

Appropriation of public funds in the Trump era (or "Trump vs. Congress")

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Abstract: La decisione parlamentare di spesa pubblica nell'era Trump – The essay analyses the relationship between Congress and the President in relation to decisions concerning the appropriation of public funds during the Trump era. After providing a general introduction to the issue, the article will focus on the experience of the Trump presidency, and in particular on the funding gaps that have created serious problems for the White House.

Keywords: Appropriation; Public budget; Funding gap; Budget process; Power of the purse.

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1. The relevance of the "U.S. case study"

Since the dawn of representative government, public budgets have given cause for the most heated (and the most tragic) debates between governments and parliaments. This dialogue has resulted in clashes not only in the past, but even today within contemporary democracies.

After all, the modern law on public budgets in Europe arises precisely out of a funding gap. This has been widely recognised since Laband's theories, which were elaborated in the wake of the budgetary Prussian crisis during the second half of the 19th century¹.

The history of budgetary emergencies does not end with the Prussian crisis from 1860 to 1866, but has recurred frequently in the chronicles of our time. Indeed, the U.S. offers perhaps one of the most tragic examples in this area.

Specifically, the risk of frequent funding gaps has increased due to two factors. The first is the absence of any requirement for the government to enjoy the confidence of parliament. Due to this disconnect between the executive and the legislature, political misalignments between them become

¹ P. Laband, *Das Budgetrecht nach den Bestimmungen der Preußischen Verfassungs-Urkunde unter Berücksichtigung der Verfassung des Norddeutschen Bundes*, 1871. For more on the Prussian crisis, see E. R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. I, *Reform und Restauration 1789–1830*, Stuttgart, 1957, and Id., vol. II, *Der Kampf um Einheit und Freiheit 1830 bis 1850*, 1960.

increasingly frequent. As a result, disagreements concerning budgetary decisions are also more commonplace.

The second factor is the existence of a bicameral system in which 1) both Houses have equal power of the purse and 2) the upper and lower houses can express different political majorities.

If the former is an internal factor (parliament vs. government), the latter is an external factor (one house of parliament vs. its 'sister' house). When both factors are present, the combination is explosive. This is why, in order to reduce risks, the main contemporary parliamentary systems provide for a secondary role for the upper House in the budget process. At one extreme there is the outright exclusion of the House of Lords in the United Kingdom². However, there are also less severe provisions in other countries, such as e.g. a veto power for the German Bundesrat³, or the right of the lower house to have the last say in the event of persistent disagreement, as occurs in France⁴.

By contrast, the U.S. system features both internal and external risk factors. There is no relationship of confidence between the President and Congress; moreover, 1) both the House of Representatives and the Senate have an equal say on the presidential budget, and 2) the two houses may (and in fact often do) express different majorities, with the result that their positions in relation to the presidential proposal differ.

However, the U.S. offers an interesting case of study, not only due to the frequent funding gaps encountered but also because – despite what common sense might suggest – it represents an efficient model of an assembly-dominated budget process.

² Parliament Act (1911) – on which see Halsbury's 'Statutes of England', London, IV, 1028 – although there is a more ancient practice in this area. See, for example, a resolution adopted by the House in 1671: "In all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords»; and in 1678: "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualification of such grants, which ought not to be changed or altered by the House of Lords".

³ German Basic Law, Art. 77.4. Once the Bundestag has given its approval, the territorial House may lodge its opposition, which triggers the convening of a bicameral conciliation committee. If this conciliation fails, the lower House has the final say. It can overcome the Bundesrat's opposition by a majority vote (or by qualified majority, if the upper House has vetoed it by a two-thirds majority).

⁴ French Constitution, Art. 47: if a joint conciliation committee does not resolve the disagreement between the Houses, the Government may ask the National Assembly to take a final decision. It should be noted that other elements of predominance of the Lower House are present in the French system. Consider for example the constitutional rule of the *priorité* of the National Assembly in the examination of the finance law.

