

Chapter 18

Toward Financial Freedom: Budgetary Reform in the U.S. Courts

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The record of budgetary reform has demonstrated results, especially in the ability of states and municipalities to function with constrained revenues, but thus far has generated a plethora of locally specific rationales rather than a compelling theoretical foundation. Though anomalous in its structure, governance, and constitutional position, the federal Judiciary may provide analytical leverage in buttressing the theoretical underpinnings of the study of budgetary reform through the example of its budget decentralization initiative. Moving in relatively short order from the constraint of an archaic requisition system to the flexibility of a virtually automatic allotment system and broad budget execution authority, managers responsible for court budgets were freed to reprogram virtually at will. Coupled with a parallel reorganization of the agency's appropriation development process, the budget decentralization initiative improved financial accountability internally, as well as externally — between the Judiciary and Congress. The key organizational elements of this reform are examined descriptively and theoretically to determine their applicability for other agencies.

The relevance of institutional norms in promoting the adoption of new methods and principles occupies a central focus, particularly in contrast to the emphasis often placed on explicit incentives by agency theory.

18.1 Introduction

The federal Judiciary needed only a decade to make dramatic changes in how its budgets were developed and executed, transforming in relatively short order from laggard to leader in the practice of federal budgeting and financial management. After removal of the constraints of an archaic requisition structure, introduction of a virtually automatic allotment system, and adoption of broad budget execution authority, court administrators could plan on anticipated amounts with confidence and reprogram virtually at will. Centralization of the appropriation development process and Congress' willingness to cooperate with the Judiciary in relaxing the restrictions of the appropriation language complete the narrative of these reforms. The speed and apparent impact of these changes, as well as their uniqueness — distinct from government-wide efforts — recommend the U.S. Courts' experience for study.

The record of budgetary reform has demonstrated results, especially in the ability of states and municipalities to function with constrained revenues (Rubin, 1998; Willoughby, 2004). Research on budgetary reforms has often utilized a case study methodology (e.g., studies by Douglas (1999) and Lauth (1985) of Georgia and by Grizzle and Pettijohn (2002) of Florida). Generalizing the Georgia case to search for common themes that contribute to the success of reform efforts, Douglas (2000) sets an example to be emulated for the work at hand. The specific factors that enabled Georgia's redirection effort to accomplish the goals of prioritizing functions within agencies and reducing the proportions of requested increases — principally the power of a determined, constitutionally strong governor coupled with the willingness of the legislature to defer somewhat to the executive's priorities — will not apply in this case. Beyond the special position of the courts, treated at length below, the differences between state and national constitutional structures account for considerable divergence between what may be achieved at the state level and what should be expected of a federal government initiative. Recognizing the sensitivity of budgetary mechanisms and techniques to the structural and political peculiarities of specific jurisdictions, this research will focus on establishing an organizational context for reform and targeting those factors that create the requisite climate for reforms to take hold, rather than emphasizing particular forms or processes. This approach follows the recommendation of Forrester and Adams (1997), who proposed a normative approach to improve budgeting

by incorporating organizational culture and learning. Notwithstanding the implicit challenge of augmenting the literature on budgetary theory by employing an exceptional instance, the Judiciary's fundamental alteration of how its budgets are produced and executed can illuminate underlying factors that transcend the particular environmental considerations of other agencies.

18.1.1 Distinctive Attributes of the Federal Judiciary

The example of the U.S. Courts, because of its distinct constitutional role and political independence, should be labeled "handle with care" to avoid uncritical application to the rest of the federal government. Whereas the presidency and Congress carry the inevitable imprimatur of the administration and majority party, the federal Judiciary follows its own cycle. Chief Justice William Rehnquist, appointed to the Supreme Court by Richard Nixon, has served in his present capacity during four administrations. Moreover, the Judicial Branch accounts for roughly two percent of the federal budget (Office of Management and Budget, 2003, p. 100) — a trifle compared to the outlays of the Executive Branch, which has been the subject of virtually all analyses of federal budgeting and financial management. Scale aside, the courts' constitutional insulation suggests separation of powers as the salient analytic feature, spawning much of the scholarship that has concerned judicial budgeting. Examples include Douglas and Hartley's (2001) study of state judiciaries under different budgetary structures, pursuing judicial independence as the outcome of interest. Glaser's (1994) treatment of the stand-off between New York's governor and chief justice considered the judicial branch's inherent power to fund its own activities. Notwithstanding its distinctiveness, the Judiciary's experience may apply more broadly through a focus on administration rather than separation of powers. Yarwood and Canon (1980) described the isolation of adjudicative issues from the budgetary ones in the justices' presentation of the Supreme Court's request to Congress. This separation is even more distinct in the remainder of the budget — the Supreme Court represents only a small portion of the Judiciary's funding requirement — because of the numerous (approximately 200) courts of appeals, district courts, and bankruptcy courts, which tackle diverse legal issues, include judges appointed by both parties, and constitute a major part of the nation's ongoing system of justice: an integral component of the legal and regulatory structure that undergird the economy and, as such, not to be unduly manipulated. Though "inferior courts" constitutionally, their financial management has been the prime target of reform under the present "administration," marked by the tenures of Chief Justice Rehnquist and

Administrative Office of the U.S. Courts (AO) Director L. Ralph Mecham, appointed by Rehnquist's predecessor.

The continuity of such longstanding leadership marks one of the noteworthy elements of this anomalous case; the other is relative freedom from recent trends that couched budgetary issues in performance-based terms through strategic plans, including goals, objectives, and derivative metrics. Passage of the Government Performance and Results Act (GPRA) during the Clinton Administration and its successor's introduction of the Program Assessment and Rating Tool as an instrument of further control by the Office of Management and Budget (OMB) over agency budgets (Gibson, 2003) tie budgetary issues ever closer to those of performance. The budgetary manifestations of this array of objectives and metrics are complex and arcane, as the technocratic tone of a recent analysis (McNab and Melese, 2003) of the prospects for successful adoption conveys:

[T]hree potential solutions exist to the multiprincipal, multi-dimensional bargaining game. First, one may restrict the principals' incentive schemes Second, it may be possible to group principals whose interests are closely aligned Finally, more agents can be created by reassigning activities and programs (p. 92).

