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SYMPOSIUM

Controlling Congress: Presidential Influence in Domestic Fiscal Policy

MICHAEL FITTS*
AND ROBERT INMAN**

Over the past twenty years the performance of the United States Congress on budgetary policy has been the subject of increasing criticism. The overall growth in government spending has been profound during this period, driven in large measure by increases in social insurance outlays, domestic program expenditures and tax favors, and interest payments made necessary by prior deficit financing. While certainly some of these increased expenditures may be explained and justified on grounds of allocative efficiency and redistribution, there is programmatic evidence that much of this recent growth in central government domestic outlays may be excessive, reaching beyond the limits of efficient and equitable allocations.¹ The criticisms have been perhaps the most intense concerning expenditures on localized domestic programs and tax favors. These nondefense, nonsocial insurance expenditures—examples include outlays for public infrastructures, agricultural subsidies, corporate loan guarantees, state/local government grants—have risen, in constant 1982 dollars, from \$613 per person in 1970 to \$990 per person in 1988. Similarly, tax expenditures or tax favors, which measure revenue lost due to tax deductions, exemptions, and credits, have shown an increase from \$463 per person in 1970 to \$949 in 1988. As a share of government spending, domestic program spending and tax favors now constitute 43.9% of all federal outlays, up from 40.9% in 1970. While real national income has grown at an annual rate of 2.8% from 1970 to 1988, real domestic program spending and tax favors have grown at an annual rate of 3.4%.²

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1. The literature critically evaluating recent government fiscal policies is extensive, but a good overview with references can be found in JOHN QUIGLEY & DANIEL RUBINFELD, *AMERICAN DOMESTIC PRIORITIES: AN ECONOMIC APPRAISAL* (1985).

2. See Robert Inman & Michael Fitts, *Political Institutions and Fiscal Policy: Evidence from the U.S. Historical Record*, 6 J.L. ECON. & ORGANIZATION 79, 79-80 tbl. 1 (1990). The results in this paper, summarized above, are our best estimates of localized domestic spending. The aggregates we

Why have federal government outlays (in particular, domestic program spending and tax favors) grown so significantly in recent years? In attempting to understand the root causes of this fiscal growth, we must move beyond usual economic explanations based on income growth and consumer preferences to an understanding of the political environment in which these fiscal allocations are made. Scholars writing in the public choice/political economy tradition have focused on the organizational problems of competing interest groups in the public at large as well as the organizational structure of Congress itself.³ The literature on Congress has emphasized the decentralization of that institution into subcommittees and the relative autonomy those committees enjoy in decisionmaking within their jurisdictions.⁴ In responding to the collective action problems of decisionmaking in a multimember legislative body, the committee structure permits Congress to avoid policy chaos and make stable decisions, as well as develop expertise on substantive issues. At the same time, it also appears, according to many writers, to result in a high degree of inefficiency in budgeting decisions.⁵

In this article, we explore the potential role of the President in overcoming inefficiencies in congressional budgeting and in improving the economic performance of Congress. Our interest in the potential influence of the President on fiscal policy grows out of the strong empirical results of our earlier research. These results suggest that influential Presidents throughout most of American history, and regardless of political party, have had statistically significant and quantitatively important effects on the levels of domestic spending and tax favors, typically acting to reduce such outlays.⁶ The work presented here makes an effort to explain exactly how such presidential influence might arise.

In Part I we review how the structure of Congress is both affected by the political forces of special interest politics, and, at the same time, exacerbates many of their negative consequences. We also consider the likely economic performance of Congress, both from an equity and an efficiency perspective; our focus will be on the domestic program budget and the provision of tax favors by Congress. As we argue, and as initial evidence indicates, there are good reasons to suspect the current domestic spending and tax budgets fall

use are likely to over-estimate true localized spending to the extent they include administrative overhead or other truly national public goods. We do not feel this upward bias is serious.

3. The classic work on these organizational incentives, of course, is MANCUR OLSEN, *THE LOGIC OF COLLECTIVE ACTION* (1965). See also RUSSELL HARDIN, *COLLECTIVE ACTION* (1982). For an insightful discussion of the organizational and informational advantages of the President relative to Congress, see Gary Miller, *Abnormal Politics: Possibilities for Presidential Leadership* (1991) (unpublished manuscript, on file with *The Georgetown Law Journal*).

4. See *infra* notes 10-17 and accompanying text.

5. See *infra* notes 18-34 and accompanying text.

6. See Inman & Fitts, *supra* note 2, at 124.

short in terms of both equity and efficiency. In Part II we then explore how the resources of the presidency can be used to overcome some of the negative consequences of a decentralized legislative organization. In this sense the presidency can be compared to other devices that have recently been offered to improve congressional decisionmaking, such as Gramm-Rudman⁷ and legislative commissions.⁸ The institution of the presidency also can be viewed as a potential substitute for more centralized committees in Congress and stronger political parties, two mechanisms which historically served to improve the efficiency of Congress, but which have diminished in importance. In Part III we offer some evidence from the recent fiscal histories of the Carter and Reagan presidencies to illustrate how our analysis might help clarify the nature of presidential influence.

In this article, we do not intend to argue for increased presidential power. Certainly, presidential powers, and individual Presidents, can be associated with a variety of goals, principles, and interests, some of which may be quite negative. We do not, and cannot, address all of these important issues in the analysis or formal political model presented here.⁹ Rather, our only purpose is predictive: to show, using the framework of positive political theory, how existing tools of presidential influence in the legislative arena, often considered by scholars to be quite weak, can be used strategically to reform a decentralized Congress, even when all members might initially resist change. The analysis not only helps explain recent presidential-legislative interactions over fiscal policy, but also shows why and how political patronage and executive discretion, traditionally viewed as a source of government inefficiency, can be important positive elements for fiscal reform. Finally, the article also suggests ways future public executives—be they Presidents, governors, or mayors—might be successful in their efforts to reform the economic performance of their own legislative bodies *and* receive political advantages for doing so!

7. See Edward M. Gramlich, *U.S. Federal Budget Deficits and Gramm-Rudman-Hollings*, 80 AM. ECON. REV. 75 (1990).

8. See PAUL LIGHT, *ARTFUL WORK: THE POLITICS OF SOCIAL SECURITY REFORM* 232 (1985) (positing that where the President and Congress decide to move on a controversial issue, commissions can provide the needed cover allowing them to do so); Hoadley, *Easy Riders: Gramm-Rudman-Hollings and the Legislative Fast Track*, 19 POL. SCI. & POL. 30 (1986); Joe White, *The Continuing Resolution: A Crazy Way to Govern?*, 6 BROOK. L. REV. 28, 29 (1988) (discussing criticisms of the continuing resolution as an appropriate device).

9. For attempts to confront some of these problems, see generally Morris Fiorina, *An Era of Divided Government*, in *DEVELOPMENTS IN AMERICAN POLITICS* (Bruce Cain et al., 1990); Michael Fitts, *Taking Institutions Seriously: Why and How Interdisciplinary Legal Scholars Should Engage In Institutional Analysis* (unpublished manuscript, on file with *The Georgetown Law Journal*) (exploring the disjunction between ideal type institutional analysis and real world performance of legal and political institutions).

I. THE FISCAL PERFORMANCE OF A DECENTRALIZED CONGRESS

A. DECENTRALIZATION IN CONGRESS TODAY

The problems associated with the performance of our current Congress have their roots in a variety of phenomena. Among the external factors that have been cited, and which we do not discuss at length here, are the limited time horizon of the public and its representatives, imperfect information among constituents about the actions of their legislators, campaign and campaign finance rules, and, more generally, voters' collective action problems.¹⁰

While each of these external factors are potentially important, our concern here will be with the role that decentralized authority itself plays as a major source of the difficulty in Congressional decisionmaking. Obviously, the constitutionally mandated structure of Congress is formally decentralized, with 435 representatives in the House, and 100 in the Senate, all elected independently from local districts. That such decentralized legislatures may fail to reach decisions through simple majority rule is well known. Unfortunately, the extra-constitutional structure of Congress—namely, the organization not set forth in the Constitution but critical to its daily operation—may fail not only to overcome the shortcomings of decentralized authority, but may exacerbate them. There are two aspects to this system.

First, the formal committee structure of Congress has changed and decentralized over the years. Many years ago, in the days of House Speakers Thomas Reed and Joseph Cannon (over the period 1889 to 1911), the Speaker was a powerful position. Later, with the decline of the power of the Speaker, the powers of committee chairs were greatly enhanced.¹¹ Today, power has generally moved down to the many subcommittees, substantially enhancing the influence of individual members of Congress, as against the leadership.¹² The formal structure of the House and Senate tends now to

10. As Barry Weingast and William Marshall have written, "rational [voter] ignorance underpins interest group advantage in politics. Because most voters have only a dim awareness of [their representatives' actions, rational ignorance biases political response toward those who do form impressions." Barry Weingast & William Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets*, 96 J. POL. ECON. 132, 136 (1988).

11. See generally RICHARD F. FENNO, JR., *THE POWER OF THE PURSE* (1966) (demonstrating the importance of committee-centered analysis for increasing understanding of Congress); CHARLES STEWART, *BUDGET REFORM POLITICS: THE DESIGN OF THE APPROPRIATIONS PROCESS IN THE HOUSE OF REPRESENTATIVES, 1865-1921*, at 3-53 (1989).

12. See generally RICHARD F. FENNO, JR., *CONGRESSMEN IN COMMITTEES* (1973) (examining how congressional committees differ systematically and with respect to five variables: member goals, environmental constraints, strategic premises, decisionmaking processes, and decisions). With the 1974 and 1980 reforms, the House and Senate attempted to establish a budget process that would centralize power over the committees, but the evidence is that the reforms have not played the expected role. Indeed, President Reagan used the process in his first term to bypass normal budgeting procedures. While it is true the floor became an increasing locus of decisionmaking in the 1980s, and the power of the Rules Committee was enhanced, it is unclear whether this has led,

reflect disproportionately the local constituent interests of their memberships and the public that elects them.

In addition to this institutional decentralization, and undoubtedly related to it, Congress today lacks strong political parties as an alternative, informal centralizing force. There are at least two reasons. First, parties' importance as a key to public voting behavior—as a psychological “anchor” in an uncertain world of political claims—has diminished over the past thirty years.¹³ Not only has the number of registered or self-identified independent voters increased, but even those who are registered or who identify with a particular party tend to vote with their leaders less often than in the past. Second, in addition to party identification, the strength of parties as political organizations with separate influence over members' votes in Congress also appears not to be great, although there has been a resurgence in ideological polarization in party voting in the 1980s. While the lack of significant party identification in the public clearly is one reason for such limited party influence, there are probably other (related) reasons as well—namely, the reduction in party controlled political patronage, the access of individual legislators to the media and publicity,¹⁴ the rise of political action committees (PACs) as sources of candidate funding,¹⁵ and the elimination of party control over the nomination process.¹⁶ Although the relative centralization of power in Congress through party and committee leadership changes over time and issues, today each of these factors tends to enhance the political independence of individual members of Congress.¹⁷

on balance, to significant centralized control. See STEVEN SMITH, *CALL TO ORDER: FLOOR POLITICS IN THE HOUSE AND SENATE* (1989); STANLEY BACH & STEVEN SMITH, *MANAGING UNCERTAINTY IN THE HOUSE OF REPRESENTATIVES: ADAPTION AND INNOVATION IN SPECIAL RULES* (1988).

13. MARTIN WATTENBERG, *THE DECLINE OF AMERICAN POLITICAL PARTIES: 1952-1988* 17-28 (1990) (presenting statistical evidence that party voting and identification declined from 1952 to 1980). Of course, the extent and significance of these changes has become, like the literature on the decline of political parties generally, subject to debate. See BRUCE KEITH ET AL., *THE MYTH OF THE INDEPENDENT VOTER* (1992).

14. See MARTIN WATTENBERG, *THE RISE OF CANDIDATE CENTERED POLITICS* 31-46 (1991).

15. See LARRY SABATO, *PAC POWER: INSIDE THE WORLD OF POLITICAL ACTION COMMITTEES* 1-27 (1984) (presenting numerous statistics showing the growth of PACs in the late 1970s and early 1980s).

16. See generally NELSON W. POLSBY, *THE CONSEQUENCES OF PARTY REFORM* (1983) (analyzing the effect of the presidential nomination process reforms on the political system).

17. Of course, the “party” remains an important factor in many votes, especially those, since the early 1980s, with symbolic or ideological overtones. See DAVID ROHDE, *PARTIES AND LEADERS IN THE POSTMODERN HOUSE* 14 (1991) (presenting an analysis of possible reasons for the resurgence of partisan voting in the 1970s and 1980s). There is also evidence that party caucuses have influence over voting. See G. Cox and M. McCubbins, *Parties and Committees in the U.S. House of Representatives* (1989) (unpublished manuscript, on file with *The Georgetown Law Journal*). It is unclear, however, to what extent the increase in polarized voting during the 1980s was caused by a significant return to party control per se, as distinguished from a change in preferences along party lines, i.e., a more ideologically polarized public and Congress. See Keith Kriebel, *Where's the*

B. DECISIONMAKING IN A DECENTRALIZED CONGRESS

Given the formal decentralization of authority in Congress, and the apparent weakness of parties and the Speaker as means of informal control, how does Congress respond to electoral pressures and interest group influence? The new political theory has shown that policymaking in decentralized, majority rule legislatures should be, absent intervention, inherently uncertain and, perhaps, unstable.¹⁸ One important school of thought argues that, in response to this instability, members will fashion a governing system of committees and subcommittees that institutionalizes a process of reciprocity and deference among members. This idea is described in the formal political theory literature as the "norm of universalism" and more informally known as logrolling or "you scratch my back, and I'll scratch yours."¹⁹ To operationalize such legislative behavior, congressional committees are given extensive control over the individual policy areas under their jurisdiction, and deference is shown by all members to the committees' decisions to bring, or not to bring, legislation to the floor.²⁰

The norm of universalism can be politically beneficial to members of Congress for at least two reasons. First, the expected benefits flowing to a district from being part of a legislature governed by the norm of universalism typically will be higher over the long run than the expected benefits resulting

Party? (1991) (unpublished manuscript, on file with *The Georgetown Law Journal*). More fundamentally, whatever the change over time, parties have markedly less control in Congress today than in the British political system, or in other countries with a strong party tradition. See BRUCE CAIN ET AL., *THE PERSONAL VOTE: CONSTITUENCY SERVICE AND ELECTORAL INDEPENDENCE* 206-11 (1987).

For a general discussion in the legal literature on the influence of parties, see, e.g., Michael A. Fitts, *Can Ignorance Be Bliss? Imperfect Information as a Positive Influence in Political Institutions*, 88 MICH. L. REV. 917 (1990); Michael A. Fitts, *Look Before You Leap: Some Cautionary Notes on Civic Republicanism*, 97 YALE L. J. 1651 (1988); Michael A. Fitts, *The Vices of Virtue: A Political Party Perspective on Civic Virtue Reforms of the Legislative Process*, 136 U. PA. L. REV. 1567 (1988) [hereinafter Fitts, *The Vices of Virtue*]; Jonathan Macey, *The Role of the Democratic and Republican Parties as Organizers of Shadow Interest Groups*, 89 MICH. L. REV. 1 (1990).

18. See generally McKelvey, *Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control*, 16 J. ECON. THEORY 472 (1976) (building on Arrow's theorem to show that changing the agenda-setter may dictate outcome).

19. For an excellent overview of this literature, see Melissa Collie, *The Legislature and Distributive Policy Making in Formal Perspective*, 13 LEGIS. STUD. Q. 427 (1988). For the first formal postulations of the argument, see Barry Weingast, *A Rational Choice Perspective in Congressional Norms*, 23 AM. J. POL. SCI. 245 (1979). For its most careful articulation, see Emerson Niou & Peter Ordeshook, *Universalism in Congress*, AM. J. POL. SCI. 246 (1985).

This literature has its intellectual roots in Lowi's important distinction between distributive (that is, domestic projects and tax favors) and redistributive (that is, social insurance and the structure of tax rates) policies and the possible need to develop separate models of the political process for each class of policies. See Theodore Lowi, *American Business, Public Policy, Case-studies, and Political Theory*, 16 WORLD POL. 677 (1964).

