on the U. S. Congress is not new. Many published books and articles have paved the road (see bibliography). However, the previous work did not examine the use of this theory as it applies specifically to the authorization/appropriation budgeting process. That is the thrust of this paper.

⁴⁹ Shelanski, Howard A., and Peter G. Klein, *Empirical Research in Transaction Cost Economics: A Review and Assessment*, Journal of Law, Economics and Organization, volume 11, number 2, 1995, p. 341-343.

Assumptions

As with any theory, before it is applied some assumptions are necessary. There are only three but they are simple and straight forward:

a) Congressmen represent the (politically responsive) interests located within their districts;

b) political parties place no constraints on the behavior of individual representatives, and

c) majority rule is a binding constraint.⁵⁰

Assumption Explanation

The first assumption does not negate the desire on the part of most congressional members to do the best for all of their constituents. Rather it faces the reality that they cannot. They must rely on information from representatives of organizations to tell them what is important to those organizations and their members. It provides a means to stay in touch with several people while hearing the needs of many and be assured of reelection.

The second faces the reality of modern politics. The most recent legislative sessions have shown how party leaders could not demand of even the most junior members, blind obedience to the party position or even the leadership's position.

⁵⁰ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1., p. 136-137.

The third assumption is set on the rules of the legislative bodies.

The Exchange

Legislators pursue their reelection goals by attempting to provide benefits to their constituents. This cannot be achieved without help from their illustrious peers. They, therefore, develop a means to generate gains from exchange and cooperation among legislators.⁵¹ And the mechanisms that survive are the ones that permit the best delivery of benefits to all concerned.

Several problems must be considered. For instance, the value of today's legislation significantly depends on next year's legislative events. And because current legislators typically cannot bind a future legislative session, problems of enforcement over time are critically important. Moreover, the environment inhibits the ability of non-institutional enforcement of cooperation as the sole means of policing bargains. This leads to uncertainty, an uncertainty that leads legislators to devise institutions for long term durability of agreements that ensure the flow of benefits beyond the present session of the legislature.⁵²

Examples

⁵¹ Ibid., p. 138.

⁵² Ibid., p. 139.

What if there were a group of legislators seeking to build dams and bridges. They search for another group of legislators with whom to exchange votes. This second set of legislators also needs help. They have a regulatory agency that is not providing the flow of services the group desires. The regulatory legislators need votes for their measure. If the two sides exchange votes, the first group gets the dams and bridges and the second gets its flow of services. But what if the first group later works to revoke the regulatory legislation. Simple market exchange would offer no protection in this instance.⁵³

Or, what if the dams get their money in the present legislative session but the regulatory issue must wait for a later legislative session. During the intervening time, the agency comes under fire during the waiting period and the public's perception may lean toward the negative as a result. Support for the agency is no longer politically wise. Therefore the IOU may not be collected or even collectable.

Another situation might arise if the regulatory legislation itself is postponed to a later session, and its writers may have changed portions of the original just to make the issue more acceptable to other support groups. The first legislator may feel his/her support is not possible to give now. This issue becomes one of moral hazard.⁵⁴

These "contract" situations highlight some of the same problems inherent in the theory of the firm. Firm theory might initially respond that the IOUs would have to be contracted for a specific session with specific wording of the legislation. However,

⁵³ Ibid., p. 139.

⁵⁴ Ibid., p. 139-140.

conducting legislative business under these conditions would severely limit the trading possibilities.

This chapter introduced the transaction cost economics concepts as they apply to Congress and its “exchange of vote-business dealings.” The last chapter applies Weingast and Marshall’s model to Congress and suggest an alternative funding committee structure.⁵⁵

⁵⁵ Ibid.,

CHAPTER 5

The following chapter applies transaction cost economics to the appropriation's and authorization's processes using the model proposed by Weingast and Marshall.⁵⁶ It shows how it applies to the public policy environment and suggests an alternative structure that accepts certain political behavior as a part of congressional interaction and incorporates that behavior to achieve committee goals.

APPLICATION TO THE APPROPRIATION-AUTHORIZATION PROCESS

The authorizers and appropriators are faced with the same predicaments with each legislative session. And it was the inability of the members to reach sufficient contractual agreements to solidify the "deals" needed to "tie down" the legislation for Fiscal Year 96 that caused the now famous impasse.