Small wonder that "the future of GPRA is not bright" (p. 94), given such daunting complexity and the acknowledged past failures of performance budgeting attributed to the usual suspects: "administrative complexities, lack of investment in managerial, accounting, and information systems, and the absence of institutional incentives to promote gains in economic efficiency" (p. 73). Distinguishing the Judiciary's simpler approach from the recent tendency toward nominally results-based orientation should not be interpreted to convey that performance is foreign to or estranged from budgeting, only that performance has a more traditional derivation than the recent, highly technical variety advanced through heightened scrutiny from program analysts, particularly within OMB. Nor is the Judiciary subject to the President's Management Agenda, whereby the George W. Bush Administration enlists agency efforts behind its operational priorities, such as "competitive sourcing" intended to increase contracting-out (Gibson, 2004). Attending these developments, the hiatus (LeLoup, 2002, p. 5) that followed the heralded demise of incrementalism as a theory (pp. 1–5) — awaiting its successor — promises to usher in a thoroughgoing revision of practice at the federal level (pp. 12–13). Given this development in budgeting and financial management, the Judiciary's example represents an alternative perspective: sacrificing

technical sophistication for pragmatic judgment, while promoting local autonomy rather than overhead direction and scorekeeping.

The anomalous nature of the Judiciary's approach has a clear heritage. For much of the previous century, the U.S. Courts followed a budgetary course manifestly out of phase with the rest of government. While the burgeoning expenditures (Schick, 1990, pp. 17–20) that emerged from the New Deal, Second World War, and Cold War expansions filled Washington with a public sector that was truly national in scale, the Judiciary still retained its traditional form and size in 1960 (Posner, 1995). As a “late-blooming” claimant to significant federal dollars, the Judiciary's growth coincided with a period when the size of government was first questioned, then attacked (LeLoup, 2002, pp. 6–8). The Judiciary appeared similarly out of step in its budgetary strategy: “unable to get Congress' attention” (Walker and Barrow, 1985) because of the small size of its request and the lack of electoral advantage from funding it. Douglas and Hartley (2001, pp. 57–58) concisely summarized the prevailing view of this strategy: personal and conservative.

Yet, the conclusion that bolder, policy-centric appeals by executive agencies place the Judiciary at a disadvantage requires a second look. Perhaps advocacy by judges — respected and well-connected within their states — has proven resilient in comparison with the political constituencies of prominent programs, increasingly vulnerable to partisan threats. Or the parsimonious fiscal climate of the mid-1980s through the end of the 1990s could have favored conservatism. For whatever reason, the Judiciary's success in sustaining steady, and sometimes dramatic, increases in funding during a generally unfavorable climate for non-defense-related expenditures demonstrates noteworthy fiscal success. Observing the role of competition in garnering budget increases, Irene Rubin (2000) tabbed the Department of Justice as the clear winner within the Commerce, State, and Justice appropriations subcommittee. But that appropriations bill also funds the Judiciary, which, overlooked by Rubin, enjoyed a slightly larger proportional increase during the same period (1980–97) than the Justice Department.¹ Potential explanations abound for this performance — foremost on its face the increase in caseload, which is treated below. Another straightforward rationale for favoring the Judiciary's and Justice's budget requests above those of State and Commerce is bipartisan support for law enforcement. That explanation ignores the Judiciary's programmatic breadth, which encompasses civil litigation (including product liability torts) and bankruptcy adjudication, as well as indigent defendants' legal representation, hardly prone to unqualified support from the law-and-order constituency. Nonetheless, connections with the criminal justice system form a central thrust of the judiciary's presentation of its budget request (Arnold, 1996). Whether owing to

presentation, programmatic appeal, or other factor(s), the Judiciary's recent budgetary prowess reflects an enviable relationship with congressional appropriators.

18.1.2 *Autonomy and Accountability*

Chief Justice Rehnquist (1998) characterized the Judiciary's change as an "archetype" for "devolution of management authority." Notwithstanding the profound increase in authority and responsibility granted to court administrators, such latitude depends on courts' management of more flexible funding: a bargain with Congress as fiscal custodian. The reciprocal power of newly integrated budget processes, equally forceful if less obvious than the devolutionary impetus toward local control, also merits our attention. Accordingly, the parallel developments of greater local autonomy and improved accountability to Congress are treated together, as "part and parcel" of a sustainable reform initiative. I examine the reasons why budgetary changes took hold in the Judiciary, how centralization complemented decentralization, and whether any broader significance should be attached to this case. This inquiry encompasses the aims of these budgetary reforms, the ways and means, and the reasons for their apparent inculcation within the Judiciary's culture. I also inquire what recent fiscal straits may portend for sustaining autonomy.

18.1.3 *Methodology*

Befitting a case study, the initial thrust of this research is descriptive. The authoritative account of the Judiciary's budget decentralization initiative was authored by Joseph Bobek (2004), former assistant director of the AO for finance and budget and the Judiciary's chief financial officer, who was retained under contract to write the history of the changes he had overseen. This history complemented a study of the effects of budget decentralization conducted by KPMG, LLP (2004). The author was granted access to final proof drafts of these studies, which are intended to remain internal AO documents. To augment these sources, the author interviewed court participants in the initiative, whose acquaintance was made while working on related efforts as a contractor during 1997-98 to develop approaches to fund lawbook purchases and local automation infrastructure. Because these court participants constitute commentators rather than a sample, their insights should not be construed as representative of court administrators' views generally. Nevertheless, they are informed by their roles within advisory groups that played a central role, as described below, in the budget decentralization initiative. Interviews with Bobek and a

current senior budget manager contributed further insights into how the budget decentralization was conceived and sustained, and how recent funding constraints may impact it. Another crucial interview was conducted with Judge Richard S. Arnold, who presided over budget decentralization as chairman of an oversight committee. The variety of assembled vantages — administering a court, directing an initiative, seeking a consensus among judges, and coordinating with a congressional committee — contribute to the “thick” description appropriate for analyzing a complex organizational change (Brady and Collier, 2004; Eckstein, 1975; Yin, 2003).

18.2 Decentralization of Budget Execution

A straightforward account of budget decentralization begins, as Chief Justice Rehnquist proclaimed, with “devolution” to the individual courts, situated in 94 judicial districts and 12 geographic circuits nationwide, as well as other courts of special jurisdiction (but not the Supreme Court, which has always maintained a separate budget from the district courts and courts of appeals). Devolution has a certain irony in the Judiciary — “a decentralized entity by nature” according to Judge Arnold (2003) — considering the freedom of the “[original] 16 district judges, who were wholly independent to do whatever they wanted administratively.” But the system evolved administratively in the modern Judiciary to a level of coordination and oversight almost certainly unrecognizable to those first judges.