20. The importance of committees and the informal rules governing member behaviors for implementing the "norm of universalism" is argued in Weingast & Marshall, *supra* note 10, at 143-55.

from an unstructured decentralized legislature ruled by a series of random minimum winning coalitions.²¹ As public choice experts have detailed, a multimember majority rule body making decisions involving more than one policy dimension—for example, selecting public projects for each of 435 congressional districts—faces, in the absence of intervention, policy cycling of minimum winning coalitions.²² There is no single, stable majority in decentralized legislatures. Individual legislators and their constituents face uncertain prospects: will they be in or out of any winning coalition? If they are in the winning coalition, the legislator's local constituencies receive net benefits from the adopted policies. If they are out, then their constituencies still pay a share of the total tax costs of the majority's approved policies, but their local projects—even economically efficient ones—are likely to be minimized, if not eliminated. For local constituencies, it is better to have your legislator in than out. But in a decentralized legislature, where there are no organizing structures such as strong political parties that would carry a stable majority on most budgetary issues, there are no stable, minimally winning coalitions. Over the long run, each legislator faces the very real prospect of being excluded from the fifty-one percent majority about half the time.²³

Which legislative environment—universalism or minimum winning coalition—is likely to be more beneficial to legislators and their constituents over time? If local project benefits are large enough to exceed the costs of the average project, then universalism will be preferred.²⁴ The intuition is straightforward. Under minimum winning coalition politics, each district can expect to pay slightly more than half of the average project's cost every legislative session (because slightly more than half of all projects are approved, but all districts share in costs), and each district has slightly better than a fifty-fifty chance of being included in the winning coalition and receiving its full local benefits. Expected net benefits are therefore slightly more than $(.5)(NB)$, where NB equals local benefits minus average project costs. Under universalism, however, all local projects are approved: "You scratch my back, I'll scratch yours." Thus, each district receives its local benefits

21. See Weingast, *supra* note 19, at 252.

22. A good review of these problems is found in DENNIS C. MUELLER, PUBLIC CHOICE II 38 (1989); Robert Inman, *Markets, Government, and the 'New' Political Economy*, in 2 HANDBOOK OF PUBLIC ECONOMICS 647, 663-71 (Alan Auerbach & Martin Feldstein eds., 1987).

23. If all 51% majority, minimum winning coalitions are equally likely, then the chance that a single legislator will be in the majority is $(N + 1)/2N$, where N is the number of legislators in the legislature. See Weingast, *supra* note 19, at 246-49. Thus, a given legislator is "in" or "out" of about one-half of all majorities which form.

24. The implicit assumption here, and below, is that our legislators are not risk takers. Risk takers might well prefer a small, one-time chance at a big win, even when a smaller stream of net benefits is a sure thing over the long-run. In contrast to the typical career legislator who is most concerned about his long-run prospects, a legislator who sees politics as a temporary opportunity might well be such a risk taker.

and pays the average project. Expected benefits become just *NB*. If local benefits are greater than average project costs, then universalism has a higher expected net gain to each congressional district over the long run.²⁵

Second, even when expected local project benefits for their districts are less than, or equal to, average project costs, the norm of universalism can be rationally preferred by legislators and their constituents to minimum coalition politics. In this case, even though universalism costs more than it returns in project benefits, it does “smooth” the flow of net fiscal benefits to the districts. Rather than uncertain and possibly large swings between periods of fiscal gains and losses as legislators move randomly into and out of minimum winning coalitions, universalism gives legislators and their constituents a steady stream of known fiscal outcomes. Indeed, it can be perfectly rational for individual legislators to prefer a constant stream of small net losses to uncertain swings that, though offering some periods of gains, also impose

25. The precise development of these results for the special case where all districts have the same size project can be found in Niou & Ordeshook, *supra* note 19. It is straightforward to generalize their conclusions to variable project sizes.

The focus in the original universalism research on identical projects of fixed size has created some unnecessary confusion in the political science literature as to what the condition of local benefits greater than average project costs really means. Some critics of the universalism theory take this condition to mean that when local benefits exceed average project costs, local projects are economically efficient. They then argue that the norm of universalism cannot be used to explain inefficient pork barrel politics. For a useful summary of this criticism and the several attempts to circumvent it, see Collie, *supra* note 19, at 433-34.

In our extended model with variable project sizes, this criticism does not apply. First, and most importantly, the criticism confuses any positive aggregate surplus (benefits greater than costs) with the maximum possible surplus. Economic efficiency demands the maximum possible surplus. Projects whose aggregate benefits are greater than aggregate costs need not be efficient projects maximizing the difference between aggregate benefits and costs. See *infra* Part II.c.1. Second, once we allow for districts to have different sized projects it is certainly possible for a majority of legislators to prefer universalism, even when their own project benefits minus *own* project costs are negative. What is needed for universalism to be preferred by a legislator is that his own project benefits exceed *average* project costs. Thus, if the distribution of project sizes is skewed toward a majority of very expensive projects leaving a minority of inexpensive projects, universalism can still be the majority's rationally preferred norm. The theory of universalism, once extended to allow for variable project sizes, allows for project inefficiencies in a very standard way; Figure 1 below presents the arguments. See *infra* Part I.c.1.

Variable project sizes also protects the theory of universalism from the arguments of John Ferejohn, Morris Fiorina, and Richard McKelvey. See John Ferejohn et al., *Sophisticated Voting and Agenda Independence in the Distributive Politics Setting*, 31 AM. J. POL. SCI. 169 (1987). While not presented as a critique of universalism, their work shows that minimum winning coalitions are the natural outcome in open agenda legislative settings, provided project sizes are fixed. In fact, they show that there is only one winning minimum coalition likely, and it will be the coalition of those districts with the cheapest projects. *Id.* at 178. Their arguments do not apply when projects are of variable size, however, since in their legislature all districts will have an incentive to reduce their projects so as to be included in the cheapest minimum winning coalition. Only very small projects giving zero net benefits will survive under minimum winning coalition politics. Thus, if anything, the open agenda, minimum winning coalition game presented by Ferejohn, Fiorina, and McKelvey makes universalism even more attractive!

large losses. In effect, universalism serves an insurance function by allowing legislators to protect themselves and their constituents against the political risk that they will be excluded from the narrow, winning coalition. Quite apart from our first argument above, therefore, universalism can be preferred if legislators and their constituents are risk averse, and value smooth, rather than widely variable, streams of net benefits from the public sector.²⁶

These two arguments for universalism are not mutually exclusive, of course, and in fact their two benefits are additive. As noted above, risk averse legislators who have local benefits less than average project costs may prefer universalism because the benefits from fiscal “smoothing” outweigh their average fiscal losses. But note too that with universalism, risk averse legislators who have local project benefits that exceed average project costs also get the added benefit from fiscal smoothing, adding to the attractiveness of universalism.

Finally, and importantly, if the norm of universalism is known to be individually preferred by a majority of legislators, then all members will have an incentive to accept that norm when they conduct their own legislative business. If a majority is going to play universalistically, then there is no incentive for the minority not to go along. No single legislator has an incentive to defect given that defection may only lead to the possible exclusion of their own projects from the universalistic budget.²⁷ In a universalistic Congress then, the operative, informal rule which governs domestic fiscal policymaking becomes: “You accept my local projects, and I’ll accept yours.”

It is the congressional committee structure that has come in many cases to facilitate this informal, universalistic norm of reciprocity between the members of Congress. Early public choice models of Congress envisioned legislators coming together in one omnibus bill covering all relevant legislation.²⁸ However, because most legislation on individual areas is passed piecemeal, and because no legally binding contracting device between legislators can exist outside a constitutional amendment, such explicit deal making is ordinarily impossible. To fill this contracting void, members are thought to cre-

26. This insurance argument requires legislators—or their constituents—to be risk averse. Risk aversion requires a diminishing marginal utility of net gains from fiscal policy. With diminishing marginal utility, large fiscal losses hurt constituents more than equal amounts of fiscal gains benefit them. Because of this insurance function some legislators might either receive a greater benefit from a system of universalism that already provides positive net district benefits, or vote for a system of universalism that provides a smaller, but steady, stream of net fiscal losses.

Of course, where *all* legislators are in a position of receiving net fiscal losses from universalism, the rational thing to do is to avoid these small steady losses altogether. This could be done by prohibiting Congress from budgeting whenever each district’s expected net benefits from fiscal policy are negative. In reality, however, it may be very difficult to enforce such prohibitions.

27. See Niou & Ordeshook, *supra* note 19, at 249-52.

28. See JAMES BUCHANAN & GEORGE TULLOCK, *THE CALCULUS OF CONSENT* 131-45 (1962) (discussing majority voting models and logrolling).

ate informal agreements through the committee structure: a *general* rule of deference to committee choices. This rule ensures reciprocity as each representative's pet project is forwarded to the floor. Committee autonomy is the coin facilitating the informal trade.²⁹ In David Mayhew's famous description of a decentralized Congress, "if a group of planners sat down and tried to design a pair of American national assemblies with the goal of serving members' electoral needs year in and year out, they would be hard pressed to improve on what exists."³⁰

Unfortunately, as we show below, there is a cost to this system: there is no assurance that the projects being pushed by committees promote efficient allocations or redistribution. On the contrary, the incentives within universalism open Congress to strategic behavior by members and their committees to push for too expensive projects, and projects that benefit *only* their own constituents. Given the difference in distribution of benefits flowing from district-specific projects versus national programmatic legislation, which is more likely to represent legislative collective goods, legislators have an incentive to emphasize the former in their committee work and attempt to free ride on their colleagues' efforts for the latter.³¹ The end result may be an economically inefficient and distributionally regressive domestic budget.

Certainly, the model of congressional behavior outlined here is stylized, as all models must be, and does not incorporate any role for ideological or civically virtuous conduct or for party or committee leadership.³² It does cap-

29. For the details of the argument, see Weingast & Marshall, *supra* note 10, at 143-48. Of course, this is not the only possible function for congressional committees. The same institutional structures can serve the ends of minimum winning coalitions too. See FENNO, *supra* note 12, at 81-138 (describing individual Appropriations Committee members' expectations and the structure for decisionmaking); STEWART, *supra* note 11, at 3-52 (describing how committees may play a unification role for passing legislation).

30. DAVID A. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 81-82 (1974).

31. See generally MORRIS FIORINA, CONGRESS: KEYSTONE OF THE WASHINGTON ESTABLISHMENT 58-63 (1989); MAYHEW, *supra* note 30. Similarly, in monitoring this system, constituents have more of an incentive to evaluate their representatives based on their individual work for the district (particularly, localized benefits such as pork barrel legislation and constituency servicing), and less on any of the broad programmatic legislative activity that is commonly associated by lawyers with the constitutional role of Congress. The responsibility for the broad programmatic activities that cut across district lines is more obscure in a multimember body. A universalistic system is viewed as successful, it should be emphasized, because neither representatives nor constituents have an individual incentive once the process is begun to respond in their individual capacity to the high cost of those goods and services—a cost that is due in part to the necessary support this system demands for the (relatively) inefficient projects pushed by other representatives who are part of the informal deal. The arrangement is supposedly an individually rational response to the collective action problems of group representation.

32. Obviously, these wider values may play an important role in political decisionmaking, but so do the constituent motives we explore here. Determining which incentives dominate representative behavior in particular cases can be resolved only empirically. See, e.g., John Hird, *The Political Economy of Pork: Project Selection and the U.S. Army Corps of Engineers*, 85 AM. POL. SCI. REV. 429 (1991) (showing ideological measures of representatives' preferences had no effect on the receipt

ture, however, some, perhaps much, of what drives Congress on many domestic fiscal policy issues.³³ Moreover, it correctly focuses attention on the structure of Congress and its potentially negative impact on legislation. This is and should be of concern to all, regardless of political perspective.

C. EVALUATING THE PERFORMANCE OF A DECENTRALIZED CONGRESS

As discussed above, the fiscal consequences of a decentralized Congress acting under a norm of universalism are problematic at best. While this is not the place to undertake an extended technical and theoretical discussion of the likely consequences of a system of universalism, any model of reform needs to be understood in light of the important policy problems with this process. Therefore, before presenting our model, this section reviews the evidence that universalistic domestic budgets are economically inefficient. Further, we suggest such budgets are unlikely to do much to equalize the allocation of societal resources; if anything, the evidence suggests that recent universalistic Congresses have made our tax code less progressive, not more. Finally, standing perhaps as a compensating benefit, universalistic Congresses do appear to produce greater political equality between representatives in Congress. We are doubtful, however, that such equality in Congress does much to enhance the more fundamental political values of checking tyranny or encouraging diversity of views. We consider each of these points in turn.

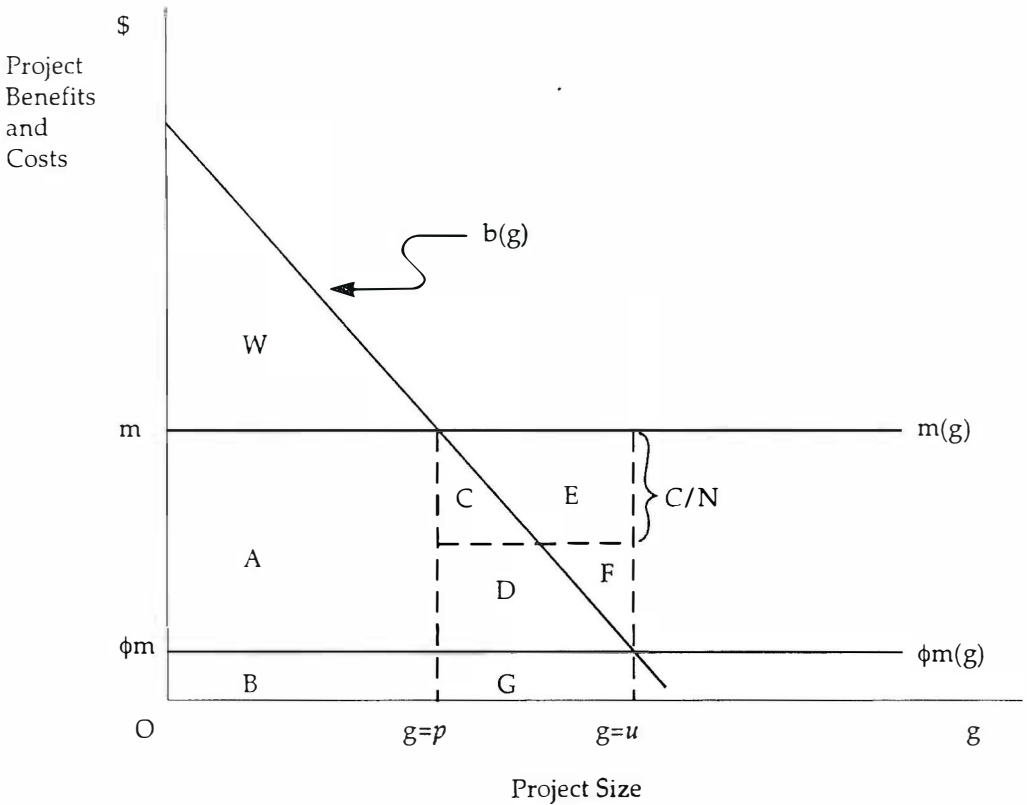
1. Fiscal Efficiency

The efficiency consequences of universalism and its institutions can be significant. The incentives to overuse the decentralized budgetary system can be shown both on an abstract level and empirically. Figure 1 illustrates the likely outcome for fiscal policymaking when public budgets are divisible across legislative districts and fiscal policy is decided under a norm of universalism. The downward sloping schedule $b(g)$ in Figure 1 measures the marginal benefits of local projects g to constituents in a typical legislative district (e.g., dams, military bases, urban grants, agricultural subsidies, tax

or size of federal water project allocations); Joseph P. Kalt & Mark A. Zupan, *Capture and Ideology in the Economic Theory of Politics*, 74 AM. ECON. REV. 279 (1984); Robert Inman, *The Political Economy of TRA '86*, (1992) (unpublished manuscript, on file with *The Georgetown Law Journal*) (showing the ideological inclinations of legislators matter when defining the progressivity of the tax code but that constituent motives largely determine which universalistic tax loopholes are to be closed); John E. Jackson & John W. Kinder, *Ideology, Interest Group Scores, and Legislative Votes* (1990) (unpublished manuscript, on file with *The Georgetown Law Journal*).

33. See Collie *supra* note 19, at 446-49; Robert Inman, *Federal Assistance and Local Services in the United States: The Evolution of a New Federalist Fiscal Order*, in *FISCAL FEDERALISM: QUANTITATIVE STUDIES* 33, 56-67 (Harvey Rosen ed., 1988) (presenting economic model showing how individual representatives have an incentive to bring federal spending to their district, even if inefficient for the country as a whole); Inman, *supra* note 32.

FIGURE 1
BUDGETING WITHIN A DECENTRALIZED LEGISLATURE



incentives). The horizontal curve at $m = m(g)$ measures the constant marginal social costs of providing g in that district. Also shown in Figure 1 is the district's own tax share of these marginal costs, denoted by the lower line, ϕm . The district tax share ϕ is typically a small fraction, perhaps as low as $1/N$, when N is the number of congressional districts and citizens share the burden of government spending roughly proportionally.