Indeed, whilst there can be no doubt that an assembly's rejection of the budget is legitimate within a parliamentary democracy, it must also be accepted that specific legislation is necessary to regulate the funding gap in detail (i.e.: to regulate the consequences parliament's rejection of the budget).

The study of such rules enables us to distinguish between two cases: an *assembly-dominated model* and an *executive-dominated model*.

Under the latter model, the governmental predominance may be achieved in different ways. The softer rule involves the automatic extension of the budget adopted for the previous year⁵; there is then the rule of a temporary substitution by the government⁶; finally, the strongest option involves the ultimate prevalence of the executive⁷.

None of these scenarios arises in the U.S., where Congress is vested with a twofold dominance. Representatives and Senators may exercise one form of dominance by adopting a provisional budgetary authorisation (a so-called "continuing resolution"), which temporarily extends the effects of the last approved appropriations. However, Congress can prevail definitively if it chooses not to approve a continuing resolution or if it fails to approve one. In such cases in fact, the government can no longer take any action, and is forced to declare a shutdown of any administrative activities lacking financial coverage.

Moreover, we can assume with regard to this twofold dominance there is no difference between the law in action and the law in books: indeed, the most recent experience shows how the battle really ends, with the withdrawal of some of the President's requests.

This article aims to examine whether and how funding gap have arisen during the Trump presidency. To this end, it is first necessary to provide a brief introduction to the U.S. budget process, focusing mainly on the so-called "appropriation" phase. Afterwards, the second part will focus on how the American system regulates irreconcilable disagreement between the President and Congress, which entails a risk that the budget may not be approved. Finally, the third part will focus on the events of the Trump presidency, and specifically those episodes that gave rise to a system blockage.

⁵ Among others: Spanish Constitution, Art. 134.4. The "prórroga presupuestaria" operates automatically at the beginning of the new fiscal year without legislative appropriation – with no indication of any timeframe, until such time as the Houses of Parliament agree to approve the new budget.

⁶ This is the case, for example, of Germany, where Art. 111 of the Basic Law provides for broad executive discretion when acting temporarily in place of Parliament.

⁷ For instance, Art. 47 of the French Constitution of 1958 provides that, if Parliament has not decided within sixty days of the presentation of the budgetary bill, the relevant provisions may be issued directly by governmental ordinance.

2. The Budgetary Process in the U.S.

2.1 A general overview

As far as general models of budget process are concerned, in terms of its documentary structure it is possible to draw a clear distinction between a British (or Anglo–American) model and an opposing continental model. Under the continental model, there is no procedural interruption between the exercise of executive initiative and parliamentary discussion/decision. On the other hand, under the British model the government's initiative does not follow proper parliamentary procedures as it does not take the form of a formal legislative proposal⁸. Thus, after the Government's has tabled its proposal a resolution must be adopted by the assembly, whereby parliament accepts the executive proposal and formally initiates the proper legislative procedure.

The U.S. Budget Process⁹ derives its essential structure from the model of the British mother country, and even today remains substantially faithful to this model. Nevertheless, during the last century, there has been significant rapprochement with the continental model.

Indeed, the Budget and Accounting Act of 1921 and, later, the Congressional Budget Act of 1974 – both of which were accompanied by broad and significant debate not only within the academic and political community, but also throughout civil society in general – created a sort of mixed model, altering the original structure with elements borrowed from the continental model.

The 1921 reform did not make provision for any formal right of legislative initiative for the President in matters concerning public finance. However, it vested him with a unitary power of initiative, consisting in the annual U.S. presidential budget, which is delivered to Congress in February, thus marking a fundamental break with the English model (which does not provide for any formal unitary power of initiative). On the one hand, the introduction of an initial instrument for rationalising the process guaranteed the President a key role in decisions concerning the public finances; however, on the other hand, it exposed him to a form of responsibility hitherto unknown in the U.S. constitutional framework.