18.2.1 Preexisting Constraints on Court Autonomy

The AO, established in 1939 as a central entity supporting finance, personnel, statistical reporting, and related management functions, curbed courts’ budgetary autonomy. Limits on administrative independence arose repeatedly in Arthur Hellman’s (1990) study of the Ninth Circuit, which coincided with the advent of decentralization: the result of the AO’s influence through

decisions about budgeting, equipment, and, above all, personnel ... [A Ninth Circuit] judge has gone so far as to say, “Until the circuit councils and the court of appeals are given some autonomy in resource allocation, it is probably a benign form of fraud to label courts as carrying policy-making authority” (p. 222).

In the same study, Doris Provine (1990) found that “[s]pending for courts traditionally has been handled almost entirely from Washington. ... Thus

judges contact the Administrative Office if they need extra office supplies or new furniture," which some found "advantageous" (p. 271). Dispensing funds in this fashion, the AO presented the appearance to several judges Provine interviewed of "a sugar daddy who dispenses money from an unseen pocket of unknown depth" (p. 271-72).

Courts submitted requests under "an old requisition system" (Bobek, 2003) that were then reviewed, decided on, and executed, once approved, by the AO. Kay Guillot (2003), circuit librarian of the Fifth Circuit, described the process thus:

If you wanted a photocopier, you would have to request it. They'd ask: 'How many copies do you need? How old is the current one?' Then, months went by; you might have to call on the status. Sometimes you never found out anything until it came.

John Shope, district executive of the Northern District of Georgia, joined the U.S. Courts just before budget decentralization began after managing a large municipal court. He reported being "disillusioned" at finding a "Mother-may-I?" system that required him to "ask Washington for funds to print; ask Washington for a copier" (Shope, 2003).

Budgeting prior to decentralization was burdensome and highly procedural, exemplified by the staffing review process (KPMG, 2004):

The AO scrutinized these [staffing] requirements using workload formulas and other projections to determine the number of staff that a court should need. The AO would not approve any additional staffing requests by a court unless the court was able to satisfactorily justify its additional needs (p. 7).

Other financial requirements met comparable obstacles, to wit, forms such as the "AO 19" for most non-personnel expenditures and the "AO 20" for travel. Program divisions, which held most of the allotments, were routinely involved with court operations, requiring court administrators to deal with an estimated 40 different AO officials in the course of their work (p. 8). In addition to the burden of added paperwork, the courts labored under the impression it was "*who you knew*" that mattered. The top financial manager (prior to the Chief Financial Officer Act) in the AO was known as the ultimate arbiter of courts' requests, according to Judge Arnold (2003): "If he thought you ought to have it, then you got it." Hardly an uncommon circumstance in government agencies; nonetheless, the "role of professional administrators in the distribution process" was controversial in the Judiciary, flying in the face of the dogma: "Decisions about who gets what . . . should be made by judges" (Provine, 1990, p. 272).

18.2.2 *The Origins of Decentralization*

With due regard for judges' dispositive role, both in and out of the courtroom, the central figure in budget decentralization — “decentralized financial management” as he prefers to think of it — was an administrator: Joseph Bobek, who joined the AO two decades ago as chief of the Budget Branch (“Bobek to Head AO Office of Finance and Budget,” 1996). Although Bobek (2003) conceived the simplified structure “brainstorming” with his staff on weekends spent developing pre-reform budgets, the vision he broadcast — “to push a button and do the allotments” — was pursued by opportunistic increments, rather than a grand design. When the Circuit Executive Committee on Budget Decentralization convened, Bobek advised the group, helping to advance the concept against the parochial interests of his organization and his superior, who “lost power because it had been a ‘good old boy’ system.” The committee endorsed the following goals (Bobek, 2004, p. 19):

- Reduce operating costs by five percent.
- Create the ability to prioritize expenditures.
- Provide a means to respond to local needs.
- Offer incentives for good management at the local level.
- Provide a better capability for planning at all levels.
- Allow more flexibility to absorb reductions in funding caused by Gramm-Rudman-Hollings or other legislative actions.
- Reduce paperwork at all levels.
- Allow for better monitoring of expenditure patterns by the AO.
- Create a greater capacity to avoid excessive year-end spending.
- Delegate responsibility for Financial Management to the operational level.

A decentralization initiative followed the circuit executives' recommendations, beginning with pilot courts, which were allotted funds based on prior year amounts plus an increment or justified by budget calls for zero-based categories such as equipment (Bobek, 2003). A concurrent pilot, the “Personal Computer Purchases with Personnel Lapses Program” (Judicial Conference of the United States, 1988), recognized the need for automation, crediting positions not filled toward the purchase of computers:

Courts could elect to keep a position vacant for the time required to accumulate sufficient salary savings to purchase personal computers The program also required that 25 percent of the savings be used as a contingency fund (Bobek, 2004, p. 25).

Another program considered at this time was formulated under the auspices of the Eleventh Circuit Court of Appeals, which liberalized budget execution, but “also provided a mechanism to allow savings from district courts’ allotments to be reprogrammed to the circuit for application to the highest priority in the circuit” (p. 25). Ultimately, these programs were discontinued after the pilot decentralization program was expanded.

The initial success of pilot courts’ financial management resulted in the return of \$4 million in unused funds in the first year (Mecham, 1990, p. 72). Nonetheless, the pilot had to run its three-year course before nationwide implementation proceeded, ultimately awaiting the conclusions of a National Academy of Public Administration (NAPA) report, which set prerequisites for the national roll-out: additional pilots to prove the concept in smaller courts and standardization of local financial accounting procedures, delays that Bobek fought. He prevailed: courts were allowed to volunteer for decentralization; virtually all did within three years (Bobek, 2003). A liberalized personnel system structure followed, which freed managers from requesting positions or promotions from the AO, but required a mechanism to ensure the new system would be “cost neutral” (Bobek, 2004, p. 44). As John Shope (2003) explained, the flexibility presented opportunities for abuse because positions could be upgraded at the discretion of court managers. He collaborated with Bobek to develop the concept that became the Cost Control Monitoring System (CCMS), which “produced the controls necessary to insure the cost neutrality of the new [Court Personnel System] CPS ... [and] moved the courts from a salary control system based on end-of-year employment ceilings to a dollar-driven system” (Bobek, 2004, p. 44). The incentive for court managers was the virtual elimination of funds retained by the AO to meet personnel-related requests, no longer necessary because clerks and other budget holders were held to monetary rather than personnel-based limits. Reserving less funding for contingencies freed up approximately four percent of salaries — gained in the annual allotment to the courts (Shope, 2003).