Assuming local projects have only local benefits, the socially efficient provision of such projects to the district will be p in Figure 1, where marginal benefits equal full marginal costs: $b(g) = m(g)$. Under the norm of universalism, however, local projects totalling size u will typically be selected. At level u , marginal benefits equal the *district's* marginal costs, ϕm : $b(g) = \phi m(g)$. Since under universalism all districts defer to each others' individually chosen project sizes—"you approve my projects, and I'll approve yours"—the final federal project budget will be simply the sum of all spending provided in each district, that is, $\sum mu$. Constituents in each district must now pay their share of the total tax costs of the project budget. For a typical district which pays (approximately) $1/N$ of all taxes this equals $1/N$ of the

Σmu budget or approximately $m\bar{u}$; \bar{u} is the average sized project ($\bar{u} = \Sigma u/N$).

The net economic benefits to each district under the norm of universalism equals district benefits minus district taxes. For the average district in Figure 1 (that is, $\bar{u} = u$) this equals the area under the Figure's benefit curve (or area [W + A + B + C + D + G]) minus the area under the Figure's cost curve (or area [A + B + C + D + E + F + G]). Net benefits for this average district are therefore measured by the area [W - (E + F)]. While net benefits in Figure 1 are positive—[W - (E + F)] > 0—as drawn, they are smaller than what could be achieved (area W) were each district to submit its efficient project of size p . The difference in net benefits between the efficient (p) and inefficient (u) project budgets—measured here by the area [E + F] for the average district in Figure 1—is defined as the excess burden of the budget's overprovision of domestic projects.

Thus, decentralized congressional budgets fashioned under a norm of universalism should dictate inefficiently large projects of size u in every district, an outcome that the recent empirical evidence seems to confirm.³⁴

2. Fiscal Equity

That congressional universalism would lead to economic inefficiencies is, on reflection, quite logical, since universalism, like all cost sharing schemes, creates incentives to over utilize. What is perhaps surprising, however, is that universalistic cost sharing among all districts is unlikely to lead to real income redistribution.

As noted above, universalism seeks to ensure that no individual legislators or geographically based interest groups are excluded from any final winning coalition. Although there are clear inefficiencies resulting from this process, it could be argued that the norm of universalism might be accepted by legislators *ex ante* because of its more egalitarian distributional effects.³⁵ From this argument we might conclude the economic inefficiencies of universalism are the socially agreed upon cost for greater economic equality.

On closer analysis, however, it should be clear that the inefficiencies of universalism described above cannot be justified on the basis of income redistribution. There are several reasons that universalism is not likely to be progressive as compared to its most likely alternatives.³⁶ First, as a logical

34. See Inman, *supra* note 33, at 68; Leonard Shabman & G. Edward Dickey, *Federal Financial Responsibility for Coastal Port Development*, 6 POL. STUD. REV. 358 (1986); Hird, *supra* note 32, at 446, tbl. 8, (estimating a \$3.58 billion inefficiency from congressional water project selection).

35. See JOHN RAWLS, A THEORY OF JUSTICE 183-92 (1971).

36. A progressive fiscal system is defined as one whose taxes as a percent of family income rise as income rises and/or whose expenditure benefits as a percent of family income decline as income rises. Such a system is likely to lead to a more equal distribution of societal resources. A proportional fiscal system is defined as one whose taxes and benefits are a constant fraction of family

matter, it is important to recognize that universalism only serves to ensure relative equality among political districts in the distribution of political resources, not relative equality among income groups. As noted above, universalism in its pure form offers each political district its own equal share of political resources, but how those resources are distributed within districts among income groups is left open.

Of course, one might hope that funds, once local, would then be distributed on a progressive basis across income groups. But there is nothing in the structure of universalism that leads to such a prediction. Indeed, to the extent that local governments make the ultimate decisions about how the government largesse is distributed within their districts, there are competitive reasons to believe they will be forced to target those resources to wealthier residents, who are disproportionately more mobile and bring more economic resources to the district. Dispersed competitive organizations³⁷ face serious problems in redistributing income, at least over the long run.³⁸

Nor is it likely, as a second point, that a norm of universalism would necessarily lead to greater progressivity at the point when federal tax rates are (initially) being formulated. The argument that a norm of universalism might further federal tax progressivity presumes that a more equal division of political resources is inherent in the norm. Further, it assumes this increased political equality must undo common law inequalities in initial incomes and lead to agreement on a more equal distribution of social resources, namely, a more progressive federal tax code. As discussed above, however, a universalistic tax agreement—assuming it could be achieved—would only equalize the incidence of taxes between districts, not necessarily between individuals.³⁹

Finally, and more fundamentally, there is a practical difficulty in even specifying a universalistic tax norm which might govern the formulation of overall tax rates. Even if a universalistic agreement were somehow to be attempted between voters, rather than the representatives of districts, voters who know their “common law incomes” might find it impossible to reach

income. Finally, a regressive fiscal system is defined as one whose taxes as a percent of family income fall as income rises and/or whose expenditure benefits as a percent of family income rise as income rises. A regressive fiscal system is likely to lead to a less equal distribution of societal resources.

37. Dispersed competitive organizations are nonhierarchical, competitive organizational structures.

38. See Richard Briffault, *Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 420 (1990) (arguing that economic theory ignores interpersonal inequality of mobility, producing a theory biased in favor of business and the affluent); Robert Inman & Daniel L. Rubinfeld, *The Judicial Pursuit of Local Fiscal Equality*, 92 HARV. L. REV. 1663, 1675 (1979) (arguing that judicial attempts to reform local government financing are undercut by substantial income variations and families' abilities to relocate).

39. Inman & Fitts, *supra* note 2, at 83-92.

consensus. The formulation of an initial structure of tax rates is fundamentally a zero sum game, with some participants necessarily worse off as the result of any agreement, as compared to their preexisting property and distributional rights. This conflict creates the classic problem of cycling and stalemate in a dispersed political system, and makes it more likely that government will leave common law distributions in effect. Thus, paradoxically, if the relatively poor attempt to make use of their new, greater leverage in the voting market,⁴⁰ cycling and stalemate will tend to retard redistribution. The ultimate progressivity of a system dependent on the adoption of universalistic norms for government action is therefore questionable.⁴¹

In light of these effects, the empirical evidence suggests that geographically decentralized political structures in general, and universalistic type agreements in particular, do not necessarily redistribute resources from the rich to the poor. Rather, as the word suggests, universalistic agreements tend merely to distribute resources between broad geographically based constituent interest groups. In particular, studies of specific federal programs have shown no real redistribution resulting from universalistic agreements covering water projects and federal grant programs,⁴² food stamps,⁴³ or tax loopholes generally.⁴⁴ As John Ferejohn notes at the end of his study of redistribution in a decentralized Congress:

[T]he overall distributions of income and wealth are not much affected by the mechanisms of redistribution employed in American politics . . . [because] . . . coalitions must be formed in the context of a political institution that divides its workload among committees and subcommittees of specialists In this setting the three general methods that could be used to develop supporting coalitions in Congress—building a broad clientele through program benefits, logrolling, and appealing to shared partisan or ideological values—do not offer much possibility of creating stable political

40. Herbert Hovenkamp, *Legislation, Well-Being, and Public Choice*, 57 U. CHI. L. REV. 63, 108-15 (1990).

41. In addition to the structural reasons noted in the text, universalism may also retard greater progressivity for what economists would probably categorize as a transaction cost or focal point effect. Members of a dispersed legislative body organized according to a geographically based universalistic norm will tend to find it more difficult to organize or focus on nongeographic-based issues and divisions—specifically, those distributional issues that divide the rich and poor. These broad issues not only necessitate the formation of entirely new cross-cutting coalitions involving larger but more diffuse groups, but they may also undermine the norm of universalism because no universalistic distributional agreement is possible when groups are competing over a set amount of resources.

42. Hird, *supra* note 32; Inman, *supra* note 33, at 68.

43. John Ferejohn, *Logrolling in an Institutional Context: A Case Study of Food Stamp Legislation*, in CONGRESS AND POLICY CHANGE 223, 250-52 (Gerald Wright et al. eds., 1986).

44. Inman & Fitts, *supra* note 2.

support for effective redistributive programs.⁴⁵

3. Political Equality

While more equal distribution of federal funds to districts may not further economic redistribution of resources among economic classes, or improve allocative efficiency, it does appear to produce, at least at first blush, greater political equality among representatives in Congress. What types of social values might this protect? Though there are two that require discussion, neither, in our view, serves to justify the current system of decentralized decisionmaking, especially given the potentially negative distributional and efficiency effects outlined above.

First, like the standard rationale put forward for checks and balances in our political system, universalism might be viewed as a means for avoiding political tyranny—a future Adolf Hitler.⁴⁶ To make this type of assertion, the alternative system supplanted by universalism would need to be quite extreme political centralization. In other words, there must be a realistic possibility of tyranny in our political system of checks and balances.

Apart from its possible protection against tyranny, universalism might also further the separate and independent value of political diversity—namely, increasing the power of diverse social and ethnic communities as their representatives become part of any universalistic deals. Diversity, as used in this sense, refers to a political system that offers the public a variety of social communities and ideals from which to choose, beyond what they currently prefer. Because today's public may not appreciate the need to retain viewpoints that it will only come to understand and accept in the future, it might be argued, standard efficiency criteria based on current preferences (even preferences about the value of diversity) should not govern decisionmaking, even under a traditional economic analysis.⁴⁷ Under this reasoning only the future can determine whether diversity vindicates preferences. From this perspective, we might want to provide some interest groups with even greater power than they have under our current system, and, reciprocally, less influence for at least some more majoritarian and diffuse interests.

While we too embrace the value of political equality and the need to control tyranny and foster diversity, these important values do not appear deci-

45. John Ferejohn, *Congress and Redistribution*, in *MAKING ECONOMIC POLICY IN CONGRESS* 151 (Alan Schick ed., 1983).

46. Some economists might consider tyranny as a variant on the distributional issue, in the sense that political tyranny may ultimately lead to regressive economic policies in favor of the ruling elite. We believe, however, that it should be treated separately as a first order issue of political equality.

47. See DEREK PARFIT, *REASONS AND PERSONS* 219-43 (1984); Mark Kelman, *Choice and Utility*, 1979 *Wis. L. REV.* 769, 779 (arguing that it is illogical to say that what one chooses necessarily makes one better off).

sive with respect to the policy issues under review here, namely, controlling universalism in congressional budgeting decisions. First, the issues of tyranny and diversity do not present themselves as directly in the budgetary context as they do in other areas of governmental policy. For the most part, such values of political equality tend not to be amenable to, and thus are often not furthered by, a norm of equal geographic influence such as universalism in the budgetary process; instead, they more often arise in the passage of substantive law implementing specific diversity goals. In particular, the current system of universalism in budgeting does not really further racial and ethnic diversity in the sense commonly used, nor does it prove to be a very important factor in preventing government tyranny of the type associated with episodes such as Watergate or Irangate, let alone a future racist dictator. Indeed, with respect to political tyranny, not only might a legislative body acting under a universalistic norm tend not to confront potential threats of executive tyranny, but there are other structural devices, such as strong political parties or the judiciary, that would prevent tyranny more directly.

Second, as a general matter, our political system already provides many protections for narrower groups, either in the form of checks and balances, separation of powers, or direct judicial intervention. Because such groups may also enjoy numerous collective action advantages in the private organizational process, our current political system seems to be too heavily influenced by many narrow groups, that is, undermined by a tyranny of the minority.⁴⁸ Indeed, our own earlier writing has attempted to give some measure of the efficiency loss, in some contexts, predicated on a utilitarian justification for such decentralization.⁴⁹ While there are individual instances where diverse interests should be afforded greater influence based on normative criteria which our legal culture would easily accept (tyranny of the majority can and does exist in many particular contexts), as a systemic matter it is unclear that the influence of such groups should be *generally* enhanced within Congress, and few, if any, scholars currently argue that the power of such groups should be strengthened across the board.

Finally, the system of universalism creates incentives for actors to avoid conflict, and in this sense can be viewed as inherently conservative. As we noted above, one of the asserted benefits of universalism is that it avoids conflict by equalizing the distribution of resources among relevant political

48. See generally Bruce A. Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713 (1984) (*Carolene Products* approach to judicial interpretation in the political process, intended to protect minority rights, is outdated because it focuses on minorities who have gained political bargaining power); Einer Elhauge, *Does Interest Group Theory Justify More Intrusive Judicial Review*, 101 YALE L.J. 31 (1991) (surveying literature proposing change in judicial review based on interest group theory).

49. Inman & Fitts, *supra* note 2, at 83-92.

actors and granting each group internal control over the distribution of those resources within their relevant political domains. There are advantages in avoiding conflict, but universalism elevates this goal into a general system of policymaking within government. In effect, it gives locally elected representatives and their supporters an unchallenged property right to control the allocation of public dollars to their districts. In those circumstances in which government needs to respond with bold new initiatives, or to redistribute resources from the rich to the poor, a Congress acting under a norm of universalism surely would not offer the quickest and best response.

4. Consent

Finally, some might suggest universalism is justified merely on the grounds of consent: our representatives have voted for it. Whatever its distributional or allocative effects, our representatives, according to this reasoning, must have concluded the process is socially beneficial.

The value of universalism cannot be presumed from its mere existence, however. There is clearly a great deal of disquiet in the public and Congress itself over the political process we have described. While voters accept the behavior of their individual representatives, they do not necessarily endorse the overall system of congressional decisionmaking. In effect, universalism may represent an individually, but not socially, rational response to the needs of legislative decisionmaking. For this reason there have been numerous attempts over the past few years to create institutions to eliminate or overcome universalism in particular contexts, with occasional success.⁵⁰ Indeed, we envision ourselves as contributing to this literature and effort.

To summarize, universalism, at least in the form described here, does not appear to be a very attractive decisionmaking process. As a general matter it has negative efficiency consequences and no clear distributional advantages. Moreover, it is necessary neither to the pursuit of diverse policy viewpoints, nor to the avoidance of political tyranny. And to the extent we believe more needs to be done in our current system to pursue these latter goals, there are other methods for achieving them.

This analysis leads inevitably to the next question: what mechanisms exist for overcoming universalism in Congress? Political institutions that centralize political authority, and improve the contracting mechanisms in Congress, appear to provide the clearest avenue for productive reform. As noted above, however, the two entities that historically served this function, centralized committees in Congress and political parties, appear to have diminished in

50. See *supra* notes 7-8.

importance.⁵¹ In this paper, therefore, we turn to the potential role of the President, the one formally centralized institution of governance, as a possible source for alleviating some of the negative effects of a universalistic Congress.

In the analysis that follows, we first examine the resources and tactics a President might employ to reform domestic fiscal decisionmaking in Congress. While the model we develop is, like all models, an ideal type, we believe it captures and isolates much of what is going on in presidential influence in this context. Using our formal analysis, we then show how President Reagan did, and President Carter did not, follow our proposed strategies for influencing congressional decisionmaking. Despite their similar goals for budgetary reform, only President Reagan was able to make a significant step toward constraining the universalistic fiscal pressures within our currently decentralized Congress.

II. THE PRESIDENCY AND FISCAL POLICY: WHERE'S THE INFLUENCE?

The existing literature on the formal powers of the Presidency suggest that the office should be inherently weak in legislative matters as compared to the constitutional powers granted to the Congress.⁵² The new positive political theory has demonstrated, and recent empirical evidence seems to confirm, that the President's one formal, constitutional tool of influence—the veto—is of limited use when members of Congress have clearly established policy preferences.⁵³ Only when the President's own policy preferences lie "close enough" to the prior and established preferences of one-third of the members

51. See *supra* notes 12-18 and accompanying text. See generally NORMAN J. ORNSTEIN, CONGRESS IN CHANGE (1975) (describing changes in Congress, institutionally and generally).

52. The President's only significant formal power is the veto. U.S. CONST. art. I, § 7. Beyond this, the President's formal authority is limited to her right to convene and adjourn both houses, and to recommend legislation. *Id.* art. II, § 3. For a summary of the arguments and evidence on presidential weakness in legislative affairs, see JON BOND & RICHARD FLEISHER, THE PRESIDENT IN THE LEGISLATIVE ARENA (1990).

53. David Schap presents perhaps the most complete treatment of the standard public choice analysis of presidential veto authority. See David Schap, *In Search of Efficacious Veto Authority*, 58 PUB. CHOICE 247 (1988). This analysis takes the preference positions of the legislature and the President as given, and shows that: (1) presidential influence is limited by the congruence of presidential preferences with those of a potential veto support group in Congress; (2) a forward-looking legislature will always force the President to near indifference between the legislative alternative and the current status quo (or reversion); and, (3) while there are veto threats, no veto actually occurs. The current formal theory seems to argue for an impotent executive.