Contractual relations

Transaction cost economics examines the governance of contacts and the relations needed to complete them. As stated before, it concerns itself with the institutional environment, the governance mechanisms and the individuals involved. It also looks for

⁵⁶ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1.

and references the frequency of the transactions, the uncertainty involved and the specificity of the assets needed to complete the transactions.⁵⁷

Using a model identified by Oliver E. Williamson in *The Mechanisms of Governance*⁵⁸ the institutional environment is allowed to define the rules of the game. The problems of the right to “property” and enforcing those property rights, along with the realization that the cost of governing the contracts changes when the environment changes are considered in the model.

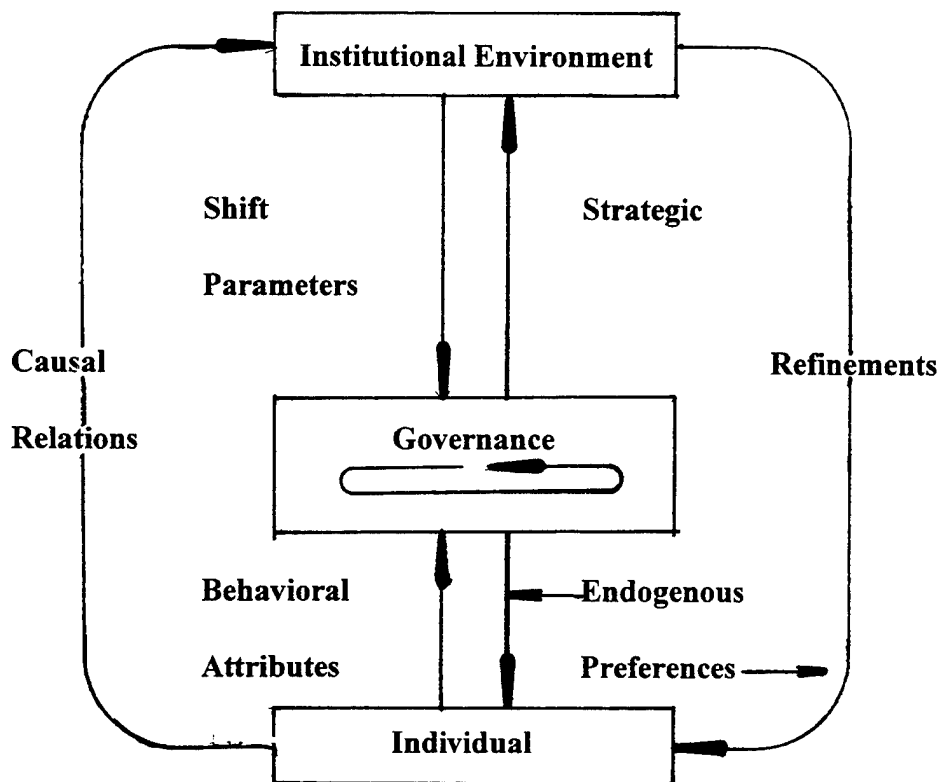


Figure 1. The Layer Schema (Williamson, *Mechanisms of Governance*)

⁵⁷ Williamson, Oliver E. *The Mechanisms of Governance*, Oxford University Press, New York, NY, 1996, p. 58-59.

⁵⁸ *Ibid.*, p. 223.

Layer Schema

Bounded rationality

Behavioral assumptions within the model are carried from the individual to the governance mechanism (e.g. bargaining, IOU, etc.). Included among those assumptions is that all of the individuals concerned are working with limited knowledge, or “bounded rationality”. This bounded rationality considers the fact that achieving given goals is accomplished within the limits imposed by the situation’s conditions and constraints.⁵⁹ It accepts the fact that in any decision the limited knowledge makes certain demands that have a price, that the cost of the decision and the rewards of the decision must always be considered so that the ultimate would be maximum profit from the results of the decision. That profit does not have to be monetary. It can be, as in the case of legislative decisions to vote or not vote, the maximum “mileage” a legislator can get from the commitment or withholding of that vote.