18.3 Decentralization Takes Root

Nothing demonstrates the Judiciary’s commitment to budget decentralization as clearly as the investment in training. More than one thousand court managers were trained for each of the budget decentralization and CCMS implementations (Bobek, 2004, p. 77). Guillot (2003) identifies the initial training in 1991–93 as “the biggest thing that made budget decentralization successful.” Court managers were immersed through both temporary separation from their operational responsibilities — emphasized by the venues, such as “the Meridian in Newport Beach, the

Ritz-Carlton in Buckhead [Atlanta], and a resort in Arizona" — and the comprehensive curriculum: "morning theory, afternoon scenarios ... [on] developing budgets, submitting requests, appeals, prioritization." Students were "kept prisoner." Instructors included AO budget staff, advisors (e.g., Guillot), and representatives of the pilot courts. The courses not only covered mechanics, but principles: "you want to get heads going up and down." Guillot concludes "we could never afford to do it again."

Institutionalization of new financial management principles was tested by the next evolution in decentralization. Whereas CCMS had been a "day-forward" system that assumed the personnel allotments to each court, based on their prior requests to the AO for positions and promotions, were correct, the allotment simplification initiative provided, for the first time, common criteria by which courts' resource needs could be determined (Shope, 2003). This final stage of decentralization enhanced the key concept of equity by applying statistical analysis to the spending patterns of the courts. Chief Justice Rehnquist (1998) summarized in his 1997 end of year message:

Funds previously allocated in 40 separate expense categories were combined in one aggregate amount based on formulas developed by teams of statisticians, financial analysts, program experts, and court staff. As a result, the paperwork burden for preparing each court's budget requests was substantially reduced or eliminated, and the courts were assured of an equitable distribution of these operating funds.

Dependence on variable inputs meant that allotments could fluctuate from year to year — discontinuously rather than incrementally. To ease the transition to simplified allotments for those whose expenditures were higher than the formula predicted, no court experienced more than a five percent reduction in the first year and ten percent in the second year. Everyone was expected to be "lean and mean" (Shope, 2003) by the third year, which required clerks and other unit executives to anticipate that a change in the formulas' inputs, such as their district's or circuit's caseload, meant a proportional change in their budget. Participants in the formula development emphasized that fiscal conservatism guided the actions of successful unit executives. Those who staffed too aggressively faced reductions when local caseload trends reversed. Barry Polsky (2003), chief probation officer for the Eastern District of Pennsylvania, averred such trends were evident to careful administrators in time to take appropriate action — "good managers know how to take care of that stuff"; his fiscal conservatism made possible significant transfers from his unit's funds to cover shortfalls within the district. Not all unit executives welcomed the

new responsibility: "courts that wanted to keep the AO in the middle and just tell the judges they can't get a decision from the AO' or 'the AO won't approve this. Some courts were afraid of the additional responsibility" (Bobek, 2003). Decentralization advocates consider the exodus of managers unequal to their new responsibilities a necessary development (Wynne, 2003; Guillot, 2003; Polsky, 2003).

18.3.1 Factors in the Institutionalization of Reform

Among the themes recurring in both personal and official accounts of budget decentralization was the crucial role of courts' involvement. Bobek trumpeted the central message that "it would be a fair and equitable system," taking every opportunity to get the message across: "at any forum, all over the country, for example, a group of probation chiefs at a circuit conference." He "made a lot of friends in the courts, and was probably better known in the courts than anyone from the AO except for the director" (Bobek, 2003). One unit executive involved in decentralization underscored this claim, relaying a colleague's tribute: "they ought to erect a monument to Joe Bobek and put it in the lobby of the AO" (Wynne, 2003).

In turn, Bobek (2003) credits Director Mecham's strong support as a key element of the reform's success, including travel and training funds, but not dedicated staff — only four were assigned from the Budget Division. Besides "all the dollars that he needed," Bobek had staff detailed part-time from the AO program divisions, which oversaw courts' administration and policy. But the bulk of the effort relied on court volunteers, who staffed standing committees that produced "deliverables," from training plans and materials to recommendations of courts to be implemented first — courts meeting stringent criteria, such as clean audits. For the volunteers Bobek (2003) provided whatever resources were necessary: "They could meet as often as they wanted," which required travel budgets, usually subject to severe scrutiny in any agency. His aim was to "take away any excuse for failure," relying on "peer pressure" from court colleagues to provide an incentive for timeliness. He "hand-picked" court members of an executive steering committee, which had two crucial decision points: the first to approve his concept; and the second "to ensure that the stamp of the courts" was on the work being done by the standing committees.

Unit executives found a national advocate of local control. Polsky (2003) gave Bobek credit not only for shrewd politics, but also for instincts that "there were good people in the field, every district was unique, every unit was unique," enabling the courts to establish national rules that secured independent local action. Shope (2003) confirms that the development

of key elements "by the courts was important to their being accepted. The courts are usually suspect of ideas that are generated centrally without their involvement." Guillot (2003) characterized their suspicion vividly: "the first reaction is — how will they get me on this one?" while emphasizing the Budget Division's outreach:

of all the divisions in the AO, Budget was the only one that had a working advisory group that came to Washington twice a year Not only did they get good advice, but you get advocates. It's our message, too. We're shills for them, carry their water. But it's good because it's communication — Budget used the group, used newsletters, used the Web to communicate.

Courts' engagement grew during the final phase of decentralization. Court managers formed a working group to review the statistical analysis and evaluate how well alternative sets of variables fit expenditures, approving separate budget formulas to govern the allotment to each court type and administrative unit (probation, pretrial services, and libraries). Anticipating the inevitable controversy associated with formulaic budgets that were insensitive to special circumstances, or in some cases caused funding to drop, court representatives were recruited for another crucial role: appeals of the calculated amounts were controlled by a board composed of the court managers who had participated in the construction of the formulas. Shope served on the board, which exacted a compelling need before additional funding was provided: "When you go before your peers, they know where the skeletons are hidden" (Shope, 2003). The number of special circumstances appealed constituted the formulas' true test. Appeals decreased steadily from 1996 to 2001, with the exception of 2000 ("Appendix 21," 2004).

18.4 Centralization of Budget Development

Although the collaboration of administrators and court executives created the impetus for decentralization as described above, they alone could not have implemented the policy because "everything that goes on in the Judiciary is determined by judges" (Arnold, 2003). At each stage of decentralization, the Judicial Conference Committee on the Budget (Budget Committee) accepted the policies and recommended that the Judicial Conference approve them, although not without reservations. For example, the Budget Committee weighed its judgment on the necessity for better responsiveness to local requirements and improved fiduciary performance more heavily than promises of realized savings, deciding nonetheless

to proceed with pilot decentralization (Bobek, 2004, p. 19). Policymaking did not stop with Judicial Conference approval, however, as budgetary policy seldom lies solely within the province of an agency, even when the agency in question constitutes a branch of government. Congressional acquiescence constituted an essential facet of both decentralization and broader changes in the budgeting and financial management that occurred during the same time. Greater responsibility granted internally to allotment holders advanced hand-in-hand with better coordination with Congress on appropriation requests, a seemingly "virtuous cycle" of authority and accountability that warrants closer inspection.