Recent empirical analysis finds that the mere availability of the veto has little effect on the ability of executives to control spending, but in certain circumstances—namely, an item veto with a veto-sustaining coalition—the veto can be effective. See Douglas Holtz-Eakin, *The Line Item Veto and Public Sector Budgets*, 36 J. OF PUB. ECON. 269, 289-90 (1988). Importantly, the effect is always to reduce government spending and taxation—results consistent with our findings and model. See generally Inman & Fitts, *supra* note 2.

of Congress, and she is willing to compromise, can she expect to have much influence. Unfortunately, if congressional preferences place the President and most members of Congress at opposite ends of the policy spectrum—as is likely when Congress budgets under the norm of universalism—then the formal veto by itself is not likely to have much, if any, effect on final budget outcomes.

Despite the limitations on formal veto powers suggested in this literature, however, Presidents do appear to have informal influence over Congress that can change the design of fiscal policy. Roosevelt's introduction of social insurance, the Kennedy-Johnson Administrations' successful passage of health insurance and the war on poverty, and Reagan's major reforms of domestic spending and taxes are each possible examples of presidential impact on fiscal policy. What informal sources of influence might Presidents draw upon that explain these and other successes? While the President's leadership of the party structure and so-called coattail effect on the election of congressional candidates may have declined,⁵⁴ some believe these party factors may still give the President an ability to attract support from congressional party leaders and membership on the margin.⁵⁵ In addition, the President's access to the media,⁵⁶ direction of executive branch appointments and decisions,⁵⁷ control over the political and public agenda,⁵⁸ personal popularity,⁵⁹ and intangible leadership skills⁶⁰ can be a source of influence over Congress. Using these devices, Presidents can be "less or more adroit in exploiting the opportunities or overcoming the adversities afforded by the times in which they served."⁶¹

Both of these perspectives, one emphasizing the President's formal powers and the other focusing on informal resources, have merit. What is needed is a theory of Presidential influence which attempts to combine the insights of both literatures, showing how the formal power of the veto can be combined

54. See JEROME CLUBB ET. AL., *PARTISAN REALIGNMENT: VOTERS, PARTIES, AND GOVERNMENT IN AMERICAN HISTORY* 55-61 (1980).

55. See generally MARK PETERSON, *LEGISLATING TOGETHER* 131 (1990).

56. See generally SAMUEL KERNELL, *GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP* (1986).

57. See PETERSON, *supra* note 55, at 87-89.

58. See JOHN KINGDON, *AGENDA ALTERNATIVES AND PUBLIC POLICIES* 25-28 (1984).

59. See Terry Sullivan, *Presidential Leadership in Congress: Securing Commitments*, in *CONGRESS: STRUCTURE AND POLICY* 286, 299-305 (Matthew McCubbins & Terry Sullivan eds., 1987); John Woolley, *Institutions, the Election Cycle, and the Presidential Veto*, 35 *AM. J. POL. SCI.* 279, 299-300 (1991); see generally Douglas Rivers and Nancy Rose, *Passing the President's Program: Public Opinion and Presidential Influence in Congress*, 29 *AM. J. POL. SCI.* 183 (1985).

60. See RICHARD NEUSTADT, *PRESIDENTIAL POWER AND THE MODERN PRESIDENTS* (1990).

61. PETERSON, *supra* note 55, at 31. See also Terry Sullivan, *Headcounts, Expectations, and Presidential Coalitions in Congress*, 32 *AM. J. POL. SCI.* 67 (1988); Terry Sullivan, *The Bank Account Presidency: A New Measure and Evidence on the Temporal Path of Presidential Influence*, 35 *AM. J. POL. SCI.* 67 (1991).

with informal congressional and electoral-based resources to give the President the power to lead policy reforms. This will be our task here: to offer a theory of the President's potential influence over domestic fiscal policies.

Part II.A. shows how informal presidential resources might be used to fashion presidential coalitions from initially reluctant legislators. Part II.B then illustrates how the influence of these informal coalitions can be leveraged through the formal powers of the presidential veto to induce even major fiscal reforms. In other words, informal presidential resources plus the executive's formal veto powers can be combined to coax welfare-improving fiscal policies from inefficient legislatures. At the right moment and for the right reasons, the President does have influence.⁶²

A. PRESIDENTIAL RESOURCES AND FORMING COALITIONS

The dilemma facing a contemporary President seeking to affect fiscal policy in a decentralized, universalistic Congress is that the President has no natural allies. Each member of Congress is assumed to pursue the specific, special interests of his or her constituency, which, when aggregated, give us the universalistic and economically inefficient budgets illustrated by Figure 1.⁶³ If the President should find an electoral mandate in an agenda that seeks to control these fiscal inefficiencies, that agenda would call for cuts in federal government spending from Figure 1's congressionally chosen level of u dollars per district to the presidentially preferred level of p dollars per district. In this electoral environment, however, there is no obvious room to compromise between these extremes of u and p and no natural veto coalition upon which the President may call to force a new policy agenda. The universalistic Congress spends too much on localized projects and taxes insufficiently and inequitably. The President can criticize and point a finger, but without some support in Congress itself, she can do nothing.

If a presidentially led policy change in a universalistic Congress is to occur, therefore, the President must bring to the legislative arena new policy resources that she, and she alone, controls. As we show below, with new resources the President may be able to fashion a reform coalition within Congress for improved fiscal policy. At least three sources of presidential resources might be imagined.

First, and perhaps the most often mentioned resource, is the coattail effect of popular Presidents. Despite the decline of party identification among the United States public, reducing the President's automatic coattail effect on members of her party, Presidents still have the ability to offer benefits to

62. The discussion that follows is an informal summary of the arguments presented in detail in Robert Inman & Michael Fitts, *Executive Influence Within Decentralized Legislatures: On Making Better Fiscal Policies* (1992) (unpublished manuscript, on file with *The Georgetown Law Journal*).

63. See *supra* Part I.C.1.

particular representatives. Such benefits include giving public credit for their individual assistance on major legislation, campaign appearances, and focusing media attention and positive exposure for selected representatives.⁶⁴

Constitutionally guaranteed and congressionally granted executive powers provide two additional sources of presidential resources. First, the President has agenda influence over nonfiscal policies of concern to congressional members—e.g., the power to make judicial appointments—that permits the President to “tilt” toward key members on social issues in exchange for support for the President’s fiscal agenda.⁶⁵ In addition, the executive branch has control over the implementation of congressional policies; coupled with the inability of Congress to fully specify an executive action for all contingencies, this leads to some executive discretion over the allocation of budget dollars, government contracts, and the enforcement of economic and tax regulations across members’ constituencies.⁶⁶

Given these resources and the potential for reform, the President may allocate her scarce presidential resources⁶⁷ to either of two “venues” of presiden-

64. See GEORGE EDWARDS, *AT THE MARGIN: PRESIDENTIAL LEADERSHIP IN CONGRESS* 219 (1989); Sullivan, *supra* note 59, at 299-305.

65. This is the trade of social policy for fiscal policy. To build their conservative coalitions in Congress on fiscal affairs, Presidents Reagan and Bush (Bush in particular) may have used judicial appointments favoring the conservative social agenda.

66. See D. RODERICK KIEWIET AND MATTHEW MCCUBBINS, *THE LOGIC OF DELEGATION: CONGRESSIONAL PARTIES AND THE APPROPRIATIONS PROCESS* 22-38 (1991). For a recent example of the President using executive discretion to influence political events, see Robin Toner, *Warming Up for the Primary*, N.Y. TIMES, Dec. 14, 1991, at A8 (comments of Nackey Loeb, publisher of the *Manchester Union Leader*: “Call it coincidence but Washington is suddenly bestowing financial benefits on our beleagued state.”).

While the new positive political theory has presented persuasive evidence that Congress does hold the executive on at least a partial leash through committee monitoring of agency decisions, even the strongest proponents of the congressional control theory must admit to some executive discretion. See generally Jerry Mashaw, *Explaining Administrative Process: Normative, Positive, and Critical Stories of Legal Development*, 6 J.L. ECON. & ORG. 267 (1990); Glen Robinson, *Commentary on “Administrative Arrangements and the Political Control of Agencies”*: *Political Uses of Structure and Process*, 75 VA. L. REV. 483 (1989). Generally, it has been shown that congressional oversight is itself a scarce resource, and not all presidential actions can be monitored. Further, Congressional oversight is backward looking, allowing the President to take preemptive actions that Congress may not be able to undo.

Finally, Congress might actually desire discretionary presidential actions—and allocate the resources necessary to make them happen—precisely because those actions hold the potential to make all the members’ constituencies better off.

67. In the discussion that follows we shall find it convenient to assume all presidential resources can be measured in dollars. Presidential control over fiscal allocations and regulatory rulings provide direct economic benefits to favored districts and can easily be valued in dollar terms. The dollar value of a presidential visit at election time (coattail resources), or judicial appointments likely to generate preferred decisions on social issues, are not so obvious. Nonetheless, representatives do find a personal metric that allows them to make choices between economic benefits and political visits or “right-thinking” judicial appointments, and we assume the President knows that metric. Presidential resources can, therefore, be expressed as the sum of all economic benefits under

tial policymaking: to the arena in which the President allocates resources directly to her national constituency, or second, to the congressional setting in which the President seeks to fashion a support coalition through which to facilitate her own policy agenda. Each allocation of government program policies is assumed to enhance her reelection prospects or, if the President is in her second term, the prospects of her party's chosen successor.⁶⁸

Of course, allocations to the two spheres of Presidential influence are not perfect substitutes for each other. While the President is assumed to be able to claim full credit for all resource dollars given directly by her to voters, credit for resources allocated to a process of congressional policy reforms will often have to be shared with congressional members, particularly those in any presidential reform coalition.⁶⁹ At first blush, this would seem to create a natural bias against the use of presidential resources in the congressional arena, especially if the substitution might lead to a less efficient use of government resources. However, as we will show, those resources can be leveraged through congressional reform to yield a positive return in constituent benefits which exceeds the original presidential allocation.

How can the President build a reform coalition within a universalistic Congress, and what are the political returns to such a process? Superficially, building a reform coalition would seem easy, since everyone appears likely to gain: the President, *all* members of Congress, and ultimately their constituencies. Figure 1 drawn for a typical congressional district illustrates the argument. As argued in Part I.C.1, the universalistic allocation at level u is an economically inefficient allocation; that allocation imposes an excess burden in each congressional district equal, on average, to area $[E + F]$ in Figure 1. If the President can only persuade the representative from this typical district to cut his project requests from level u to the economically efficient level p , then a potential economic benefit equal to the saved economic inefficiencies—area $[E + F]$ —will have been created.

The President's problem, however, is that the incentives in the universalistic Congress are just the opposite. As indicated in Part I.C.1, each individual member of Congress finds it individually rational to demand the allocation of u for his district, given that all other representatives are also demanding u at the best level for their own districts. While all members of Congress would

presidential control plus the metric-weighted sum of actions such as political visits and judicial appointments.

68. The President's objective need not be just reelection. Policy outcomes, or her place in history, can be objectives too. See Donald Wittman, *Candidate Motivation: A Synthesis of Alternatives*, 77 AM. POL. SCI. REV. 142, 143 (1983).

69. The important point here is not the absolute levels of credit claiming for presidential allocations, but rather the *relative levels* of credit claiming. Typically, the President has to share more of the credit with members of Congress when seeking fiscal reforms than when she allocates dollars on her own.

be better off collectively if spending could be cut from u to p in all districts—collectively gaining the sum of all districts' areas $[E + F]$ —it is irrational for any member to offer such a spending cut alone. If an individual representative reduced his district's projects allocation from u to p , the constituent benefits from those projects—area $[C + D + G]$ in Figure 1—would be lost. The district's direct compensation from this reduction would be the district's share of the tax savings which this reduction in benefits has made possible. This is approximately equal to $(1/N)(m)(u - p)$ —when $\phi \approx (1/N)^{70}$ —or $(1/N)$ times the area $[C + D + E + F + G]$, or simply, area $[G]$ in Figure 1. Since the district's lost benefits of area $[C + D + G]$ are larger than the district's tax savings of area $[G]$, no district representative can afford to offer such a reduction on his own. Compensation paid to the district equal to at least the difference between lost benefits and the resulting tax savings, or area $[C + D]$, might prove persuasive, however.

It is here that the President's resources come into play in creating a reform coalition. The President offers to each member of Congress who is willing to join her reform coalition the needed compensation equal to the net loss in fiscal benefits of area $[C + D]$ plus a policy "sweetener" with a dollar value of s . These compensation resources which we shall denote by the dollar amount w (area $[C + D]$ plus s) are channelled from the President directly to the constituents of the coalition district—e.g., as a defense contract for the local shipyard—with both the President and the congressional representative sharing in the political credit. Having received a district project allocation p plus presidential compensation equal in value to w , constituents in the district are now better off economically by the value of the policy sweetener, s . The district's representative and the President are also better off politically, since each shares in the credit for bringing the net economic improvement of s dollars to the district. Note too that residents in districts other than the reform district also gain; they share in the benefits of smaller tax payments as expenditures fall from u to p in the reform district. The President in particular can lay political claim to these added economic benefits created by reform.

Reform coalitions of more than one congressional district increase these political benefits to the President and the participating representatives. Figure 1 shows the net position of a typical district in the President's reform coalition when a total of C ($C < N$) districts join the coalition. If the re-

70. We use "approximately" here since we are estimating each district's share (ϕ) of tax payments or tax savings by the ratio $(1/N)$, the share that would occur if all districts had approximately equal average taxpayer incomes. This assumption of equal average incomes is not crucial to the basic logic of our argument but it does simplify the presentation considerably.

More generally, richer congressional districts will have larger shares of tax payments and tax savings than poorer districts. When trying to understand the final structure of actual presidential reforms, the distinction between rich and poor districts may become important.

duced spending in each (typical) district in the coalition yields an average tax savings per district of area $[C + D + E + F + G]$, then the total tax savings in which all districts share will be C multiplied by the area $[C + D + E + F + G]$. Each district's share of these total tax savings will be $\phi \approx 1/N$ of these savings, or C/N multiplied by the area $[C + D + E + F + G]$. This is shown as the area $[C + E]$ in Figure 1 for the typical congressional district. When the reform coalition contains C congressional districts, then each coalition member's district initially loses area $[C + D + G]$ in project benefits, gains back area $[C + D]$ plus s in presidential compensation, and then shares in the overall tax savings from reform to the approximate amount of area $[C + E]$. The net position is an improvement in constituent welfare equal to the presidential "sweetener" plus the district's net fiscal savings: s plus area $[C + E - G]$.⁷¹ Finally, since the area $[C + E - G]$ of net tax savings for each member of the reform coalition grows with the size of the reform coalition, members will wish to add new members to their coalition.⁷² If the President has sufficient resources, it appears, she can fashion a fiscally efficient coalition of the whole.

Figure 1 also illustrates that members of Congress who do not join the President's reform coalition—denoted as belonging to the coalition of size $/C$ —are also better off with reform. Even though their representatives are not members of the President's coalition, constituents in each district in $/C$ receive their share of the tax savings from reform, again equal to approximately $(1/N)C$ multiplied by the area $[C + D + E + F + G]$. This is again area $[C + E]$ in Figure 1. Since members of $/C$ do not participate in the reform program, their districts do not suffer a decline in district spending from u to p . Thus, these districts continue to receive area $[C + D + G]$ in project benefits. In contrast to districts in the reform coalition, the President has no need to compensate these districts nor to offer a sweetener. In the end, constituents whose members are in the nonreform group receive a net gain from the President's reform process equal to their share of the reform's tax savings: area $[C + E]$. Constituents in nonreform districts are better off too, a gain for which the President can well claim credit.⁷³

Since everyone gains with the reform process, and larger reform coalitions

71. The area $[C + E]$ is the district's share of total tax savings. Area $[G]$ is what each participating reform district contributes in lost resources to create this tax savings. Note that area $[G]$ is defined to equal $(1/N)$ multiplied by area $[C + D + E + F + G]$. Thus C multiplied by area $[G]$ also equals (C/N) multiplied by area $[C + D + E + F + G]$, which is the definition of area $[C + E]$, the area of total tax savings.