Bounded rationality then modifies this understanding of decisions by assuming that each carries risk and uncertainty. This uncertainty plays in determining the price and profit that can be garnered from a decision. It also is aware of the fact that each decision maker has incomplete information about alternatives as well. Complexity, too, is seen as part of the cost function when the decision is being weighted.⁶⁰

Decisions must be made selecting from only a limited number of strategies. This serves two purposes. It reduces the amount of time spent on information gathering while

⁵⁹ Simon, Herbert A., *Theories of Bounded Rationality*, *Decision and Organization*, McGuire & Radner, editors, North-Holland Publishing Company, New York, NY, 1972, p. 161.

⁶⁰ *Ibid.*, p. 161.

moving toward a decision that can be regarded as satisfactory. This satisfactory alternative must have considered all known alternatives, expected positive or negative results and the stop rules that determine when the search should end.⁶¹

The Legislature and the Model

The model's circular arrow in governance reflects the fact that the legislative organization has a life of its own. Any strategic changes could take the form of protectionist trade barriers against insincere bargaining (strategic) but the reality of the organization and its functioning must always be considered. And the endogenous preferences are really the feedback from the governing mechanism to the individual, otherwise known as social conditioning.⁶²

The legislature is an organization that fits, with little (if any) adjustment this model of institutional economics.

The Suggested Strategy

If the transaction is the basic unit of analysis, then efforts should be focused on economizing the costs of obtaining that transaction.

The unit of analysis is the vote each legislator can cast either for or against each U.S. government agency's budget. The frequency of this vote, even on the same budget

⁶¹ Ibid., p. 166-167.

⁶² Williamson, Oliver E. *The Mechanisms of Governance*, Oxford University Press, New York, NY, 1996, p. 225.

is high, particularly when the number of committees and/or subcommittees that can have purview over an agency is taken into consideration.

The focus of the strategy is therefore on economizing the transaction costs of obtaining sufficient votes to pass an authorized appropriated budget as required by Article 1 Section 9 of the U.S. Constitution.

In place of two, one committee is suggested for both authorizing and appropriating the budget. Called the Authorizing Appropriations Committee, it will fulfill the legal requirements and permit the direct flow from an authorized bill to an appropriated funds vote.

Suggested Strategy Specifics

The committee, will have three basic conditions (as identified by Weingast and Marshall, 1988) under which it will work.⁶³

first: the committee is composed of a number of seats or positions that can be held by individual legislators, political party affiliation is not to be considered;

second: a committee seats property rights system exists called the seniority system;

third: when a member leaves a committee, his/her seat becomes available for reassignment.

⁶³ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1., p. 143-144.

The first condition permits the committee to have subcommittees that are associated with specific policy issues, and the monopoly right to suggest alternatives to the present system for a vote before the legislature. It also requires only a majority vote to change the present policy with an alternative.⁶⁴

The second condition allows a member to retain his/her seat on the committee as long as wanted by the member, and allocates chairmanship by seniority, regardless of party affiliation. It denies a member the right to trade or sell his/her position on a committee. Finally, it lays the groundwork for operating outside of the party system and more within the committee structure system.⁶⁵

The third condition establishes the exchange mechanism over the rights of the committee and the seniority system.⁶⁶

Suggested Strategy Focus

The suggested strategy focuses on the Committee and its subcommittee and the exchange of policy influencing that will be required to make the system work. Party affiliation will not be a consideration. It permits committee members to be chosen by a desire to be on a committee and a requirement that the member request only those subcommittees that most directly affect his/her constituency.

⁶⁴ Ibid., p. 143-144

⁶⁵ Ibid., p. 143-144

⁶⁶ Ibid., p. 143-144

The new Authorization Appropriation Committee will have subcommittees that handle specific government programs or agencies (areas to be funded) like defense, justice, waters and roadways, etc. (see Figure 2).