18.4.1 Reform of the Appropriation Process

As Budget Committee chairman, Judge Arnold (2003) also assumed responsibility for an open-ended appropriation process, which in his first year as chairman of the Budget Committee produced a request for a 30 percent annual increase, termed "an outrage" by a Republican on the Senate appropriation subcommittee staff. The obvious question: How could such a large increase be submitted given even a rudimentary process of review and approval within the Judiciary? To appreciate the answer requires a basic understanding of its policymaking process. The most remarkable aspect is that the Third Branch of government is literally "run by committee." The "supreme" governing body is not the court of that name, although its chief justice serves as the administrative as well as legal head of the courts through his role as chairman of the Judicial Conference. All policy-related and administrative decisions — everything that must be decided for the whole court system outside of specific cases — are formally made by this body, comprising the chief justice of the Supreme Court, two representatives from each circuit, one of whom is the chief judge of that circuit, and representatives of special courts (Fish, 1973 pp. 254–57). The Judicial Conference meets semiannually, operating in the meantime through delegation to committees and to the AO, which is responsible for the staff work supporting the Conference and its committees, as well as the day-to-day administration. In their account of the former Fifth Circuit Court of Appeals' division into the current Fifth and Eleventh Circuits, Walker and Barrow (1985) pose a model of judicial governance that incorporates many elements that may be unfamiliar, even to those quite familiar with the operation of the other two branches of the federal government. Figure 18.1 depicts a model of budgetary decision-making, adapting Walker and Barrow's structure.

The Judicial Conference and its committees oversee the Judiciary's administration: the budgetary, personnel, and other policy areas that are

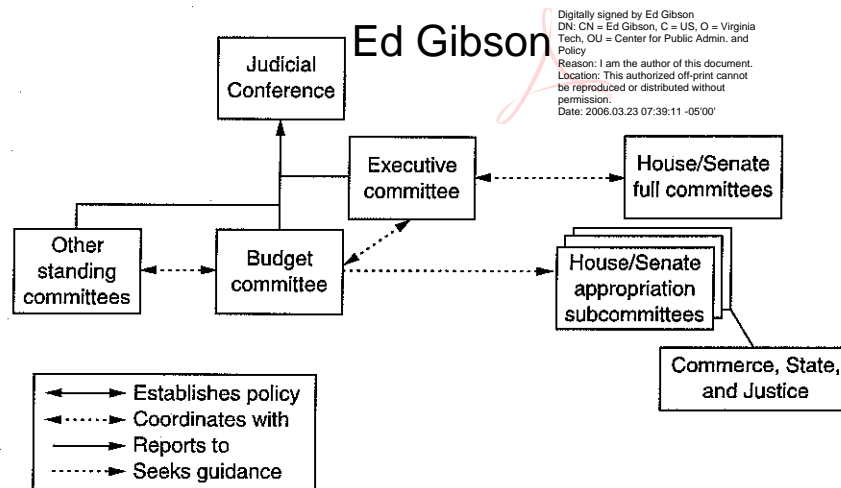


Figure 18.1 Judiciary policymaking entities and relationships.

the purview of the political appointees in executive agencies (Fish, 1973, pp. 444–45). Approval of the Judiciary's budget request occurs during semi-annual Conference meetings, which is the forum for other policy matters such as proposed changes to procedural rules. Because judges are primarily responsible for deciding cases and have quite limited availability for administrative duties, the considerable staff work associated with policy development and promulgation falls largely on the AO. Judicial Conference committees, meeting in the intervals between the Judicial Conference sessions, guide and approve this staff work. Foremost among these committees is the Executive Committee, which stands in for the Judicial Conference on matters that require interim actions, establishes its agenda, and bounds the responsibilities of the other committees. Within the network of committees that accomplish the work of the Judicial Conference between its formal meetings, responsibility does not imply control. Witness the significant budgetary roles played by other committees, for instance establishing resource requirements for personnel, facilities, and information technology, circumscribing the Budget Committee's role to coordination and consolidation, a role described in the Annual Report of the Director (Mecham, 1990) thus:

to determine the maximum attainable level when formulating the budget. This level is based on past experience and discussion with appropriation committee staff Instead of simply collecting the requirements of the courts and incorporating them

in a budget submission, the Chairmen of the substantive committees of the Conference met with the Budget Committee to arrive at a reduced number (p. 73).

In the first year, the result was a 25 percent reduction in the size of the increase (p. 73). Seizing on the most obvious feature of this change, *centralization*, I follow Rubin (2000) in examining

two related concepts: (1) the degree to which the budget process is bottom-up or top-down, and (2) the degree to which power is scattered among independent committees, commissions, and elected officials without an effective coordinating device (p. 85).

Bobek (2003) felt that the Budget Committee's evolving role — "coming up with a number that would be politically acceptable to Congress" — elevated their responsibility, thus countering the dispersion of power and its consequence (Rubin, 2000, p. 85): "When power is widely shared, the effect may be to immobilize decision making." Yet, the process cannot be necessarily described as "top-down" because of the large number of committees with input into the product; hardly "ignored" as Rubin (2000, p. 85) finds typical of those outside the central core in hierarchical organizations. Indeed, the policymaking structure depicted above confounds the basic notion of "bottom-up or top-down" by its highly networked topology.

Given its non-traditional governance, the second concept, coordination, yields stronger relevance for the Judiciary's experience. Barrow and Walker (1988) found the dispute over splitting the Fifth Circuit exemplified the Judiciary's "strong norms of decentralization and accommodation," which tend toward dispersion and limit coordination, especially given the expectation that "unanimity needed for such change will not be present . . . [so that] the policy is likely to reflect agreement on the least common denominator" (p. 263). Nevertheless, during his first years Judge Arnold (2003) and the members of his committee

told these committee chairmen: "The increase will be [for example] 12 percent; we don't care how you do it." And we'd leave them in a room, until they got the matter decided among them.

The process later became formalized (Arnold, 2003), fortifying the norm of economy through an additional structure: "the Efficiency Subcommittee: their job was to go over the requests of those committees responsible for the budget items and get them reduced or made more efficient." Yet, this central role in the budgeting process did not involve

direction *per se*. Arnold (2003) recalled the chairman of the committee responsible for automation asking “to be turned loose” to pursue donation of equipment by vendors. His response was: “you are loose,” in effect because ... his role was not to tell other committee chairmen what they could and could not do.” Although the proposal was ultimately abandoned, its treatment illustrates the crucial but constrained role of the Budget Committee under Judge Arnold (2003): “to make it possible to get whatever the judges needed once it was clear what was needed.”