72. Note that area $[C + E]$ gets larger as the ratio C/N approaches one. Area $[G]$ remains unchanged, however.

73. At this point, it is important to ask whether the benefits received by residents in the nonreform coalition are larger or smaller than the benefits received by residents in the President's reform coalition. For if noncoalition districts do better than coalition districts, then no representa-

are preferred, it would appear the process of reform would push naturally to a reform coalition “of the whole.” Such a conclusion is premature. We must expose and then relax two very important assumptions made implicitly in the argument to date. The first is that the President knows the district marginal benefit schedules, $b(g)$; this information is crucial if presidential compensation and the sweetener are to be paid to coalition members. The second is the assumption that the President can credibly commit the payment of that compensation at the time the fiscal reforms are being voted in Congress—that is, that she really can “do a deal.” Dropping both assumptions and giving the President the dual tasks of discovering $b(g)$ and then writing acceptable compensation contracts will raise the cost of reform, both to the President and to society as a whole.⁷⁴

The President has resources within the executive branch to reveal the $b(g)$ schedules of individual legislators. The staffs of executive agencies specializing in project administration have information about local benefits, while the Office of Management and Budget has the capacity for independent review of those estimates. Finally, the President’s congressional liaison staff can and often does extract valuable information about individual districts’ benefits

tive has an individual incentive to join the President’s team. The congressional thinking becomes: “Let the other representatives join, but not me; I’ll do better for my constituents.”

Here is where presidential compensation plus the sweetener matters; payments must be large enough to ensure that members joining the President’s reform coalition C have no incentive to defect to the nonreform coalition $/C$. If representatives are primarily concerned about the net fiscal benefits they bring home to their constituents, then presidential-side payments must be large enough to leave the constituents in reform districts better off than they would be were their representative to leave the President’s coalition for the nonreform group. Being in a reform district costs residents gross project benefits of area $[C + D + G]$, but earns them their share of tax savings equal to area $[C + E]$. Reform members are also compensated by the President for their lost benefits equal to area $[C + D]$ and are given a small sweetener, s . After compensation, membership in the reform coalition earns district residents a net fiscal gain of s plus area $[C + E - G]$.

What might residents of the district earn if they were to exit the reform coalition for the nonreform coalition? Being in a nonreform district earns residents a pure economic benefit equal to their share of tax savings; there are no lost project benefits and, of course, no presidential compensation. Tax savings available to $/C$ members when there is a defection no longer equal area $[C + E]$, however. With a defection of one district from the reform coalition we must subtract that district’s contribution to tax savings; this is area $[G]$. Thus, the net fiscal gain in $/C$ when you leave C for $/C$ is area $[C + E - G]$.

Membership in the reform coalition will be preferred to nonreform coalition membership because net fiscal benefits following reform are greater in C than when defecting to $/C$. That is, s plus area $[C + E - G]$ is greater than area $[C + E - G]$ alone.

74. Discovering the marginal benefit schedules of individual members of Congress is necessary if the process of fiscal reform is to achieve fiscal efficiency. When the marginal benefits of public projects in each district are unknown to individuals from outside the district—particularly other congressional representatives—then the district’s representative can credibly announce any budget, including the budget u , as the “efficient” allocation to the district. In the deferential world of universalistic politics each representative’s announced budget is accepted and included in the final allocation. Unfortunately, what is locally efficient, namely u , is socially inefficient. It is the lack of public information about each district’s $b(g)$ schedule that makes such inefficiencies possible.

during the process of presidential-congressional negotiations.⁷⁵ This information is collected at the cost of executive branch staff and research time, or by spending dollars in one-on-one negotiations to infer benefits. While these revelation costs are not likely to be large,⁷⁶ particularly in comparison to the gains from controlling fiscal inefficiencies, they will be positive and the President must pay them if she is to negotiate credibly with members of Congress for membership in her reform coalition. We shall denote the resource cost borne by the President to reveal each district's marginal benefit curve by the expenditure of r dollars per district for each district in the reform coalition.⁷⁷

75. We are not arguing here that this preference revelation role is the only reason the President creates specialized executive agencies, an Office of Management and Budget, or her liaison staff. But revelation is a role these agencies can and do play.

76. Detailed benefit-cost analyses of project benefits are done by many executive agencies, either directly or by contracting work to research and academic centers. Million dollar contracts are not atypical. Of course, there are significant economies of scale in such research. Once the basic data and methodologies have been developed for one district, they may transfer to other congressional districts at little added cost. On the other hand, districts receive their fiscal allocations not as one common project across all districts, but as many different projects. Some districts receive their dollars in the form of hundreds of different government expenditures. Thus, to reveal benefits will require program analysis over many projects. A very rough guess might estimate the cost of revealing project benefits in each district as somewhere between \$50,000 per district (the typical cost of one professional benefit-cost study) for districts with only one project, to perhaps as much as \$2 to \$3 million in districts receiving many complicated, and locally unique, government projects each requiring separate study. If the revelation of project benefits in each district costs, on average, \$200,000 in executive resources, then revelation for a major reform effort might cost close to \$87 million (\$200,000 multiplied by 435 districts). The President certainly has these resources. The Office of Management and Budget has a staff budget of \$54 million for fiscal year 1992, and the ten domestic policy cabinet positions have research staff budgets ranging from \$4.2 million in Transportation to as much as \$160 million in the Corps of Engineers. BUDGET OF THE UNITED STATES GOVERNMENT, FY 1992, at 278 (1991).

77. There is the question of why, if the President can spend r dollars to reveal $b(g)$ schedules, Congress could not do the same. Constitutionally, it certainly can. As a matter of strategic behavior, however, there are good reasons to suspect that such a public gathering of private, district-specific information does not occur. First, any information generated about marginal benefits, and any subsequent development of reform coalitions, provide significant "public" benefits in improved resource allocations for all members of Congress. Because of such benefit spillovers from this information, no single member is likely to have the incentive to spend the needed dollars, either from his own staff budget or by sacrificing his district's project budget. Second, even if all members could agree to jointly fund the task of gathering information about $b(g)$ schedules, the person or group who uses that information to fashion a reform budget in effect becomes the budget's agenda setter. If estimates of district $b(g)$ schedules cannot be easily verified, there is a significant risk in a universalistic Congress that those who collect the information can then manipulate it to their advantage. Members who do not like the outcome of a proposed reform budget—namely, those who believe their benefits have been underestimated while the benefits in other districts are overstated—have only one recourse to check the agenda setter: re-estimate the benefit schedules for themselves.

As a factual matter, there are two organizations now under congressional control which do collect and disseminate information about government performance—the General Accounting Office (GAO) and the Congressional Budget Office (CBO). Despite the potential of GAO and CBO to provide detailed, district-specific information to curb fiscal inefficiencies, there is no evidence—perhaps for the reasons noted above—that the offices have been used to that end by Congress. See ALLEN SCHICK, CONGRESS AND MONEY 149-53, 407 (1980).

To fashion a coalition of size C the President must spend rC dollars.

The President faces another problem in her efforts to develop a reform coalition: the absence of a binding mechanism for enforcing deals struck with Congress. Once the $b(g)$ schedule has been revealed for each coalition member and the promise of compensation and the sweetener (recall w equals area $[C + D]$ plus s) has been offered, the President must form an agreement. Typically, the congressional vote on fiscal reform takes place before w can be paid to supporting districts. How does the representative know the President will stand by her word to pay w in economic benefits to the district?⁷⁸ The best protection is the President's desire to formulate a long-run working relationship with Congress, so that a violation of a promise damages the President's reputation and limits her ability to forge working coalitions in the future. Because there is some uncertainty as to the value the President places on her future relationships with Congress, legislators will demand a larger sweetener, denoted here as the premium k , paid as compensation for agreeing to accept such a risky contract.⁷⁹ The value kC measures the contracting costs to the President of formulating a reform coalition of size C .

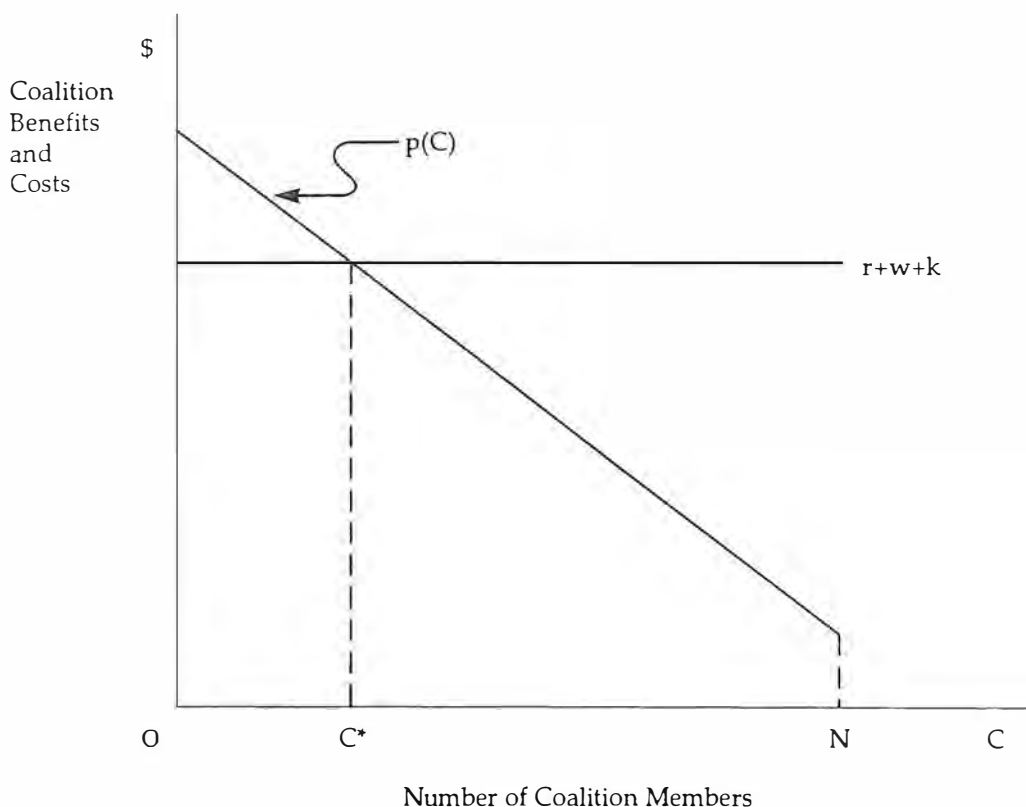
Together, the revelation costs of rC and the contracting costs of kC constrain the President in her desire to build reform coalitions. In the presence of these costs, reform coalitions are only attractive if the *political benefits* that the President earns following economic reform outweigh the political opportunity costs of spending her scarce presidential resources to build her coalition. How does the President balance these political benefits and costs? Figure 2 illustrates one plausible case in which marginal political benefits to the President from the reform coalition outweigh the marginal political costs for small coalitions ($C < C^*$) but marginal costs are larger than marginal benefits for large coalitions ($C > C^*$). In Figure 2, a reform coalition of C^* members is the President's preferred coalition size.

The marginal political costs to the President of adding one more member

78. The problem of contract enforcement arises in any agreement in which one party performs an irreversible action in return for compensation at a date after the first action has been completed. Such situations create incentives for the second party to take the benefits of the action without paying compensation. The use of reputation to enforce implicit contracts is well studied in economics. See Bengt Holmstrom, *The Provision of Services in a Market Economy*, in *MANAGING THE SERVICE ECONOMY: PROSPECTS AND PROBLEMS* 183, 197-207 (Robert Inman ed., 1985) (studying effects of reputation and contingent contracts in service markets). If there is value to the President in protecting her reputation, then representatives have some reason to believe the implicit contract will be respected.

79. Two obvious predictions follow from these observations. First, less trustworthy Presidents face higher costs in fashioning reform coalitions and will, therefore, be less likely to pursue reform policies, all else being equal. Second, as Presidents near the end of their second term, or as their reelection prospects become uncertain, the value to the President of her reputation declines, which increases the risk of renegeing on agreements. This too raises the costs of contracting, leading to a reduction in the size of reform coalitions.

FIGURE 2
THE SIZE OF REFORM COALITION



to the reform coalition—denoted in Figure 2 as $r + w + k$ —is simply the additional money the President must spend from presidential resources to bring one more district into the coalition. First, r dollars are spent to reveal a potential coalition member's project benefit schedule. Second, w dollars (area [C + D] plus s) are paid to induce a coalition member to join, and then stay within, the reform coalition. Finally, k dollars are needed as the additional premium to coalition members to induce them to accept the uncertain promise of payment w . The final marginal cost of bringing in one more coalition member is therefore the sum, $r + w + k$, as shown in Figure 2.⁸⁰

80. While Figure 2 illustrates this marginal cost as a constant line, this need not be so. Presidents are likely to begin fashioning reform coalitions with the "cheapest" members first—for example, those who have revealed the benefits of their district projects in prior negotiations (thus saving on r), who have low levels of required compensation (saving on w), and who "trust" the President (saving on k). Thus, the marginal cost curve is likely to rise as C increases.

Further, coincident ideologies and political parties may lower these presidential costs of reform—particularly r and k —and, therefore, should encourage fiscal reform, a point emphasized in Fitts, *The Vices of Virtue*, *supra* note 17, at 1603-12.

The marginal political benefits of adding one more congressional member to the reform coalition are indicated by the downward sloping political benefit curve, $p(C)$. The marginal political benefits may decline for either, or both, of two reasons. First, as the President's coalition grows in size, the ability of the President to claim credit for the economic benefits of reform may decline. This is particularly so when the reform coalitions get large (say, one hundred members or so) and reform looks less like the explicit work of the President and her closest allies, and more like congressional-presidential cooperation. Adding more members to the reform coalition dilutes the ability of the President to claim that she, and she alone, is responsible for the benefits created by reform.

Second, the $p(C)$ curve measures the *relative* political attractiveness of using the President's resources for coalition building for fiscal reform or for direct President-to-constituent allocations. When resources are allocated by the President from direct constituent servicing to the congressional reform process, we assume the President first takes resources from her least politically productive direct allocations. In the beginning, therefore, congressional coalition building looks *relatively* attractive when compared to the political gains available from the President's least politically productive direct activities. But as more resources flow into coalition building, more and more direct allocations are sacrificed, and those sacrificed are increasingly costly. Thus, even if presidential credit claiming for the benefits of coalition building remains constant, the marginal political gains from expanding C relative to direct presidential allocations are likely to decline.⁸¹ The net effect is declining political benefits to the President from coalition building for fiscal reform, either because credit claiming declines as C increases or because the alternative uses of scarce presidential resources become increasingly attractive.⁸²

81. There is a third reason why the marginal benefit curve might decline, but it assumes prior knowledge on the part of the President of at least some representatives' $b(g)$ schedules. If the President knows, or guesses successfully, which districts are likely to offer the greatest economic benefits from fiscal reform, then it is in the President's own interest to include those districts first in the reform coalition. The very first districts included will be those that offer the highest economic benefit from reform—namely, those districts that receive the most inefficient projects under universalism. Simply put, the President should seek to correct the very worst economic abuses first, if those abuses can be easily identified.

82. This description of the President's marginal political benefit schedule from coalition building can also be specified more formally. See Inman & Fitts, *supra* note 62. There we show that the President evaluates the marginal political benefits of an additional reform coalition member by the relationship:

$$p(C) = v(C)[dH(C)/dC],$$

where $p(C)$ is the marginal political benefit curve shown in Figure 2, $v(C)$ is the extra relative value to the President of an additional claimable dollar from congressional reform, and $dH(C)/dC$ are the number of additional claimable dollars each new coalition member brings to the President. As noted in the text, we expect $p(C)$ to decline as C increases for either, or both, of two reasons, now formally stated: (1) the relative marginal value of congressional reforms, $v(C)$, falls as the President

The central conclusions of this analysis, summarized by the results in Figure 2, are twofold. First, Presidents *can build* reform coalitions to improve the fiscal allocations of universalistic legislatures *if* they can bring additional resources into the legislative arena to overcome the revelation and contracting problems which inhibit organizing a decentralized Congress. Second, as a political matter, Presidents *will build* such coalitions *if* their ability to claim credit for the economic benefits of reform provide sufficient political returns to justify the investment in coalition building.⁸³ While perhaps not the fully efficient coalition of the whole which this analysis first seemed to promise, even modestly sized reform coalitions, such as C^* in Figure 2, can offer improved resource allocations.⁸⁴ From a strict efficiency perspective, each district that enters the reform coalition saves society tax payments of area $[C + D + E + F + G]$ on average and costs society project benefits of area $[C + D + G]$ on average; see Figure 1. The net efficiency gain per coalition district is therefore area $[E + F]$, the original measure of district inefficiency with universalism. The economic costs of achieving this efficiency gain are the transaction costs paid by the President to establish the reform coalition ($r + k$). The net social gain provided by each district in the

builds larger coalitions ($dv(C)/dC < 0$) or (2) the marginal political gains from larger coalition building declines ($d^2H(C)/dC^2 < 0$).