The Congressional Budget Act of 1974 also took steps to achieve greater procedural rationalisation, introducing as a counterweight to the presidential budget the instrument of "concurrent resolution", by which

⁸ On the U.K., see: E. May, *Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Parliamentary Practice)*, 2011, 711 ff.

⁹ For a general overview: A. Schick, *The Federal Budget. Politics, Policy, Process*, Washington, 2008; H.M. Robert, *Robert's Rules of Order Newly Revised*, Reading, 2011; P. Mason, *Mason's Manual of Legislative Procedure*, 2010.

Congress can express a unitary and overall position on government proposals immediately after their presentation to Congress.

The adoption of a concurrent resolution by Congress marks the moment when the procedure reverts to the typical British model, with two tracks for fiscal and public spending decisions.

The resolution can thus contain a series of reconciliation instructions, on the basis of which the Budget Committees of the House and Senate prepare reconciliation bills to be presented to the House, containing changes to fiscal legislation.

However, the resolution also provides for a first general allocation of funds to the Appropriations Committees of the two houses, as the first step in the distribution mechanism, which represents the main tool for enforcing public finance decisions. In fact, based on the first allocation, the Appropriations Committees of the House and Senate make a sub-allocation in favour of each of their twelve sub-committees, which are responsible for the various substantive competences. Once the expenditure requests of each of their sub-committees have been received, the two committees can formulate the Appropriation Bill to be presented to the House, which authorises the allocation of public expenditure for the following financial year.

Despite the relevance that the reconciliation procedure has taken on within the context of policies to reduce the public deficit¹⁰, the heart of the budget process is actually represented by the appropriation procedure¹¹, that is the allocation of legislative expenditure of a non-discretionary nature, which ends up constituting the main part of overall public expenditure. The relevance of appropriations is also justified by Article 1, sec. 9, of the Constitution, which provides that "no money shall be drawn from the Treasury but in Consequence of Appropriations made by Law".

Therefore, according to the relevant constitutional provision, in contrast to the reconciliation process, the appropriation cycle is a necessary element of the budget process. Indeed, the failure to approve appropriations has a major impact on the country, since this unfortunate outcome is binding on the administration, which is unable to dispose of any expenditure.

2.2 *The appropriation process*

A specific focus on the appropriation process will help us to better understand the U.S. budget cycle and crisis situations affecting it.

The rational procedure that concludes a public expenditure decision is known as "the regular order" and begins with a first distribution of resources

¹⁰ A. Schick, *Reconciliation and the Congressional Budget Process*, 1981; R. Keith, B. Heniff Jr., *The Budget Reconciliation Process: House and Senate Procedures*, CRS Report, 2005.

¹¹ S. Streeter, *The Congressional Appropriations Process: An Introduction*, CRS Report, 2008.

among the Appropriations Committees of the House and Senate according to a concurrent resolution (so-called *302(a) allocation*). The committees then make a sub-allocation (*302(b) allocation*) in favour of the twelve sub-committees present in both the House and the Senate. After the proposals of expenditure have been collected from each sub-committee, a set of twelve Regular Appropriation Bills is drawn up, which then follow the ordinary legislative process. In fact, in contrast to the reconciliation process, no special procedure is provided for in relation to appropriation, and hence this fundamental step of the budget process is fatally exposed to the risks of obstructionist strategies.

Debates during discussions of regular appropriations bills is extremely intense. In actual fact, the main decisions have already been taken within the concurrent resolution, which is adopted by an agreement on public spending between the majority and the opposition and (since it is a joint resolution) between the two houses. However, leaving aside considerations concerning the stability of political agreements, it should be noted that parliamentary debate on the common resolution ends with a decision on allocation by function, whereas debate on regular appropriations bills results in the allocation of money by account. The move from an allocation for macro-areas to an allocation for more detailed areas of expenditure risks arousing different political interests and worsening the climate in the House. In this “war”, filibustering of course plays an important role, and the Senate opposition may attempt to reach the start of the new fiscal year without any regular appropriations having been made.