18.4.2 Flexibility in Financial Management

Sought after as a key element of federal financial management reform proposals for many years, budgetary flexibility in federal agencies has nonetheless received lukewarm support from Congress. Rubin (2000) cited two examples of failure to achieve the benefits of greater flexibility. Advanced billings in Defense capital revolving funds raised congressional concerns of “reprogramming without official notification” (p. 237). Indeed, the recent trend has been toward more oversight due to “the history of prior abuse of discretion that made some members of Congress suspicious about new sources of discretion as unofficial reprogramming” (p. 237). Not only abuse of discretion, but inability to take advantage also discourages its broader use, as the example of the Forest Service shows. Rubin reported that the agency — despite relaxed reprogramming requirements and broader construction of budget line items — “seldom requested changes between line items, either before the reforms or afterward,” concluding that “the changes seemed to have made little difference to agency management” (p. 236). Notwithstanding the apparent flexibility of courts to reprogram at will, the Judiciary has not been granted special waivers. Its extensive reprogramming works within the appropriation rules because of broadly structured, programmatic line items, such as district, bankruptcy, and appellate courts, which Congress established at the Judiciary’s request to make decentralization possible. The former structure, in which salaries for support personnel across all court types constituted a single line item, would have stymied decentralization (Bobek, 2004, p. 36). Previously, actions that court managers needed to take — spending personnel funds for automation for instance — triggered reprogramming restrictions whenever they exceeded \$500,000, which would have rendered decentralization impractical due to continuous AO monitoring and congressional involvement being required (KPMG, 2004a, p. 10).

Unlike the Forest Service, flexibility garnered results in the Judiciary, which reciprocated Congress’ accommodation by returning funds from an annual appeal from the AO to the courts back to the Treasury, accumulating

**Table 18.1 Allotted Funds Voluntarily Returned by Courts
(in thousands of dollars)**

<i>FY1994</i>	<i>FY1995</i>	<i>FY1996</i>	<i>FY1997</i>	<i>FY1998</i>
\$7,103	\$30,525	\$22,727	\$39,886	\$43,428
<i>FY1999</i>	<i>FY2000</i>	<i>FY2001</i>	<i>FY2002</i>	Total
\$31,178	\$15,751	\$56,150	\$46,289	\$293,037

the totals contained in Table 18.1 over the course of the budget decentralization initiative ("Appendix 1," 2004):

In addition to the nearly \$300 million in returned allotments, the Judiciary reported over \$1 billion saved over the same period from centralized programs (*ibid.*), although it is uncertain which of these programs returned funds formally allotted to them, as was the case for the individual courts.

New appropriation language crafted by Bobek (2003) made possible the use of these returned funds, directing expenditure of appropriated funds first, then fee receipts, which "essentially made everything no-year funding." Even though the individual courts returned the funds unconditionally, the Judiciary as a whole suffered no penalty; its base unaffected: "the appropriation committees just ask how much is in the fee accounts and reduce the appropriation by that amount" (Bobek, 2003). During the budget stalemate between the Clinton Administration and the 104th Congress that shut down approximately half of the government, it was this flexibility that, "[r]ecognizing the need for the federal courts to continue operations, ... allowed the Judiciary to function through limited fee income and a small amount of carry-over funds" ("Judiciary Secures FY 96 Funding," 1996). When these funding sources neared depletion, "personal phone calls to two key Senate leaders" by Chief Justice Rehnquist and contacts between judges and "pivotal members of the Congress" enabled the Judiciary's appropriation and programs within the Department of Justice to be passed separately from the larger appropriation bill (*ibid.*).

It remains to be seen whether the Judiciary will emerge from the latest belt-tightening unscathed. In any case, the trend toward tighter coordination of budgetary decision-making has continued into a new era of fiscal stringency. The Executive Committee has taken a prominent role in establishing the parameters of the fiscal year 2006 appropriation development by underscoring the dire impact of potential budget targets on discretionary expenditures — exclusive of judicial salaries, those of direct

staff, and related expenses, as well as other budget categories outside of unit executive control, which are classified as mandatory — and tasking committees with budgetary impacts to identify immediate economies to reduce pressure on the impending budget crunch (King, 2004). A senior budget manager expressed the hope that a revised framework for courts' budgetary responsibilities would emerge from this review, reconfiguring their decision parameters — excluding, for example, some of the administrative functions more properly handled centrally — while sustaining the level of discretion achieved by the decentralization initiative.

18.4.3 Challenges to Local Autonomy

Increasing budgetary constraints prompted several of the court managers who played key roles in budget decentralization to express concern that the exigency of current fiscal pressure may weaken the commitment to local autonomy. The Judicial Conference favored the personnel category in recent (2003) cuts to court operating budgets (personnel categories reduced by six percent, but other operating costs by thirty-two percent), protecting positions, but, according to Guillot (2003), "causing a little disgruntlement" by precluding an across-the-board cut that "hits every court the same." Implicit in shielding personnel-related categories from deeper cuts that would accompany across-the-board reductions was the necessity of a new baseline or "snapshot," the first since 1995 (Bobek, 2004, p. 44). This reallocation, according to Shope (2003), disadvantaged "conservative" court managers who had maintained lower average salary structures because disproportionately more of their budgets were subject to the higher level of cuts. He says that those whom he taught to think in terms of dollars rather than positions were ill-served. His court's use of contracted training services rather than an on-staff trainer is an example of a practice that the new "snapshot" disfavors. Departure from the rules appears to renege on decentralization's promised equity, even committing the cardinal breach: "messing with my court" (Shope, 2003). The tension between institutional commitment to its people and adherence to the principle of local accountability, while "not a death knell," captures the challenge to the "integrity" of the process "when there's not enough money nationally," according to Guillot (2003). Shope (2003) predicted a diminished response to the AOs annual appeal to return unused funds.

Another development is the increased acceptance of appeals — now judged by the AO program divisions rather than court peers — blamed by some former appeals board members for undermining the principles of local responsibility and accountability by rescuing failed management practices. Shope (2003) is unsure whether the impetus for re-imposition of the central oversight on courts' finances reflects a heightened sense of

compassion for those whose jobs are threatened, or a response to the courts' recent strides toward financial autonomy by Washington staff who had increasingly lost control. Bobek (2003) did not raise this issue, but did note that courts who used to talk to their program divisions every day, now go months without calling. While concerned, court veterans of decentralization remain advocates: Shope (2003) calls decentralization "salvageable"; Polsky (2003), "the best system around."