83. *See id.* For reasonable specifications of the reform model, if the President can claim that more than 50% of the benefits of reform was "her doing," then she will find it in her interest to create at least small coalitions, that is, $C^* > 1$ at a minimum. The intuition is as follows: The President spends $r + w + k$ in presidential resources on each reform district, and she can claim a share, ψ , of the area $[C + D + E + F]$ plus the sweetener s in political benefits created. She will include any district in a reform coalition if her claim to the gain exceeds her expenditure of resources: that is, if $\psi(\text{area } [C + D + E + F] + s) > r + w + k$. For this condition to hold:

$$\psi > r + w + k / (\text{area } [C + D + E + F] + s).$$

Note that if demand curves are linear (or approximately so), then area $[C + D]$ approximates area $[E + F]$ when full reform is achieved. Note, further, that w equals s plus area $[C + D]$. Thus, for small values of s , r , and k , this implies that $\psi > .5$ is sufficient for the President to wish to form a coalition including at least this one district.

84. It should be noted that larger and more economically beneficial reform coalitions are possible if the President's marginal political benefits from the reform strategy increase or if the President's marginal costs of coalition formation decline. This is clear from Figure 2, where C^* rises with an outward shift in the marginal benefit curve, $p(C)$, or a downward shift in the cost curve, $r + w + k$. The marginal benefit schedule will shift outward when congressional reforms yield more political benefits to the President than direct allocations (i.e., $v(C)$ rises) as, for example, when the President has more resources to allocate to coalition building or when running "against Congress" is a winning Presidential strategy. The $p(C)$ curve will also shift outward when coalition building becomes more productive (i.e., $dH(C)/dC$ rises) as, for example, when presidential credit claiming rises by isolating nonreform members as "noncooperating budget-busters." The marginal cost curve will slide downward as revelation becomes easier (r falls, for example, when congressional projects become less idiosyncratic across districts), as required presidential compensation declines (w falls when less districts actually benefit from government projects), and as presidential promises become more credible (k falls as the President becomes more conscious of her reputation, for example, early in her tenure).

President's reform coalition is therefore area $[E + F]$ less $(r + k)$.⁸⁵ If the transactions costs of the reform process are not "too high," then the aggregate economic gains exceed the transactions costs of coalition building and the presidential reform process will make a net contribution to aggregate economic welfare.

Fiscal equity too may be improved, but this outcome depends upon the distributional preferences of the President and exactly who she chooses for her reform coalition. First, if the dollar savings come disproportionately from programs benefiting richer districts—for example, when loopholes are eliminated from the tax code—and returned on a per capita basis, then the ultimate result of fiscal reform is likely to be progressive. However, if the dollar savings are taken and returned uniformly against income, then the outcome will be fiscally neutral. Third, and finally, if the President and her reform coalition target the distribution of tax savings disproportionately to the wealthy—as for example when tax savings are returned as proportional rate reduction off a progressive tax system—the ultimate incidence of fiscal reform may be regressive against income.⁸⁶ Even in the regressive case, however, we must note that "poorer districts" are not economically worse off in an absolute sense, for to join the President's reform coalition they must have been compensated for any economic losses they might have borne from fiscal reform.

On balance, therefore, presidential coalition building holds the promise of

85. While the President also pays the amount w (area $[C + D]$ plus s) in compensation to members of the reform coalition, this payment is simply a transfer from the Presidential account to the congressional account; no new economic value is created.

More formally, for each district that enters the reform coalition, the national citizenry receives a net gain from reform, payable into a "congressional account," equal to:

$$\begin{aligned} & \text{Tax Savings} + \text{Compensation/Sweetener} - \text{Lost Project Benefits} \\ & \text{or} \\ & \text{area } [C + D + E + F + G] + \text{area } [C + D] + s - \text{area } [C + D + G]. \end{aligned}$$

To earn this net gain per reform district, citizens must pay, from their "Presidential account," an amount per reform district equal to:

$$\begin{aligned} & \text{Compensation/Sweetener} + \text{Revelation Costs} + \text{Contracting Costs} \\ & \text{or} \\ & \text{area } [C + D] + s + r + k. \end{aligned}$$

Subtracting the net gain per reform district from the net costs per reform district, gives the economic surplus for the national citizenry contributed by each district in the reform coalition:

$$\text{area } [E + F] - (r + k).$$

86. It is difficult to gauge the likelihood of these three cases, but it is possible that presidential politics may be more distributionally progressive than congressional politics in the long-run: "Presidents from Eisenhower to Reagan have tended to introduce more proposals under the general rubric of redistribution than any other single policy type." PETERSON, *supra* note 55, at 177. Of course, even if the institution of the Presidency has a progressive bias, obviously individual presidents may diverge. For an argument that the long-run is the appropriate horizon for design of institutions—our task here—see Fitts, *supra* note 9.

improved fiscal performance, assuming the existence of sufficient informal executive resources. This potential for welfare improving fiscal reforms is enhanced still further when we allow for the interaction of coalition building with the strategic use of the President's one formal, constitutional power, the veto.

B. COALITION BUILDING AND THE VETO: FORCING LARGE REFORMS

Although positive political theory's analysis of the presidential veto often finds the impact of the veto to be quite weak,⁸⁷ the veto, when used in conjunction with the process of informal coalition building described above, in fact can be quite important. As we argue below, the President can, through coalition building and the strategic use of a commitment to veto, force all of the individual members of Congress to face the full marginal costs and benefits of their universalistic behavior. Knowing how and when to use this joint strategy of coalition building plus the veto raises the prospects for significant fiscal reforms and major political payoffs.⁸⁸

Let us assume the President uses the informal resources of her office to construct the modestly sized coalition described above, C^* ($C^* < N$ total legislators), in which all members of the coalition embrace fiscal reform. Coalition members willingly support the President's proposal to cut project spending in their districts from the inefficient level u to the efficient level p . Representatives not in the reform coalition, however, are not so moved. They continue to ask for, and to receive from the still decentralized Congress, their inefficient project levels, u . Without paying the costs of revelation (r), compensation (w), and contracting (k), neither the President nor the C^* members of her reform coalition can induce these nonreform members of Congress to join their team. In this case, the reform budget therefore consists of C^* districts receiving their efficient levels p and the remaining districts in the $/C^*$ nonreform coalition ($N - C^*$) receiving their universalistic project levels, u . We shall call this budget the "modest reform budget" and represent it by the notation $B(p_C u_{/C})$, noting that p_C is a vector of efficient project allocations for each of the members of the C^* reform coalition and that $u_{/C}$ is a vector of universalistic project allocations for each of the members of the $/C^*$ nonreform coalition. The budget $B(p_C, u_{/C})$ is the outcome of the presidential coalition process of Part II.A above. The question now is whether the President can improve upon this allocation by using her formal

87. See *supra* text accompanying notes 52-53.

88. A full discussion of the veto strategy is presented in Inman & Fitts, *supra* note 62. We present only the simplest, but most effective, strategy here. In the full discussion we show that the veto strategy will be limited by the ability of the President to commit to its use. With more limited commitment, compromise reforms lying between universalism and full efficiency—the outcome we predict in the text—are the more likely outcomes.

veto powers. Can she force a *fully* efficient budget of $B(p_N)$, where p_N is a vector of efficient district projects for N districts?⁸⁹

Two extreme cases lead to fairly predictable results. If the President has built a coalition that constitutes a *majority* of Congress ($C^* > .5N$) then $B(p_N)$ will be approved since the President and the members of her coalition C^* all prefer $B(p_N)$. While our model certainly allows for this possibility, as a factual matter we doubt that the President alone has the resources to reveal and credibly compensate a full majority coalition.⁹⁰ In a second case where C^* is *less than one-third* of the legislature ($C^* < .33N$), then the outcome must be the modest reform budget. The majority members of the $/C^*$ coalition have the incentive and the votes to defeat any budget other than $B(p_C, u_{/C})$.⁹¹ Further, even threatening a veto strategy is useless, for the President does not have enough votes in her coalition to sustain any veto she might offer. Thus, when $C^* < .33N$, $B(p_C, u_{/C})$ is the only outcome.

The most interesting case, however, is when the President's coalition is large enough to sustain a veto, but not large enough to pass a major reform budget on its own—that is, when $.33N < C^* < .5N$. Can the President now leverage her C^* votes with a veto threat to pass $B(p_N)$? Clearly, the formal veto *alone* is not enough, for by itself her threat to veto is not credible. Though she might originally propose a major reform $B(p_N)$ and have the support of her C^* coalition, members of the majority $/C^*$ coalition will play their individually rational, universalistic strategies and pass the modest re-

89. To improve upon the modest reform budgets, $B(p_C, u_{/C})$, which coalition building allows, the President must induce the noncoalition members of Congress to accept a reduction in their districts' budgets from u to (ideally) p . Suppose she were to propose a more extensive reform budget $B(p_N)$. The major reform budget is economically more efficient than the modest reform budget, so the President will prefer $B(p_N)$ to $B(p_C, u_{/C})$ if she can claim credit for at least a portion of these additional economic benefits. We assume she can. Members of the President's reform coalition also prefer $B(p_N)$ to $B(p_C, u_{/C})$ since the extensive reform budget will give their constituents increased tax savings with no additional loss in project benefits. We assume they all vote for the major reform.

The members of the nonreform coalition, however, face the very same dilemma they faced as members of the fully universalistic Congress. While the President has proposed the major reform budget and announced it to be the efficient budget, individual members of the Congress cannot verify this claim. They do not know the true marginal benefit schedules $b(g)$ of their fellow members, and each—*unless compensated by the President*—retains the private incentive to dispute the President's estimates of their efficient p . Each representative of $/C^*$ claims the President has underestimated his district's true benefits: "If the President had only estimated $b(g)$ correctly, our 'efficient' budget would have been projects of size u ." All members of $/C^*$ prefer the efficient spending for all districts save one, their own. Since the members of $/C^*$ lack the ability (i.e., resources) to discipline each other's behavior to ensure collective support for the President's efficient budget, they adopt their old universalistic strategies to ensure they are not separately exploited. The President's major reform budget $B(p_N)$ therefore unravels with floor amendments to become the modest reform proposal of $B(p_C, u_{/C})$. Thus, for the President to simply announce a reform proposal is not enough. She must do more.

90. A strong and well-financed political party might have the needed resources, however. See Fitts, *The Vices of Virtue*, *supra* note 17, at 1603-09.

91. Holmstrom, *supra* note 78, at 183.

form budget $B(p_C, u_{/C})$. If the President threatens and then vetoes this budget and her coalition sustains her veto, then all players receive the initial status quo budget which is the universalism budget, $B(u_N)$, where u_N is a vector of all districts' allocations at their levels u . Both the President and her reform coalition prefer the modest reform budget $B(p_C, u_{/C})$ to $B(u_N)$. Members of $/C^*$ know, therefore, that if they pass $B(p_C, u_{/C})$ the President and her coalition will accept it. Thus, the President's naked threat to veto $B(p_C, u_{/C})$ to receive $B(u_N)$ is not credible.

To influence policy beyond modest reform, therefore, the President needs to create a credible veto threat, namely, to establish that the modest reform budget of $B(p_C, u_{/C})$ is, from her own point of view, worse than accepting the universalistic status quo budget, $B(u_N)$.⁹² Two possibilities exist for bringing such new and informal costs into the policy game. First, the President may make a public precommitment to major reform of the budget sufficient to make any deviation from that reform politically unacceptable. By vetoing less than full reform, the President can establish the desirable reputation with the public that she is a candidate of principle and thereby avoid later political charges that she is not person of her word, dishonest, or worse still, a "wimp." Second, beyond any public "political" costs, the President may make it clear to members of Congress that her word and promise to veto will be more important to future interactions with political leaders, including Congress, than any credit claiming lost by the veto of a modest reform budget. In each instance, the President puts her reputation, and thus her future political prospects, on the line.⁹³

In addition to a reputational impact, this strategy also relies on the fact that the line must be clearly drawn and the offer to Congress simply made: *all* ($B(p_N)$) or *nothing* ($B(u_N)$). If the unacceptable budget that will activate the veto is at all fuzzy, allowing some districts to pursue universalism if most other districts are efficient, then members of the nonreform coalition still have an incentive to act universalistically. Each member of $/C^*$ hopes to be one of the lucky districts the President will permit to be inefficient. Fuzzy veto threats, therefore, encourage only partial fiscal reforms, placing the President in the awkward position of appearing to back down if she accepts the partial package. Clearly drawn budget choices presented as all-or-nothing offers will avoid this problem.⁹⁴ The President must make clear that any

92. Our model builds upon the important insights of D. Ingberman & D. Yao, *Presidential Commitment and the Veto*, 35 AM. J. POL. SCI. 357 (1991).

93. If she does not veto when she said she would, she bears potentially large costs in the form of the economic value of her lost reputation. These losses, if the veto commitment is violated, can be described formally. See *id.*; Inman & Fitts, *supra* note 62.

94. For a general discussion of "clear" and "fuzzy" veto sets, see Ingberman & Yao, *supra* note 92.

deviation from the full reform budget of $B(p_N)$ will force a sustainable veto and give the universalistic budget $B(u_N)$.

If a credible commitment to veto can be made, members of the nonreform coalition now face a clear choice: major reform or the universalistic status quo. Importantly, *it is now individually rational to support the reform budget, even if one belongs to the nonreform coalition.* If any one member of $/C^*$ deviates from $B(p_N)$ and proposes a u amendment for his own district, that will be sufficient to trigger the President's veto if the offending amendment is approved. A veto gives the budget $B(u_N)$.⁹⁵ All members of Congress prefer the efficient reform budget $B(p_N)$ to the universalistic status quo $B(u_N)$. Since under the veto threat any single u amendment will move the budget from $B(p_N)$ to $B(u_N)$, no member will propose u .⁹⁶ Further, all other members of $/C^*$ have an individual incentive to vote down any such deviations. When Congress faces this all or nothing choice, the major reform budget passes—unanimously!⁹⁷

Thus, a President is not without influence over the budgetary affairs of an inefficient and decentralized Congress, even when all members of Congress initially vote for such unattractive budgets. Through the strategic use of her informal resources and formal veto powers, the President can fashion a legislative strategy of coalition building and position taking that draws all members of Congress into supporting an efficient fiscal outcome. Importantly, a decentralized Congress could not achieve this reform outcome on its own. A presidential veto strategy and presidential resources are required. Note too that neither informal resources (provided $C^* < .5N$) nor formal veto powers alone could be used to achieve this major reform outcome. Presidentially initiated major reforms are possible, but typically only when the President uses her informal and formal resources jointly.

95. It is important to ask at this point whether the members of the President's veto coalition C^* will sustain her veto of a partial reform. The answer is yes, if the presidential sweetener s paid to members of C^* is large enough to compensate them for taking the universalistic outcome rather than the partial reform.

96. In an important sense, the President's use of the commitment to veto solves the collective action problem of Congress. When a credible commitment to veto can be made, and the President presents the Congress with an all-or-nothing choice of reform or universalism, each individual member of Congress now faces the full social costs of any decision to increase spending from the President's proposed budget of p to an inefficient budget u . When full social costs have been internalized, efficient choices are the likely outcome. This is the case here.

97. In the simple case outlined here, even when the costs of violating the commitment are quite modest, the veto strategy is still effective. See Inman & Fitts, *supra* note 62. However, in more realistic settings in which legislatures can form their own partial reform plans to compete with the President's full reform, the President's costs of violating her commitment to veto must be larger. Nevertheless, the President's ability to make a commitment to impose large costs may not be credible. The veto strategy is, therefore, constrained by the maximum credible penalty the President can impose upon herself. When constrained, less than fully efficient fiscal reforms will be the compromise outcome of the veto game.

While this analysis may be compelling in the abstract, some may minimize the likelihood that this effort will be undertaken very often in real life. The number of legislators who must be won over may be large, the available executive resources may be minimal, and the likelihood of success accordingly small. To some degree this may explain why this is not an everyday presidential strategy. But the potential is there. Certain executives, especially some governors and mayors, as well as Presidents in some contexts, have a great deal of discretionary resources to bring to the legislative arena. In addition, Presidents can build upon preexisting ideological support in Congress for their efforts to create a coalition close to or above the required veto level for major reform. Only limited additional *economic* resources will then be needed to create a fully effective veto coalition. And once a veto coalition is established, the potential economic and political benefits can rise quite substantially, making the political payoff from the reform strategy for the executive quite large indeed.

Part III applies this analysis to two illustrative examples of presidential efforts at fiscal reform. One worked—Reagan and the Tax Reform Act of 1986—and one did not—Carter and his tax reform failure of 1978. We think our model helps us to understand why.