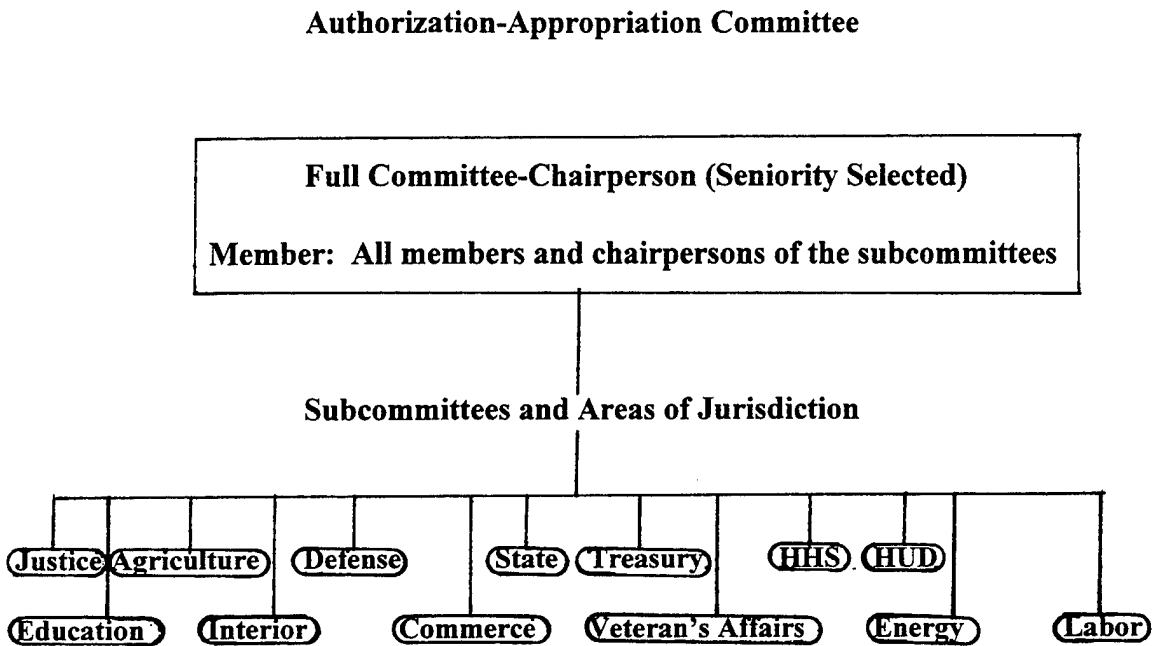


Figure 2. Subcommittee Structure and Relationship

All member legislators are equal in stature since each must vote to authorize and appropriate and because selection to the committee rests only in constituency requirements.

Each subcommittee's programs will have a specific agenda to be addressed. Each member will come to the subcommittee with the concerns of his/her geographic needs and be required to exchange influence so that:

all members are satisfied enough to move the process forward,
an agenda is developed,
a program is authorized , and
the authorized program is then submitted for appropriation approval .

The same committee that authorized must recommend or not recommend appropriation. (It is quite possible to authorize a program but require the agency to reach within its own funds or seek private industry assistance for implementation.). The committee, in authorizing, provides justification (staff review and report) for each authorized program. A suggested funding level will be included.

Authorization Period

Each recommended authorization will be for, at least two years. Each recommended appropriation will be for two years, with a provision, when necessary for updates to the committee. These updates can be reviewed and if unusual behavior is exhibited, the funded program can be questioned, suspended, or withdrawn.

The committee will investigate programs only to authorize. The congressional committee staff or legislative members may conduct program reviews or investigations. But these must be completed (all questioning and request for information) prior to the subcommittee authorization vote. These investigations must include all questions that relate to funding as well as authority to function concerns. Once the vote has been secured, the approved programs will be submitted to the entire committee for vote on "authorizing an appropriation" All programs approved for appropriation vote at the committee level will be included in the legislation sent to the full chamber for vote.

Those programs for which multiyear authorization already exists would have their authorization-appropriation process function in the same way as the above suggestion. Their period of authorization, however, would be the same as that presently identified.

Appropriation

The subcommittee investigation into each program's activities will be reflected in the accompanying report. In addition, a suggested legislative bill will contain language that authorizes the programs and an appropriation level.

The full committee will then vote on the subcommittee's recommended program and suggested legislation. Subcommittees can vote on parliamentary proceedings so that the committee function's smoothly, but only one vote will be conducted on program's authorization-appropriation before it goes to the full chamber. That will be for full Committee approval. No subcommittee votes on the bill. Every program reviewed will be presented to the full committee.

The House or Senate chamber vote to appropriate will be the same as the full House or Senate authorization vote. This vote is the binding vote. In reality, the chamber will vote to authorize the program/agency's existence and appropriate the identified funding level.