18.5 General Applicability of Budgetary Reforms

The Judiciary's experience is not offered as a template — reproducible in other federal agencies — because important differences complicate the application of these lessons. Issues that are crucial for other federal agencies, such as the role of the President's Budget and by extension OMB's function (e.g., White, 1991), lack relevance because the Budget and Accounting Act of 1921 requires the Judiciary's request to be submitted to Congress unchanged, circumventing OMB's involvement. Conversely, recommendations aimed at research on municipal budgeting by Gianakis and McCue (2002) appear apt enough in the case of this highly decentralized agency. In particular, their characterization of a "weakly integrated organization ... highly permeable to the political environment, and ... subject to enormous centrifugal forces" (2002, p. 160) applies equally well to the Judiciary as to the local governments for which that description is intended. The impact of "centrifugal forces" is quite evident in the description of the initiative's progress: spawned by local agitation for greater financial authority, tested in a handful of courts, and approved *on a voluntary basis* for national adoption by the responsible committee and governing conference of judges. Thus, the prerogatives of individual judges count heavily and shared policy objectives rest tenuously on hard-won consensus.

The challenge of integrating policy in a decentralized environment forms the core of the descriptive theory-building focus, one of four distinct dimensions of budgetary theory that Gianakis and McCue (2002) identify, discussion of which immediately follows. Assumptive and normative theory dimensions will next be treated in turn. The fourth vantage on budgetary theory, an instrumental dimension, will not be addressed explicitly in order to deemphasize the specific methods the Judiciary used and in keeping with the organizationally sensitive approach of Forrester and Adams (1997), which informs the discussion of normative theory. Other agencies must exercise their own judgment on which, if any, of the Judiciary's specific budgetary processes may be suitable.

18.5.1 Connection with Descriptive Theory-Building

Gianakis and McCue (2002) establish descriptive analysis as the prerequisite for establishing further dimensions of budgeting. But in the wake of incrementalism, what descriptions apply? Whether incrementalism was a descriptive theory or merely a description, nothing has replaced it as shorthand for the predominant budgetary practice. Performance budgeting appears a strong candidate, prevalent in the literature (e.g., Gianakis, 1996; Willoughby, 2004), legislated through GPRA, and enforced by the National Performance Review and President's Management Agenda of the last two administrations. The issues for performance budgeting are well known, for example, the technical complexity of relating funding to performance (Gianakis and McCue, 1999, pp. 25–26), but the Judiciary's ability to allot funds to each court based on workload and other parameters exhibits considerable technical prowess.

Unlike many agencies, for which GPRA introduced formal measurement, Judge Posner's (1995) study of how methods have changed in response to caseload shows that metrics mattered in the Judiciary for decades. He measured the evolution of the adjudicative function by the steadily declining cost per case (pp. 185–89) — just the kind of “objective” success that the performance movement in government has sought. Even though the Judiciary does not submit a performance plan to OMB as executive agencies do, publications such as the *Annual Report of the Director* (Mecham, 2001) include dozens of statistical tables focused on input, throughput, and results of the judicial process. Acute issues, such as the explosion of bankruptcies filed and the associated impact on required resource levels (p. 3), receive special attention. The nominal connections with performance-based budgeting extend further, encompassing the linkage of inputs and outputs.

Bobek (2003) highlighted the prominence of statistical workload analysis, calling it the “springboard for decentralization.” Workload analysis involves a specialized team who apply the “statistical method of work measurement known as operational audit” to randomly selected courts (“AO Staff Measures the Needs of the Courts,” 1999). The resultant system of measurement has been in use for approximately twenty years and, according to the judge overseeing their use, “reflects the Judiciary's commitment to requesting only those resources required to fulfill our core mission of handling cases in a just, timely, and efficient manner” (Gibbons, 1999). Yet, on closer inspection, the expression of the resource levels required in terms of expected workload does not represent performance-based appropriation.

Abandoning its insistence on full funding of the caseload-based requirement — as the Judicial Conference (1989) decided in 1988 by adopting the alternate request recommended by the Budget Committee — in favor of an increase closer to the level requested by executive agencies,

notwithstanding the array of workload measurement data backing up the full request, represents a break with the metric-based budget. Judge Arnold's successful establishment of a new role for the Budget Committee — determining the level of increase over the prior year that represented a politically reasonable opening position — marked a clear preference for negotiation of "base" and "fair share," recalling Wildavsky's (1984) description of classical budgeting. Budget requests for fiscal years 2000 and 2001 lagged behind the rate of caseload growth, which provided another example of the Judiciary conforming its request to the budgetary environment (Mecham, 2000; 2001). Workload formula recalibration in 2001 (Mecham, 2001) may represent an attempt to reestablish the importance of metrics as dispositive, rather than decorative.

Individual courts, by contrast, are subject to tight linkage between budget and workload, but because cases flow into the courts at litigants' instigation, the impacts are beyond the courts' control. Acutely sensitive to caseload fluctuations, unit executives nonetheless cannot influence but merely react to the factors on which future budgets depend. For this reason, caseload and the other variables of the allotment formulas serve not as incentives but as courts' due: determining their share of the appropriation, demanding concern but resisting control. Lacking influence over their workload, unit executives respond to other cues, ultimately confounding the governance by metric that performance-based budgeting promotes.

Despite failing to meet the rhetorical threshold of "outcomes rather than outputs," of the Service Efforts and Accomplishments project (Gianakis, 1996) and performance-based budgeting generally (Martin, 2002), the dissemination of workload through publications such as the *Annual Report of the Director* and use of common funding formulas create the prospect of comparisons across districts and establish a mechanism for reputational dynamics. Judges are susceptible to performance issues, according to Judge Posner (1995, 222–23), as evidenced by the potential for "shaming" those who lag behind recognized norms. Perhaps financial management will also generate normative dynamics — judges after all are ultimately in charge of administration as well as adjudication — that may sensitize courts to financial outcomes. But any incentives for financial management will remain indirect: judges' direct support, including salaries, space, and staff, are inviolable due to classification as mandatory expenditures (King, 2004). Notwithstanding routinized metrics in the Judiciary, the motivational complexity described above belies the straight-line connection between strategic direction and management behavior underlying performance-based budgeting. The foundation of this performance turn will be revisited in the context of court governance, while discussing assumptive theory below. Yet, the essential point is that, despite tantalizing parallels, the Judiciary's decentralization

initiative lacks key elements that would characterize a performance-based case.