Most of the time, the majority does not have sufficient numbers (60 senators) to approve a cloture motion¹² to break a filibuster – as will be seen below with specific reference to the recent past. Perhaps the only instrument in order to (attempt a) return to a “regular order” is the choice of compacting different regular appropriations bills within one one single (or multiple) omnibus appropriations bill(s). This choice has an important impact on the decision-making process and on Congress’ freedom of debate. Indeed, the combination within one single bill of different regular appropriations bills concerning different matters prevents more detailed debate. This is not to speak of the fact that the omnibus appropriations bill makes it difficult for the President to exercise his veto power which, as is known, cannot be a partial veto.

3. The funding gap and its consequences

The Senate majority does not have many options other than trying to accelerate debate by tabling an omnibus bill (or multiple such bills);

¹² See C. M. Davis, *Invoking Cloture in the Senate*, CRS Report, 2015.

moreover, if it does not have the numbers for a cloture motion, a filibuster can threaten to drag out the proceedings.

The risk is that the October 1 deadline (the start of the new fiscal year) may not be met. From this date, a requirement of legislative coverage for public expenditure applies pursuant to Article 1, sec. 9, of the Constitution.

Indeed, *continuité de la vie nationale* does not permit even a short period without spending coverage according to legislative appropriations; otherwise there would be a risk of public spending being interrupted, and hence a shutdown of administrative activity.

In this respect, a solution can be reached by adopting a provisional budgetary authorisation (a so-called continuing resolution), providing legislative recognition for temporary situations in the interest of a healthy life of the State. This resolution has three essential elements¹³.

The first one is legislative coverage. Temporary financing is only permitted for activities that have already been object of an appropriations act for a previous financial year (or an appropriations bill already under discussion before Congress). In this respect, it must be considered that continuing resolutions are very attractive for those seeking to incorporate non-financial measures, as they are practically certain to be approved.

The second element of an interim resolution is the degree of budget authority associated with it.

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In actual fact, there is no allocation of a precise sum for each account budget. On the contrary, the continuing resolution provides "such sums as are necessary" so as not to interrupt financing, with reference to a "rate for operations" that, until a few years ago, could be defined in a variety of ways, mostly with reference to historical expenditure. Nowadays by contrast, reference is no longer made to historical expenditure, but rather to the President's financial proposals for the new fiscal year.

The third element is the duration of the resolution (and thus of financial coverage). It should be said that these acts are not always genuinely provisional in nature. Continuing resolutions that provide coverage for activities throughout the whole of the following financial year (so called "full-year continuing resolutions") are most frequent.

If Congress chooses not to approve a continuing resolution (or if it fails to do so) without making any definitive or provisional appropriation, no form of discretionary spending whatsoever is permitted, and the government can no longer take any action, and is forced to declare a shutdown of any administrative activities lacking financial coverage.

¹³ See J. White, *The Continuing Resolution: A Crazy Way to Govern?*, Brookings Review, 1988, 30; C. T. Brass, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, CRS Report, 2011; J. Tollestrup, *Continuing Resolutions: Overview of Components and Recent Practices*, CRS Report, 2012.

The constitutional prohibition has been enhanced by the Antideficiency Act of 1982, which attempted to bring an end to a rather loose application of Art. 1. The 1982 Act expressly prohibits – by the threat of criminal sanctions – any federal official or employee from disposing of or even simply authorising obligations or other forms of economic commitments in excess of the funds allocated by legislative act.

Moreover, in order to avoid the rules from being circumvented, the Antideficiency Act adds a prohibition on accepting the offer of voluntary work in order to replace personnel on leave. Such acts are subject to the same criminal penalties as those stipulated for officials or employees who make payments or take on commitments without any legislative appropriation.