III. TAX REFORM DURING THE CARTER AND REAGAN PRESIDENCIES

A. THE POLICY ISSUES UNDERLYING TAX REFORM

The formation of national tax policy involves two decisions: a choice of tax base and a choice of tax rate progressivity to be applied against that base. The latter, rate progressivity, is inevitably a zero-sum political game; there are winners and there are losers. A survey of the national tax codes of most industrial democracies reveals the typical winner in this “us versus them” redistribution game is the dominant majority from the lower tail of the initial pretax, or common law, distribution of income.⁹⁸ The resulting structure of relative tax rates in most western democratic societies is progressive—that is, average tax rates rise with taxable incomes.

Also to be decided by democratic politics is the tax base against which these tax rates are to be applied. Income, both for individuals and corpora-

98. See James Snyder & Gerald Kramer, *Fairness, Self-Interest, and the Politics of the Progressive Income Tax*, 36 J. PUB. ECON. 197, 198 tbl. 1 (1988). Of course policy cycling is possible in such voting games, as groups of rich taxpayers can try to break off splinter groups of poorer households to form new majorities to defeat the original decisive coalition. Empirically, however, such cycles over rate structures rarely occur.

There are numerous theoretical studies that derive stable structures of relative tax rates from a majority rule process. For a survey of the major theories now offered, see Inman, *supra* note 22, at 727-38. Which of these different approaches in fact explains the source of the observed stability of relative rate structures is still an open question.

tions, is the typical choice, but exactly what constitutes *taxable* income is an economically subtle and, at times, politically explosive issue.⁹⁹ Clearly, whatever the structure of tax rates, it is in the economic interest of each taxpayer to favor a definition of taxable income that reduces his or her tax payments. Since taxable income equals pretax income minus tax exemptions and deductions, taxpayers generally want to maximize their exemptions and deductions. The democratic struggle over the definition of tax base ultimately reduces to a democratic struggle over the inclusion in the tax code of everyone's favorite exemptions and deductions.

How does Congress decide the tax base issue? Detailed case studies of tax policy in today's Congress often reveal a process of universalism in which each representative logrolls for the approval of his constituents' own favorite exemption or deduction in return for the nodding approval of everyone else's preferred tax break.¹⁰⁰ In this setting, while the distribution of benefits may not be as district specific as the allocation of army bases or water projects can be, the political economy model of decentralized budgeting presented in Figure 1 is still a reasonable description of Congressional choice over many exemptions and deductions. "Project size" in Figure 1 is now the amount of income taxes saved by district residents through a favorable tax deduction or exemption. The benefit curve $b(g)$ measures the marginal benefits to district residents from these tax breaks.¹⁰¹ Such deductions and exemptions from the income tax base are known popularly as "tax expenditures."¹⁰² Like government spending, these tax favors must be paid for through increases in tax rates or government deficits. The cost curves m and ϕm measure, respectively, the full marginal cost and district's share of the marginal costs of pro-

99. See generally JOSEPH A. PECHMAN, *FEDERAL TAX POLICY* (5th ed. 1987) (providing a useful summary of the major economic issues in tax policy). Any number of examples from Pechman illustrate the political divisions over the definition of income. When taxing personal income: Should social security benefits be classified as taxable income? Unemployment compensations? Welfare benefits? Company provided insurance benefits? Should charitable contribution be counted as reductions in personal income or are such payments consumption and, therefore, counted as income? When taxing corporate income: How should capital be depreciated as a business expense? Are "sky-boxes" business expenses? Are dividend payments a cost of capital? Each of these questions has engendered a political fight in recent years.

100. For the definitive review of the process of tax policy in contemporary Congress, see JOHN F. WITTE, *THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX* 271-338 (1985). See also RANDALL STRAHAN, *NEW WAYS AND MEANS: REFORM AND CHANGE IN A CONGRESSIONAL COMMITTEE* 122-23 (1990).

101. While tax favors transfer income to residents, they do so not as lump-sum grants, but as price subsidies. Dollars transferred by price subsidies will have declining marginal value relative to the marginal value of a pure income transfer. Thus, a downward sloping $b(g)$ curve as drawn in Figure 1 is appropriate for district tax favors given as price subsidies.

102. The term was first used by Stanley Surrey in his famous critique of the U.S. tax code. See STANLEY S. SURREY, *PATHWAYS TO TAX REFORM: THE CONCEPT OF TAX EXPENDITURES* (1973). Congress now requires the measurement of tax expenditures as a supplement to the annual federal budget.

viding local tax favors. As Figure 1 makes clear, the same universalistic congressional incentives that can lead to too much project spending may also lead to excessive (i.e., level *u*) tax favors.¹⁰³ Further, as with excessive government spending, the resulting tax breaks may be criticized as both economically inefficient and economically inequitable.¹⁰⁴

The size and growing importance of federal government tax expenditures are documented in Table 1. The level of these expenditures are approximately equal to the levels of federal government spending for domestic projects, for the military budget, and for social insurance programs over the recent decade, each totalling about 21% of total government outlays.¹⁰⁵ From 1974 (the first year full data was available) to its peak in 1985, real tax expenditures grew at an annual rate of 5.5% per year. For the same period, real federal project spending grew by less than 1% per year, military spending grew by 3.3%, social insurance outlays by 4.7%, and real interest payments by 7.2%. Finally, when we compare this 5.5% rate of growth of tax expenditures to the same period's modest 1.3% growth in real income per

103. Strahan and Witte provide case study evidence that universalism is the norm behind current congressional tax policy. See STRAHAN, *supra* note 100, at 122-23; WITTE, *supra* note 100, at 271-338. Inman and Fitts use the model of Figure 1 to formally test—and find support for—the effects of universalistic congressional institutions on U.S. tax policy. See *generally* Inman & Fitts, *supra* note 2.

104. For the personal income tax, economic inefficiencies have been documented for municipal bond tax exemptions, OFFICE OF STATE AND LOCAL FIN., DEP'T OF TREASURY, FEDERAL STATE-LOCAL FISCAL RELATIONS: REPORT TO THE PRESIDENT AND CONGRESS 317-18 (1985); state and local tax deductions, Theodore Bergstrom, et al., *A Test for Efficiency in the Supply of Public Education*, 35 J. PUB. ECON. 289, 295 (1988); housing mortgage deductions, Harvey Rosen, *Housing Subsidies*, in HANDBOOK OF PUBLIC ECONOMICS 394, 402-03 (Alan Auerbach & Martin Feldstein eds., 1985); and the exemption of health care insurance premiums, Martin Feldstein & Bernard Friedman, *Tax Subsidies, the Rational Demand for Insurance, and the Health Care Crisis*, 7 J. PUB. ECON. 155, 168-72 (1977). Often cited examples of tax code induced economic inefficiencies for the corporate income tax include oil and gas depletion allowances, differential depreciation, investment tax credits, and the tax itself. See ALAN AUERBACH, CORPORATE TAXATION IN THE UNITED STATES 468-69 (Brookings Papers on Economic Activity 1983).

Tax equity also has been harmed by the growth in tax expenditures. First, the dollar value of exemptions and deductions increases as pretax income rises, thereby reducing tax progressivity. This occurs for two reasons: (1) upper income households often qualify for larger deductions (state and local taxes, home mortgage) and use certain exemptions more frequently (IRAs, capital gains); and (2) because richer families face higher marginal tax rates, even equal deductions and exemptions translate into larger dollar tax savings for the rich. See INTERNAL REVENUE SERV., STATISTICS OF INCOME: INDIVIDUAL TAX RETURNS (note particularly those tables listing returns with itemized deductions and exemptions by taxpayers' adjusted gross incomes). Both effects reduce the overall progressivity of the federal income tax. See JOSEPH A. PECHMAN, WHO PAID THE TAXES, 1965-85 8 (1985). For evidence that removing these tax expenditures can improve tax equity, see Jane G. Gravelle, *Equity in Effects of the Tax Reform Act of 1986*, 6 J. ECON. PERSP. 27 (1992).

Second, families earning the same pretax incomes often qualify for different levels of exemptions and deductions. If so, families with identical incomes may face different tax payments. This is a violation of the economic principle of horizontal equity, another measure of tax fairness.

105. See Inman & Fitts, *supra* note 2, at 79-78 tbl. 1. Government interest payments constituted the remaining 16% of total government outlays.

capita, we see that tax expenditures now consume a larger share of national income, rising from 5.5% of income in 1974 to 8.5% of income by 1985. As inefficient and inequitable as they may be, tax expenditures have increasingly become an important component of our domestic fiscal policy.

TABLE 1
TOTAL TAX REVENUES LOST FROM FEDERAL TAX EXPENDITURES¹⁰⁶
(1982 DOLLARS)

YEAR	Total
1974	714.94
1975	709.44
1976	695.86
1977	747.43
1978	835.80
1979	902.82
1980	874.52
1981	977.94
1982	1104.00
1983	1074.18
1984	1232.36
1985	1290.54
1986	1169.74
1987	1008.47
1988	920.42
1989	893.73

Yet something happened to this upward trend in 1986. From the peak in 1985 to the most recent available estimates for 1989, real tax expenditures per capita declined by over 30%. The cause of this dramatic turnaround was the passage of the Tax Reform Act of 1986. The Act's unmistakable target was growing tax expenditures. It is also worth noting that the ultimate incidence of the Tax Reform Act—that is, combining the effects on distribution of rate reductions and loophole closings—was to make our tax code *more* progressive. Understanding why major tax reform occurred in 1986 and not sooner—notably, why Reagan succeeded and Carter did not—is our task below.

106. Sources: Tax Expenditures, Statistical Abstract of the United States, "Revenue Losses: Tax Expenditures due to Federal Tax Law"; Population, Statistical Abstract of the United States; GNP Deflator, Statistical Abstract of the United States and The Economic Report of the President, 1991.

B. CARTER FAILS: THE REVENUE ACT OF 1978¹⁰⁷

It was not for a lack of enthusiasm for major tax reform that President Jimmy Carter failed to move us toward a more efficient and equitable tax system during his Presidency. Indeed, his election success was based in no small measure on his commitment to the issue of tax reform and controlling tax expenditures.¹⁰⁸ A repeated Carter campaign theme was to label the existing tax system a “disgrace to the human race.”¹⁰⁹

The Carter administration proposed a comprehensive tax reform package in January 1978, one year after assuming the presidency. The principles of the reform were clear: simplify the tax code to improve economic efficiency and to insure a more equitable treatment of taxpayers, and use some of the savings to stimulate economic growth.¹¹⁰ The income tax base was to be broadened and tax expenditures controlled, on the personal side, through a general tightening of tax deductions (notably, for medical and casualty losses, charity, and state and local taxes) and tax exclusions (for unemployment benefits received by those earning more than \$20,000, for capital gains received by upper income households, and for municipal bond interest payments). On the corporate side there was to be an elimination of tax deferrals (for foreign corporate income), and a phased elimination in the tax exempt status for export sales (via Domestic International Sales Corporations or DISCs). The administration estimated that its reform package would reduce tax expenditures by \$9.5 billion in fiscal year 1979, or about \$50 per capita when measured in 1982 dollars.¹¹¹ The Carter reform package would then return these tax savings through a uniform two percent cut in all personal tax rates and a four percent cut in the corporate tax rate. Further, the personal exemption, which favors families in higher income tax brackets, would be replaced by a neutral \$240 tax credit for every taxpayer. Tax progressivity would be improved thereby. Finally, in an effort to stimulate economic growth, Carter proposed permanent status for an expanded ten percent investment tax credit. Together, the reductions in tax rates and the personal and investment tax credits would cost the Treasury \$22.5 billion in fiscal year

107. Two excellent summaries of the political history of this bill are found in WITTE, *supra* note 100, at 204-17; Edward R. Kantowicz, *The Limits of Incrementalism: Carter's Efforts at Tax Reform*, 4 J. POL. ANALYSIS & MGMT. 217 (1985).

108. Political analysts commenting on the Ford-Carter campaign pointed to tax reform as one of the major differences between the candidates. See Kantowicz, *supra* note 107, at 221. In his acceptance speech at the Democratic National Convention, Carter promised: “It’s time for a complete overhaul of our income tax system All my life I’ve heard promises about tax reform, but it never quite happened. With your help we are finally going to make it happen.” *Id.* at 221.

109. *Id.*

110. *Id.* at 227.

111. See WITTE, *supra* note 100, at 206. The estimated \$9.5 billion savings is divided by the 1979 value of the gross national product price deflator (.788) denominated in 1982 dollars, and the 1979 population (.225 billion) to estimate real per capita savings.

1979.¹¹²

Congress was unimpressed. By April 1978, the House Ways and Means Committee not only defeated the administration's major reforms to close deductions, it *expanded* the charitable deduction provision to taxpayers who do not itemize!¹¹³ Though this proposal was finally dropped, the intent of Congress with respect to tax expenditures was clear. The final bill closed no existing tax favors. It did, however, increase the personal exemption, lower rates for the middle class, expand IRA exemptions, double the credit for political contributions, extend municipal bond tax exempt status to water and electrical generation facilities, allow deductions for firm contributions to employee educational expenses, and, finally, reduce the maximum tax rates for capital gains for individuals and corporations.¹¹⁴ In the end, Carter's lone achievement was in stopping Senate efforts to bring tax expenditures to the financing of private education via a tuition tax credit.¹¹⁵ The House (362 to 49) and the Senate (86 to 4) approved the new bill, known as the Revenue Act of 1978,¹¹⁶ nearly unanimously.¹¹⁷ As John Witte remarks at the end of his review of the legislative history: "Never in the history of the income tax were [administration] proposals so out of step with congressional intentions, and never were they so completely defeated."¹¹⁸

Three factors incorporated into our model appear to have undercut President Carter's efforts to achieve major tax reform. First, Carter's presidential resources available for coalition building may have been in relatively short supply. Congress was only just emerging from under the domination of the Nixon Presidency and beginning to reassert itself in matters of fiscal policy.¹¹⁹ Further, Carter's ability and willingness to trade nonfiscal policies for fiscal reform may have been more limited; there were fewer clear major social issues (e.g., civil rights, right to life) on the national agenda during this period with which the President could or would promise to attract supporters for fiscal policy.

Second, the potential costs to Carter of coalition formation within Congress appeared to be high, particularly by his second year. Carter in fact paid the revelation costs (*r*) necessary for reform; the U.S. Treasury staff under

112. *Id.*

113. *Id.* at 207.

114. *Id.* at 208-13.

115. *See id.* at 215. The failure of this provision to be included in the bill may have had less to do with Carter's proposed veto than with a threatened constitutional challenge by public school interest groups.

116. Pub. L. No. 95-600, 92 Stat. 2763 (1978).

117. WITTE, *supra* note 100, at 209, 212.

118. *Id.* at 207.

119. *See* RUDOLPH G. PENNER & ALAN J. ABRAMSON, *BROKEN PURSE STRINGS: CONGRESSIONAL BUDGETING, 1974-88* (1988).

the direction of Deputy Assistant Secretary Emil Sunley devoted their first year in office to fashioning a politically feasible reform proposal¹²⁰—in effect, revealing the *b(g)* schedules of Figure 1. Potential compensation payments needed to draw members into a supporting coalition (*w*) may also have been higher; real median family incomes had been stagnant for four years, perhaps placing a higher premium on constituent tax favors.¹²¹ More important than either *r* or *w*, however, was the implicitly high cost of “contracting” (*k*) faced by the Carter administration in early 1978. Following a presidential embarrassment over tax policy in 1977, Congress, and in particular the chair (Al Ullman) and members of the House Ways and Means Committee, no longer trusted Carter to stand by his word on tax policy.¹²² Carter promises were no longer credible to the members, and serious coalition formation for tax reform therefore became almost impossible.¹²³ The only tool that remained to force major tax reform was the formal veto.

Third, Carter mismanaged the veto strategy too.¹²⁴ Carter’s reform was never presented to Congress as a clearly specified, all-or-nothing alternative to the status quo. The reform proposal itself was an ambivalent attack on the concept of tax expenditures. While it proposed to close many tax favors, it also proposed several new favors, notably new investment credits for business.¹²⁵ When discussions on reform began, Carter never drew the line clearly between what was acceptable and what was not. His veto threat, when it was finally offered, was only a “fuzzy veto threat” in support of

120. Kantowicz, *supra* note 107, at 224-25.

121. During the discussion of tax reform, there was much mention in Congress of a need for additional tax relief for middle class taxpayers suggesting, perhaps, an upward shift of the *b(g)* schedules for representatives from these districts. See Witte, *supra* note 100, at 207. This would increase required compensation (*w*) for joining a presidential coalition. In support, Inman and Fitts find some historical evidence that domestic project spending and tax favors *increase* during periods of high unemployment. Inman & Fitts, *supra* note 2, at 108-09 tbl. IV, 118-19 tbl. V. Congressional proposals to offer tax relief during the current recession offer another example of this tendency. See Robin Toner, *To the Presidential Hopefuls, the Middle Class is Royalty*, N.Y. TIMES, Jan. 11, 1992, at A1.