This one time only pass on a program/agency will require coalitions and influence exchange.

CHAPTER 6

CONCLUSION

Chapter 5 applied basic transaction cost economics theory concepts to the appropriation and authorization processes, using the Weingast and Marshall model. It also introduced the alternative structure suggested in this paper. The following chapter examines the benefits gained by applying the alternative structure and offers some trade offs that should result. It also looks at possible criticisms of the suggested alternative and identifies the areas that will be explored in later research.

Gains

This suggested system requires the members of each subcommittee to produce a document that supports their suggested authorization-appropriation levels for the agency in question. Each member will cast only one committee vote on the bill.

So what is gained? A stable environment that seeks risk aversion and individual legislators who can be utilized much more effectively. In addition, as a preference based, rather than party based, individual selection procedure system the expected results are for greater individual and aggregate utility. As Weingast and Marshall state⁶⁷

“Legislators exchange special rights affording the holder of these rights additional influence over well-defined policy jurisdictions. This influence stems from the property

⁶⁷ Ibid., p. 157.

rights established over the agenda mechanisms, that is, the means by which alternatives arise for votes. The extra influence over particular policies institutionalizes a specific pattern of trades. When the holders of seats on committees are precisely those individuals who would bid for votes on these issues in a market for votes, policy choice under the committee system parallels that under a more explicit exchange system. Because the exchange is institutionalized, it need not be renegotiated each new legislative session, and it is subject to fewer enforcement problems.”

Suggested Strategy's Risks to Contracting

There are four types of risk behavior that could occur:

- a) risk neutral - a transaction that needs no protective governance structure
- b) some risk - a transaction for which some risk to the member is involved, however, it requires minimal safeguards;
- c) significant investment- a transaction for which there are high risks, no safeguards are available and a great price is attached
- d) safeguards - protected transaction which may have a high price for that protection.

It is assumed very few transactions will be risk neutral for everyone. Most will involve some risk, those with significant investment will more than likely fall by the wayside. The last category offers some concern.

One negative example of the third type of risk behavior is the one which raises the transaction costs intentionally. These costs could be raised to opponents of an issue by the issues supporters in order to give the impression (whether real or imagined) that the

cost of acting on that opposition is too high a price to pay given the result. This raised transaction cost, a display of opportunistic behavior, may even reduce the collective outcome of the legislation.⁶⁸ It will, however, serve as a warning to others who might oppose the member on a later issue. This type of opportunistic behavior should be kept to a minimum with the committee drawn up under the requirements of :

members composed of above average supporters for the interest area
reduced party influence with selection for committee membership being party affiliation indifferent.

Trade Offs

The trade offs that should result from this suggested committee being implemented are the increased cooperation, reduction of party dominance, acknowledgment of the reality of the need to continue to retain the valuable resource: committee membership and the power associated with that membership. It should also provide a means to address the concerns raised by members during the hearings before the Joint Committee on the Organization of Congress.⁶⁹ As Representatives Brown, Folly and Nattier indicated, many members were already going around the authorization committees to obtain less difficult approval through the appropriators.

It will, however, reduce the greater number of persons available to review a program and reduce the obviousness of party influence on issues becoming policy.

⁶⁸ Twight, Charlotte, Political Transaction-cost Manipulation: An Integrating Theory, *Journal of Theoretical Politics*, vol. 6 issue 2, 1994, pp. 192-193.

⁶⁹ Joint Committee of the Organization of Congress, *Final Report of the Joint Committee of Congress: Organization of the Congress*, U.S. Government Printing Office, Washington, D.C., 1993, p. 119.

It may also reduce some perceived power centers..

Possible Criticisms

Criticisms that can arise to counter this suggested alternative to the present Congressional two step appropriation-authorization process include:

- a) Why not stick with the status quo - subsequent fiscal debates have not evolved into another FY 96?
- b) Why doesn't the threat of retaliation take care of opportunism?
- c) Why don't other conventions take care of the situation?