Therefore, the failure to approve appropriation leads to a cut in non-discretionary public spending and therefore an interruption of the related federal services, except for "emergencies involving the safety of human life or the protection of property", with any "unnecessary" civil servants being furloughed¹⁴.

Until the 1980s, most federal agencies interpreted the Antideficiency Act flexibly. As matter of fact, they generally continued to provide services and to carry out activities, minimising all non-essential operations and obligations, in the belief that Congress did not intend agencies to shut down. Between 1980 and 1981, the Attorney General Benjamin R. Civiletti argued in two opinions that the Antideficiency Act should be interpreted strictly, also in the light of the constitutional provision that it was intended to implement, so as to require the effective shutdown of any federal service unless «some reasonable and articulable connection [can be established] between the function to be performed and the safety of human life or the protection of property» (U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981). Although it was not universal accepted, Civiletti's thesis been officially adopted. In fact, in 1990, Congress stated that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property" (31 U.S.C. § 1342). On the other hand, OBM Circular No. A-11, which calls on agencies to prepare a

¹⁴ Only the following exceptions apply: Members of Congress; the President of the United States and his trustees; certain federal employees who engage in emergency activities involving the protection of human life or property, or for whom specific exceptions are provided; employees of Congress paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives in cases where the competent authorities of the House consider that the exemption is being invoked. In 1990, Congress clarified that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property" (31 U.S.C. § 1342).

shutdown plan, adopts the narrow interpretation of relevant legislation proposed by Civiletti.

In order to deal with this extraordinary scenario – which is not always entirely unforeseeable – at the beginning of the public budget cycle the Budget Office of the White House issues a Circular No. A-11 calling on federal agencies to prepare a shutdown plan and to submit it to the Budget Office in order to verify its sustainability should it be necessary to implement it.

In particular, the plan must identify the personnel who will remain at work and those who will be furloughed, in addition to any activities to protect human life or property that must be maintained.

Shutdown is definitively a drastic eventuality, which not only represents a moment of institutional friction. It also has a considerable impact on the national economy. It is therefore no surprise that some authors argue that the Antideficiency Act is unconstitutional.

Among them, some argue that "if ... suggestion of the operation of the laws through denial of funding is essentially legislative in effect, any device that permits a single house of Congress to accomplish this result is unconstitutional for violation of the Constitution's provision that the concurrence of both houses is needed for the enactment of legislation"¹⁵. But this argument appears to be rather specious.

Art. 1 of the U.S. Constitution does indeed give legislative power collectively to both houses. Of course, Congress exercises such a power also when it decides not to approve a law: in other words, the exercise of legislative power also has a negative aspect. There is no doubt therefore that, according to Art. 1, the lack of a joint will of the two houses in itself constitutes an exercise of legislative power.

4. Events during the Trump presidency

Since 1981, there have been fifteen shutdowns¹⁶. During more recent times, President Trump had to deal twice with a funding up and ended up presiding over the longest (although not a total) shutdown in American history.

The first crisis occurred during the first year of the Trump presidency: in 2017 concerning the following fiscal year. Trump's party in actual fact held a majority in both the House and the Senate, and for this reason things proceeded well, up to a certain point. He was only able to obtain the common resolution for the budget approved – something that had not been taken for granted in recent years – and even the reconciliation process was successful

¹⁵ A. Hill, *The Shutdowns and the Constitution*, *Pol. Sc. Quarterly*, 2000, 276–277.

¹⁶ On shutdowns during the Obama presidency see: L. Testa, *The President and the «regular disorder» of the Budget process*, in G. F. Ferrari (ed.), *The American Presidency after Barack Obama (2009–2016)*, The Hague, 2017.

(this is the first of the two financial policy procedures following the common resolution).

It should be noted that this was beneficial for the reconciliation process. The relevant standing orders of the Houses provide for a procedure with a fixed timescale, without scope for any filibuster. It is therefore a procedure that protects the measure under discussion against any opposition. Trump used this procedure to propose a controversial tax reform, and the STRS stirred up political debate.