122. Upon entering the presidency in 1977, Carter had sought a tax cut package aimed at stimulating the economy. Its centerpiece was an egalitarian \$50 rebate for all taxpayers. The bill moved easily through the House only to be bogged down in the Senate. What finally emerged was a strongly probusiness bill with a job credit for hiring new workers. The egalitarian tax rebate had been dropped. Liberals in the House felt betrayed when Carter signed the bill without even a fight for the rebate. “Ullman and other Democratic leaders felt they had gone out on a limb for the tax rebate and the President had sawed it off.” Kantowicz, *supra* note 107, at 223.

123. Even his most natural allies, House liberal Democrats, had abandoned Carter’s efforts at tax reform. Just as the *Washington Post* predicted: “Without the support from liberals, Carter has virtually no chance of getting a comprehensive tax bill through Congress.” Art Pine, *House Liberals Urge Carter to Cut Back on Tax Package*, WASH. POST, Oct. 18, 1977, at D8.

124. Of course, even a well-managed veto strategy could not overcome the more fundamental problem that Carter’s support coalition for reform was minimal at best. Nonetheless, Carter’s experience is informative of what is needed to make the veto work for fiscal reform.

125. WITTE, *supra* note 100, at 204-06.

major reform, aimed only at specific provisions (i.e., the school tuition tax credit) of the emerging tax bill.¹²⁶ Members easily worked around the veto threat to produce a bill which significantly expanded the level of tax favors.

When the Congress had finished its tax work, Democratic representative Fortney Stark offered the following assessment of Carter's efforts at fiscal reform:

The rich will have Christmas with ill-gotten gains.
While others pay taxes with annual pains.
But Scrooging the people is Washington's credo,
Now what we need, Tiny Jim, is a veto!!!¹²⁷

It did not happen. With congressional elections just three weeks away, Carter felt he could not reject a tax cut fashioned by a Democratic Congress.¹²⁸ Universalism had won.¹²⁹

C. REAGAN SUCCEEDS: THE TAX REFORM ACT OF 1986¹³⁰

The similarities and the contrasts of the Carter and Reagan Presidencies on tax reform could not be more striking. Like Carter, Ronald Reagan became a strong proponent of major tax reform. In their campaigns for the Presidency, both men advocated the need to shrink special interest tax favors and to use the resulting tax savings to lower tax rates for all taxpayers. Like Carter before him, Reagan made tax reform the centerpiece of his 1984 re-election campaign.¹³¹

On May 28, 1985, five months into his second term, Reagan introduced his tax proposals in a nationally televised address. Although Carter and Reagan may have differed in their views of tax progressivity, both were clearly committed to closing tax loopholes; in fact, Reagan went for more. The reform proposal—called Tax Reform for Fairness, Simplicity, and Economic

126. *Id.* at 214-15.

127. Kantowicz, *supra* note 107, at 228.

128. *Id.* at 229.

129. Michael Graetz summarizes well the congressional process and the impediments to significant tax reform. He blames the congressional reforms which decentralized the committee system and opened the door to universalism: [P]rospects for structural tax reform have been dimmed by recent 'reforms' in congressional practices. . . . [P]olitical leadership on tax matters has become increasingly diffuse. . . . [F]or those who would urge massive tax reforms, there is now more than ample cause for despair. Michael Graetz, *Can the Income Tax Continue to Be the Major Revenue Source?*, in *OPTIONS FOR TAX REFORM* 42, 42 (Joseph Pechman ed., 1984).

130. The political history of the passage of the Tax Reform Act of 1986 is well covered in JEFFREY BIRNBAUM & ALAN S. MURRAY, *SHOWDOWN AT GUCCI GULCH: LAWMAKERS, LOBBYISTS, AND THE UNLIKELY TRIUMPH OF TAX REFORM* (1988); TIMOTHY CONLAN ET. AL. *TAXING CHOICES: THE POLITICS OF TAX REFORM* (1990).

131. Some commentators on the campaign contended that the decision to showcase tax reform was simply to preempt the Democrats from using the issue. See BIRNBAUM & MURRAY, *supra* note 130, at 33-39. In fact, Mondale had no taste for a tax reform platform. Reagan found tax reform appealing because it offered another opportunity to lower tax rates.

Growth¹³²—advocated closing numerous tax favors on the personal and corporate side and then returning the resulting increases in federal revenues to taxpayers through major reductions in personal and corporate tax rates. While not all tax expenditures were closed,¹³³ significant savings were anticipated. Tax rates were reduced accordingly. Top bracket tax rates—Reagan’s central concern—fell in the President’s proposal from fifty percent to thirty-five percent on the personal side and from forty-eight to thirty-three percent on the corporate side.¹³⁴

In contrast to Carter’s proposals, Reagan’s were welcome on the Hill. House Ways and Means Chair Daniel Rostenkowski was a strong supporter, finding the President’s emphasis on loophole closing and significant tax rate reductions congenial to old-style Democratic Party values of tax fairness for working people.¹³⁵ Rostenkowski strengthened the coalition of support for tax reform within Ways and Means, but feared that a reform bill would unravel to special interest amendments if “open rule” prevailed on the House floor—that is, the major reform budget $B(p_N)$ might become modest reform budget $B(p_C, u/d)$.¹³⁶ A first vote on a “closed rule” to limit debate and amendments failed by twenty-one votes. Importantly, only fourteen Republicans voted for the closed rule and (in effect) tax reform. House Speaker Tip O’Neill called the White House and told President Reagan’s staff that reform could only go forward if the President could personally guarantee that he had “fifty to seventy-five votes for passage. . . . [T]hen we will begin moving ahead with the bipartisan reform process.”¹³⁷ To achieve the required reform coalition, the President spoke to all House Republicans on the need for tax reform at a special meeting at the Capitol. Importantly, and for first time, he promised to veto any reform bill that did not meet his requirements for personal exemptions and a reduced top tax rate. He assured the Republicans that he would not leave them with a selective reform bill that helped only Democrat constituencies; it would be major reform or no bill at all.

132. *Id.*

133. Those which were not were strategically chosen by then-Secretary of the Treasury James Baker and his Under Secretary Richard Darman. To appease business Republicans, Baker kept accelerated depreciation allowances and lowered the top tax rate for capital gains. To satisfy labor and win over Robert Packwood, chair of the Senate Finance Committee, most fringe benefits remained exempt from taxation. To win over the oil and gas coalitions on the Finance Committee and the House Ways and Means Committee, the special tax treatment for oil and gas drilling remained. Baker and Darman were coalition building in Congress.

134. BIRNBAUM & MURRAY, *supra* note 130, at 59-60.

135. *Id.* at 96-125.

136. We should be more precise here. In building their reform coalition, Baker and Rostenkowski in fact gave back tax favors to a few crucial members, denoted by membership in the reform coalition subgroup C' , where now C divides as $[C', C'']$. Thus the major reform budget included some tax favors for coalition members—that is, $B(u_C, p_C, p/d)$. The fear, then, was this “pretty-good” reform budget might simply unravel to a very modest reform budget of $B(u_C, p_C, u/d)$.

137. See BIRNBAUM & MURRAY, *supra* note 130, at 166-67.

This promise proved compelling enough to attract an additional thirty-four Republican supporters. Staff members then used presidential resources to attract the additional votes needed to meet O'Neill's target.¹³⁸ With the closed rule in hand, tax reform passed the House under a simple voice vote!

With the bill now in the hands of the Republican Senate, reform seemed more assured. It was not easy, however, as the special interest tax groups began to pressure the Senate.¹³⁹ Again, presidential intervention was required, this time in the form of a Reagan promise to support Republican Senator Robert Packwood in his difficult Oregon primary against a hard-core conservative.¹⁴⁰ Packwood was the Chairman of the Senate Finance Committee and the key to any significant reform. With Reagan's promised support for his difficult reelection campaign, Packwood felt responsible for bringing a reform bill to the Senate which the President could support. He succeeded with a radical proposal that met the President's veto constraint—and then some. Top rates in the Senate bill were thirty-three percent for the corporate tax, and twenty-seven percent for the personal tax.¹⁴¹ Using a core coalition of Republicans and tax reform Democrats, Packwood was able to defeat all amendments to the reform package. In the end, the Senate approved tax reform nearly unanimously; the final vote was ninety-seven to three.¹⁴² The President signed the final version of the Tax Reform Act of 1986 on October 22, 1986. It was, according to the *Wall Street Journal* reporters who covered the process, “[t]he most sweeping overhaul of the tax code in the nation's history,” and “(t)he most important player . . . was Ronald Reagan himself.”¹⁴³

What Reagan brought to the reform process were the three ingredients which Carter lacked: resources to trade, credibility to make trades work, and the strategic use of the presidential veto. First, Reagan began the reform process only five months after an overwhelming victory in the 1984 presidential elections, carrying all but one state easily. His approval ratings over the course of reform deliberations reached personal highs, never falling below sixty percent.¹⁴⁴ Reagan's promise to “share” his popularity in the upcoming 1986 congressional elections was crucial to Senator Packwood's support and also played a role in finding the needed Republican votes for the pivotal,

138. *Id.* at 170-72.

139. *Id.* at 176.

140. *Id.* at 190-91.

141. This top rate was a fiction for taxpayers in the middle income brackets who faced a 5% tax surcharge. The true top rate was 32%, still below the President's veto target of 35%. *Id.* at 220.

142. The conference committee still needed to reconcile differences between the House and Senate bills. The final reform bill followed the Senate version almost exactly. *Id.* at apps. A, B.

143. *Id.* at 284, 286.

144. The Gallup Poll, *Public Opinion, 1985* (1986) at 233; *Public Opinion, 1986* (1987) at 255.

“closed rule” vote in the House.¹⁴⁵ Executive office resources were allocated to win Congressional support as well—for example, a promise to sign farm legislation for rural districts, the granting of favorable administrative rulings on tax filing dates and import quotas for machine tools, and a promise of visits by cabinet members to congressional districts at election time.¹⁴⁶

Second, unlike Carter, Reagan had a reputation as a credible deal maker. Republican members of Congress in particular trusted the President, and this meant that reform coalitions could be fashioned. No coalition was more important to reform than the fifty Republican’s who joined Reagan and the Democratic leadership to ensure a closed rule vote on the House version of the bill. Crucial to this coalition was the credibility of Reagan’s promises to protect their interests in the reform process.¹⁴⁷ While there was virtually no value of k that Carter could offer to ensure a congressional agreement, Reagan’s promises seemed to stand with little or no extra guarantees. The resulting block of fifty Republican votes proved in the end to be Reagan’s reform coalition, C^* . Those fifty votes were enough, when joined with the Democrats, to ensure passage of reform. But if at any time reform went badly for the President (specifically, if rates remained too high), those fifty votes could be joined with other conservative Republicans and special interest losers to sustain a veto.¹⁴⁸

Finally, Reagan and his staff knew the importance of the “all-or-nothing” offer when seeking major fiscal reform. To give Congress the free hand to fashion reform, as Carter had done, would mean no reform at all.¹⁴⁹ To force the all-or-nothing choice on Congress, Reagan had to fulfill the three requirements of our model of presidential influence: (1) a reform coalition capable of sustaining a veto; (2) the credible threat to veto partial reforms in favor of no reform at all; and (3) a clear, not “fuzzy,” veto criterion. Reagan achieved the first two conditions with his promise to conservative Republi-

145. BIRNBAUM & MURRAY, *supra* note 130, at 170, 190.

146. *Id.* at 172.

147. During Reagan’s visit to the Hill to find this coalition, Representative Henry Hyde, a leading conservative, rose to announce: “Mr. President if you say you’ll fight for the \$2000 exemption, the rate reduction, effective dates, and lower capital gains rates, I don’t need a letter. I’ll vote for it.” *Id.* at 171. After Hyde’s comments, the meeting changed from an expression of concern over the path of tax reform to a show of support for the President’s policies. *Id.*

148. When the closed rule vote was first taken, the closed rule (and effectively reform) was defeated, 223 to 202. O’Neill told Reagan that 50 to 75 (the C^* coalition) of those 223 antireform votes had to be brought over to the side of reform. This would reduce the number of potential antireform votes to the edge of the veto range. If Reagan were to “release” his C^* coalition to support a veto, there was little question that it would be sustained.

149. This was no more evident during the 1986 deliberations than when the special interest lobbyists took hold of the Senate Finance Committee in the first months of the Senate’s efforts to fashion reform. Only Packwood’s leadership, steeled by the promise of Reagan’s support, could close the gate on a new explosion of tax favors. See BIRNBAUM & MURRAY, *supra* note 130, at 176-234.

cans to veto all reform bills unless they met his strict tax rate guidelines. This promise not only earned Reagan his core *C'* coalition but it also tied his legislative future to accepting only major tax reforms. To have promised his most important congressional supporters a veto of partial reform and then to have backed down would have seriously damaged the Reagan agenda for the remainder of his term.¹⁵⁰

The third requirement for a successful all-or-nothing strategy is a clear veto signal. The President chose to draw the line on tax rates: only those reform proposals with a top rate less than thirty-five percent would avoid a veto. It is at this point that presidential tax reform received some important outside help: the Gramm-Rudman-Hollings (GRH) deficit control act, passed in December 1985.¹⁵¹ GRH made the principle of revenue neutrality—tax rate reductions matched by equally valued reductions in tax expenditures—a real constraint for tax reformers. When the President's commitment to veto any bill with a top rate greater than thirty-five percent was joined with GRH, tax expenditures had to be reduced. Unlike Carter who used a "fuzzy" veto threat aimed at explicit tax favors, Reagan could force a reduction in most tax expenditures with a simple and clear message on tax rates alone. That Congress felt the bite of both the veto and the GRH constraints is clear from their efforts to balance each rate reduction with an equal savings from tax expenditures.¹⁵²

Reagan's use of the presidential reform strategy outlined in Part II appears to have been critical to his success, just as Carter's failure to follow this approach significantly undercut his efforts. Unlike Carter, Reagan and his staff were quite willing to trade on the discretionary resources available to the administration to garner votes. They also were willing to threaten a veto if the clear outline of the proposed tax amendments were violated. This was high risk politics, but the economic and political payoffs were high too. The Tax Reform Act of 1986 greatly reduced tax loopholes and, we also emphasize, improved the overall progressivity of our federal tax system.¹⁵³

CONCLUSION

Both the academy and the public have criticized the growing inefficiencies—"waste"—in government programs. The new political economy has identified one important explanation for this phenomenon in congressional budgeting—the decentralization of Congress and the norm of universalism. In its classic form, universalism reflects an individually rational response to

150. In contrast, Carter's retreat from the \$50 rebate in 1977 may have cost him dearly in his efforts to achieve major tax reform in 1978. See Kantowicz, *supra* note 107, at 223.

151. Pub. L. No. 99-177, 99 Stat. 1037 (1985).

152. CONLAN ET. AL., *supra* note 130, at 51.

153. See Gravelle, *supra* note 104, at 30.

the collective action problems inherent within a decentralized legislative body. At the same time, in the aggregate, such behavior can lead individual legislators to ignore the larger social costs of their actions and lead them to pass wasteful domestic budgets.

Congress has recently experimented with a variety of mechanisms to overcome these difficulties. The military base closing commission and GRH are prominent examples. We believe that the powers of the Presidency, especially informal resources for coalition building and the strategic use of formal veto powers, offer additional tools to force useful economic reforms.

Robert Reischauer, current head of the Congressional Budget Office, has observed, "Although it is congressional, the [budget] process is incapable of producing major shifts in priorities or dealing with the difficult issues of retrenchment and deficit reduction without the cooperation and leadership of the President."¹⁵⁴ Our analysis lends support to this conclusion. As outlined here, the President can overcome an inefficient Congress unanimously opposed to change by forming an effective veto coalition and presenting an "all-or-nothing" budget offer that forces individual members of Congress to face the full social costs of their legislative actions. The result can be significant budget reform. President Reagan's success using our veto *cum* budget strategy and President Carter's contrasting failure without our strategy are, we feel, telling lessons for other public executives—be they mayors, governors, or future Presidents—seeking better fiscal policies from their own decentralized legislative bodies.

154. Robert Reischauer, *The Congressional Budget Process*, in *FEDERAL BUDGET POLICY IN THE 1980s* 385, 386 (1984).