To address the first criticism, staying with the status quo, it is apparent that to do so continues to permit no safeguards against behavior that exhibits opportunism with guile. This behavior is most probably due to the fact that several exchange problems arise since present legislation is often dependent on future events. Because of this delay and its inherent dependence on players not only returning to congress but also being able to fulfill any bargains struck in the earlier session, enforcement becomes a problem. Present legislators are aware that they cannot usually bind a future legislative session to a specific act or vote result.⁷⁰

The proposed system permits enforcement to be understood as "a given", because it relies on coalitions within and outside of the committee. It also recognizes the fact that those outside of the committee will have incentive (i.e. passage of measures friendly to

⁷⁰ Weingast, Barry R., and William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized As Markets*, Journal of Political Economy, 1988, vol. 96, number 1., p. 158

appropriation committee members and their constituents) to cooperate in their committees as well.

To answer the concern of relying on the threat of retaliation to counter opportunistic behavior, it is necessary only to look at the last two legislative sessions to see that new and continued members realize the old rules do not apply. Freshman legislators, in particular, are examples of this: they feel obligations to constituents and ideology first and are willing to buck the system, if necessary, to achieve their goals.⁷¹

This paper's suggested alternative permits freshman legislators' concerns for constituents and ideology to be addressed not only when they identify their subcommittee choices but also when they develop the coalitions needed to make the committee system work. The concerns are also addressed when these members interact with other committees or subcommittees. In particular, legislators have a freedom to develop these coalitions without sacrificing the actual mission of the committee.

The question of conventions, such as executive branch support, perceived importance to constituents, third party payoffs, media attention and ideology and time, are often the means by which legislators raise the transaction costs of a measure or action. In the present system, legislators can use these conventions to change political resistance to desired measures⁷²

The proposed strategy focuses on minimizing the impact of these conventions and their transaction cost increasing effect by basing committee selection on the transaction

⁷¹ Neikirk, William, "'90's Politics Relies On confrontation, Not Compromise; Shutdown but One Sign of New Hard-Line Style." *The Chicago Tribune*, January 7, 1996.

⁷² ⁷² Twight, Charlotte, Political Transaction-cost Manipulation: An Integrating Theory, *Journal of Theoretical Politics*, vol. 6 issue 2, 1994, pp. 196-197.

cost minimizing requirements of no party based selection and specific constituency identified need.

Additional study will address other possible criticisms such as: how will party politics be eliminated since it still exists, even if its not directly used for committee selection.

Summary

This paper has sought to demonstrate how transaction cost economics can be applied to the federal funding process (specifically the appropriations and authorization processes). In addition, when applying transaction costs to these processes, the political aspects of the legislative system as well as its mechanical workings have been acknowledged. This was necessary because, to do otherwise, would doom any suggested alternative to failure. But the ability of transaction costs economics to include the political traits of the system among the characteristics to be modeled is an excellent example of transaction costs applicability to the public bureaucracy arena.

Indeed, the topic has been approached by looking at the asset specificity of the vote exchange process, the uncertainty of contracts forged to secure future votes and the opportunity for guile that presently exists, then incorporating this knowledge into the alternative suggested.

One Committee, Not Two

According to Gilligan and Krehbiel, "the institutional arrangements that allocate committee assignments as a function of preference intensity and the parliamentary devices that generate stable collective decisions also promote mutually beneficial (i.e. efficient) legislative bargains."⁷³

The nonpartisan vertical integration (bringing all significant asset specific actions under the rule of one committee) permits members to develop coalitions in order to develop and execute a successful agenda without paying the price of members acting with guile and the budget being held hostage. It also does the following:

- permits a reduction of the number of times agencies must submit information for approval of continued activity;

- acknowledges an important fact: the need to provide members with a means to continue possessing power that can be welded when necessary;

- continues the process of reviewing for authority first before addressing appropriations;

- continues the seniority system and allows the committee and its members to place reelection and constituent concerns above party affiliation; and

- reduces the opportunity for another session like Fiscal Year 96.

⁷³ Gillian, Thomas W., and Keith Krehbiel, The Gains from Exchange Hypothesis of Legislative Organization, Positive Theories of Congressional Institutions, Shepsle, Kenneth and Barry Weingast, editors, The University of Michigan Press, Ann Arbor, MI, 1995.

Finally, to answer: Are both the Authorization and Appropriation Committees needed to fund the U.S. government? The answer is no. Two actions may be needed, but not two committees.

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