For example, Democrat Senator Ron Wyden spoke of "a shame debate": "There were no public hearings on the specifics of this legislation, and people wonder why the American people oppose it. Republicans have chosen to ignore them. They have chosen to ignore them. What is happening is un-democratic".

At that point, all of the tensions poured into the parallel procedure: the appropriations process. However, here the standing orders did not provide any instrument for preventing a filibuster other than the approval of a cloture motion, for which the Republicans did not have the numbers. Trump therefore attempted to use the nuclear option, as he did with Justice Gorsuch's confirmation; however, the nuclear option is not available in relation to legislative procedures – as the appropriation process is.

Following a first provisional authorisation until January 19, the Democratic opposition forced the administration into a shutdown – the first since 2013. The shutdown lasted until the night between 22 and 23 January, when agreement concerning a continuing resolution was reached, with provisional legislative authorisation until February 8, by which time Congress had approved the definitive appropriation acts.

The following year – in 2018 – things had changed, with the mid-term elections giving the House Democrats a majority.

The common resolution was not approved and there was no reconciliation process. In September, the House and Senate approved five of the twelve regular appropriation acts (with little tensions with the White House); however, it soon became clear that appropriations would not be easy for the others, as the Democrats did not want to accept the full 5.7 billion dollar request to build the infamous Mexican wall.

As early as September, Congress approved a continuing resolution until December 7 – for those administrations not covered by the appropriation acts already approved. On the evening before December 7 the provisional authorisation was extended until December 21.

The Democrats tried to spin the process out until the beginning of the 116th Congress, when they would enjoy the majority in Congress that they had won at the polls. Moreover, Senate Republicans did not have the majority needed to break a filibuster. Thus, on December 21 Trump was forced to declare a shutdown.

Republicans continued to invoke the nation's defence needs against immigration at the Mexican border; on the other hand, the Democrats sought to delay debate on the measures to combat immigration, releasing the country free from the shutdown so as not to harm the economy or the workers involved and – an interesting aspect – so not to damage the nation's image with Russia and "Chinese competitors".

The assertion made by Democrats that Congress performed an "adversarial role" towards the President was also interesting. Democrats House leader Hoyer claimed the role of a "coequal branch of government" for the House, with competence to make legislative revenue choices independently. He argued that: "Article I says we make the policy. We decide what is rational to spend \$5.7 billion on. I can't think that the American people will get it, that their Congress sits supine and says we will only pass something if the President says it is okay".

Democrats knew they could win and wanted to receive credit for ending the shutdown caused by Republican intransigence. On January 14, they presented a new continuing resolution and the Republicans were forced to give in as they did not have a majority in the House, and did not have the numbers in the Senate for a cloture motion. The resolution was passed, with provisional authorisation being granted until February 15. On February 15, the President was forced to sign an omnibus appropriation act, which granted definitive authorisation for the entire administration, but did not allocate the funds for the Mexican wall that had been sought by the White House.

The 2019 shutdown was the longest in the history of the United States even though, if one looks at the data, the damage seemed to be less serious than it had been in other shorter cases. This is because the second shutdown in the Trump era was still only a partial shutdown, since five regular appropriation acts had been approved. Thus, for example, around 400,000 federal employees were furloughed, while during the sixteen-day shutdown with Obama in 2013 the number had been more than the double this figure, at 800,000¹⁷. It is also of course necessary to add a number of other indirect effects: for example, the collection of some fees and fines was affected, sometimes permanently, since some fees are associated with economic activity that did not occur. Moreover, the reduction in economic activity leads to a decrease in the fiscal income. The Congressional Budget Office estimates that the 2019 shutdown made the level of real GDP in the fourth quarter of the year a little less than 0.1 percent lower than it would have been without the shutdown¹⁸.

