

C O M M E N T

Comment on *The President's Budget as a Source of Agency Policy Control*

by Russell Shay

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From the perspective of a lobbyist for a conservation nonprofit organization in Washington, D.C., for three decades, Prof. Eloise Pasachoff's article—particularly the descriptive part—is truly insightful and an excellent look at how the Office of Management and Budget (OMB) works and the amount of influence it has. The budget part of OMB controls what the government actually does; whereas, the Office of Information and Regulatory Affairs, the regulatory part, controls (or tries to control) what people outside the government do.

For a number of reasons, I am a little skeptical about Professor Pasachoff's recommendations for reforms. Unlike countries with parliamentary systems and multiparty coalitions, where there are largely independent ministers who are not of the same party of the president, here in the United States, the president is the boss and someone has to see that his orders get implemented. James Q. Wilson's book *Bureaucracy* is a great work about government and, in particular, American government. One of the anecdotes in his book describes how when Theodore Roosevelt was President there were six levels of command between President Roosevelt and a ranger in Yellowstone National Park; when Wilson wrote the book in the 1980s, there were 24 levels.

The size and complexity of the U.S. Government is such that it is a very difficult job to reconcile a lot of differing opinions. But, the role of government is to make decisions, and that works best when people can come to agreements with give and take. When people are unable to speak freely and figure out what is really important to them (and horse trade), it really impairs the ability of people with disparate viewpoints to agree to move forward. But the ability to keep those discussions internal is important to getting the best decisions—and, indeed, to actually getting a decision made.

Accordingly, I am skeptical of too much disclosure in certain situations. For example, disclosure is appropriate when the president discusses his agenda, but when the details of the budget that reflects his agenda are developed—all of that does not all need be public. I can see recording and publishing who comes in to talk with OMB;

that is a great idea and relatively easy to implement. This would disclose what everyone should know, but tends to be obscured—that people who have money at stake seek out and talk to the people who control the government. Whereas, for others who are merely interested in good policy decisions, we sometimes ignore the budget staff—at our own peril.

In addition, it is probably not appropriate to use policy cures to address the fact that the current members of Congress are not using their oversight authority very responsibly. Today, there is no John Dingell, the former Chairman of the House Energy and Commerce Committee, who will bring a deputy assistant secretary of Energy up the Hill to aggressively grill him or her about the rationale for their decisions, and about alternatives. Congress has the power to do this and it is a power that they probably should be using more. Congress also has the whip hand on the budget. When Congress puts funding in the budget and requires the money is spent in a certain way, then it will be spent that way.

What we are seeing in Congress are irreconcilable arguments over and over again on the same subject. What you want in the budget is to make a decision so the government can move forward. But, to do that, you cannot allow participants in the decisionmaking to say what they would have done because that just takes you backwards and reinforces outsiders who wish to re-argue the same question.

There are a lot of points of view represented in the current budget process, both from outsiders and from within the federal agencies. For example, everyone thinks their job is important—which is great, because it means that they are trying really hard to get their jobs done. But someone has to decide which of those jobs receives more resources than others. And, that someone has a very tough job.

In sum, Professor Pasachoff's article is a great addition to the literature. Her article will focus more attention on these issues and could increase accountability. But we have to be cautious, so that we don't end up making Administrative decisions more like the current state of Congressional decisions, where compromise and balance and final resolution are less and less rewarded and broad-based support for these decisions become rarer and rarer.

This Comment is based on a transcription of remarks at the Environmental Law and Policy Annual Review conference on March 31, 2017, in Washington, D.C.