¹⁷ M. Labonte, B. Momoh, *Economic Effects of the FY2014 Shutdown*, CRS Report, 2015.

¹⁸ Congressional Budget Office, 'The Effects of the Partial Shutdown Ending in January 2019', 2019.

5. Some concluding remarks

The crisis of 2018 and especially of 2019 are merely the tip of the iceberg of a budget process that is always in trouble. Without entering into greater detail, budgetary agreement for 2020 was only reached in 2019, after some continuing resolutions, at the end of December. As of today, no definitive appropriation has been approved for the next financial year. However, on October 1 a continuing resolution was signed for the entire administration, which provides financial authorisation until December 12, although this is somehow normal in an electoral year.

The two consecutive shutdowns hark back to the 1980s, when shutdowns were the annual events. Since the 1990s though, they have been the exception: there was one during Clinton administration in 1996, the longest in history, and one under Obama in 2014. In any case, Trump's second shutdown at 35 days is different from President Carter's shutdowns – the longest of which lasted for 14 days – and especially from President Reagan's ones – which averaged 4 days¹⁹. These events from the Trump presidency confirm the image of an exasperated political debate, which was the main cause of problems within the budget process already under Clinton and Obama.

It is worth noting that, in all of these cases, the reason for the conflict with Congress was a non-economic in a strict sense. The reasons essentially focused on aspects of the President's political agenda, which offered an opportunity to challenge all of the President's actions.

This was the case in 2014 with Obamacare; it also occurred for Trump, first with fiscal reform and then, above all, with the "Mexican wall". All of political tensions that it has not been possible to dissipate elsewhere have poured into the budget process, where Congress can cause trouble for the White House. Moreover, the poor performance of the Trump presidency, which was characterised by major political tensions, therefore came as no surprise. What distinguishes the latest shutdowns from those previous ones was the lack of any cooperation from the White House – but perhaps this will not surprise many.

Especially during the 2019 shutdown, the White House exacerbated the situation in three ways.

First, it did so as a result of the President's behaviour during informal negotiations. From insiders, we know that the President was late, distracted, and constantly threatening, for example, "keeping the government closed for a very long period of time. Months or even years"; according to someone, he said: "I'm proud of doing what I'm doing". And on January 9 he announced that there would be no further negotiations.

¹⁹ For a summary of the previous shutdowns, see J.V. Saturno, *Federal Funding Gaps: A Brief Overview*, CRS Report, 2019.

Secondly, he attempted to mislead Congress by promising an extension of the Deferred Action for Childhood Arrivals in exchange for the border wall, which – at least according to the Democrats – was not real but only nominal.

Thirdly, he threatened declaring a state of national emergency in order to build a wall, which – according to Ackerman and others – would have been both unconstitutional and unlawful.

In general, we remember the poisoned climate that Trump's public statements in those days helped to create. We all remember the exchange between Nancy Pelosi and the President concerning the State of the Union Address. The Speaker sent a letter to President Trump indicating that the House would be unavailable for the Address until the shutdown had ended, and Trump retorted that she would not be allowed use military transport aircraft for certain previously scheduled official visits.

The increase in political tensions between the White House and Congress is not a good sign for the future of the budget process. We are probably heading towards a period in which shutdowns will become an almost annual recurrence again. It is no coincidence that, in January 2019, a bill to provide for continuing appropriations in the event of a lapse in appropriations under the normal appropriations process was tabled in the Senate. The name of the bill was "Stop Shutdown Transferring Unnecessary Pain and Inflicting Damage in the Coming Years Act" – known by its acronym as Stop Stupidity Act. It provides for a sort of automatic form of continuing appropriations, which would in fact transform the U.S. from an assembly-dominated model into a government-dominated model in this field. Discussion of it never really began, and the United States remains the most effective model, from this point of view, characterised by predominance of the assembly over the executive. This was even the case when confronted with a difficult interlocutor of the ilk of President Trump.