If performance-based budgeting represents an ill-fitting template to describe the experience of the Judiciary, target budgeting (Rubin, 1998) promises a closer match. Target budgeting couples central constraint (the target) with considerable latitude for autonomous organizational components to determine their priorities and budget and spend accordingly. Target budgeting serves to make budgetary units accountable at a macro level, while discarding micro-level controls, which is the mechanism at work in the individual courts as a result of budget decentralization. Courts are free to prioritize. Because the main factors impelling the Judiciary were the ability to meet local priorities more quickly and to overcome the appearance of favoritism given by an AO-dominated process (Bobek, 2004), the target budget's chief attribute of proportional sacrifice or gain and its decentralized planning and execution correspond well with the Judiciary's experience. For example, the study found widespread reprogramming into automation (KPMG, 2004, p. 36), which was perceived as an unmet need (Arnold, 2003). Targeted budgeting also helps to explain the changes in appropriation development that the Budget Committee wrought by imposing a ceiling on annual increases to bind the committees with budgetary responsibility, but not dictating how it would be maintained. To the extent that apparently evenhanded treatment of budget-holders is of significant concern, then target budgeting by its straightforward sharing of largesse or hardship achieves the appearance of equal treatment, which is an important attribute in an enterprise with many co-equal constituents.

18.5.2 Connection with Assumptive Theory-Building

Locating a theoretical vantage that accounts for the above-described processes is the task Gianakis and McCue assign to *assumptive* budgetary theory. Whereas affixing a descriptive label to the Judiciary's experience poses the challenge of selecting among abundant alternatives, establishing an explanatory foundation begs simple classification. Nonetheless, I follow Forrester (2002) by investigating whether agency theory can shore up weaknesses in the theoretical underpinnings of budgetary scholarship.

Agential tenets are not fundamentally different from those underlying the "default" (Gianakis and McCue, 2002, p. 165) model of self-interested administrator as budget maximizer or wastrel because they explain objectives and motivations instrumentally: derived from calculation of the likelihood and consequences of alternative courses of action. At base, the foundations of instrumentality are deductive, nomothetic, and utilitarian: deductive in the stepwise progression from ends to means; nomothetic in its

reference to absolutes, manifest rather than negotiable; and utilitarian in its reduction of choices to trade-offs based on welfare economics, as computed through cost-benefit analysis or other rational mechanisms. Agency theory merely adds a second entity, the principal, whose interests and expectations counteract, reinforce, or simply coexist with the agent's, as well as a structure for executing agreements such as a contract.

The contractual basis of principal-agent relationships provides a template for instrumental development and execution of budgets. Budget development proceeds from requests, winnowed and refined through intra-agency prioritization, conformed to administration priorities and aggregated by OMB to produce the President's Budget, thence to congressional disposition. At each stage, those who claim are accountable to those who conserve, using Schick's (1990, pp. 64–65) terms, for sound foundation and reasonable presentation underlying the requests. Hardly powerless, claimants influence the disposition of their requests by selectively informing decision makers, whose relative ignorance renders them subject to nominal subordinates. The tension between knowledge and authority, which contend rather than cohere, at least in theory, results in budgetary compromise between official objectives and local, even personal, prerogatives.

Accountability for budget execution flows from Congress — notwithstanding the presidential veto power — to the Executive and Judicial Branches: traceable through successive agential dyads, from apportionments and allocations that allow agency heads to execute their financial plans to allotments whereby accountable executives authorize specific expenditures. As in budget development, contending asymmetries of authority and information influence and constrain individual actors at each stage, as they weigh personal, official, and organizational incentives. Termed "moral hazard," the issue of abrogating official responsibilities hinges on expectations of likely outcomes and associated rewards or penalties. Observance of official duties is reduced to a balance struck between proprietary knowledge, which, kept from principals, permits agents' independent action, and incentive structures calibrated to discourage misbehavior.

The crisp theoretical model resulting from the expectation-driven behavior attributed to principals and agents seems promising, but encounters obstacles in simulating how agential incentives should have worked in the Judiciary's case. Figure 18.2 models the implications of the decentralization initiative from the vantage of tactical use of information to attain control by the principal, designated as the "central approving authority," or to resist control by the agent, the court in this depiction. The initial phase, which models the pre-existing system, reveals many apertures — budget calls, requisitions, and reprogramming requests — affording the principal regular and multifaceted visibility into the local situation. Such knowledge gives the principal increased leverage to exert effective control, while constraining

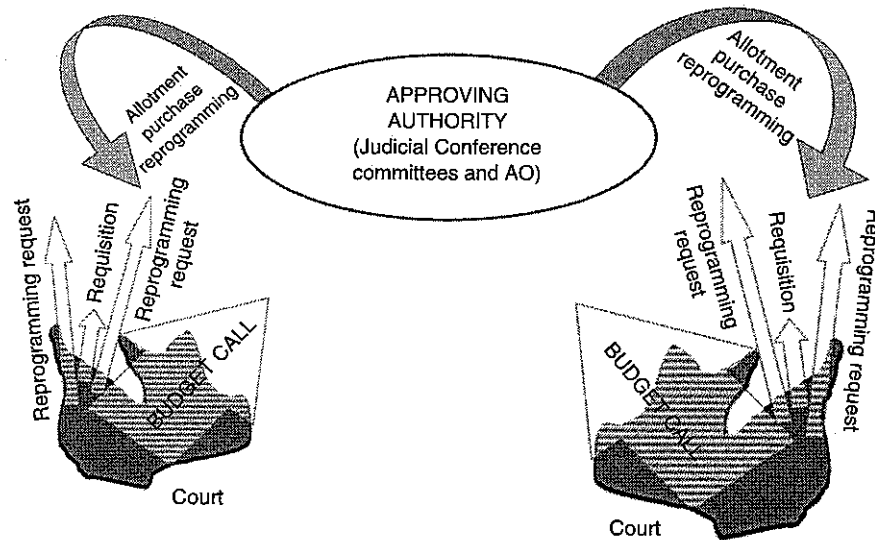


Figure 18.2 Simulation of principal-agent dynamics in budget decentralization.

the agent's latitude for independent action and ultimately denying the agent control.

Figure 18.3 depicts the interim phase, corresponding to the pilot decentralization, which reduces the occasions for information exchange to more narrowly focused budget calls, stripped of historically based cost categories. With local information more closely held and fewer opportunities to breach the proprietary "membrane" bounding discrete organizations, principal and agent each exercise limited control. The demarcation of agential control coincided with the limit on reprogramming, set at \$5,000 or 10 percent, whichever was greater, during the pilot program (Bobek, 2004, p. 31).

The ultimately decentralized budgetary process, depicted in Figure 18.4, disengages the principal and agent through the mechanism of the "court attributes" — the collection of court data whereby formulas compute budgets for allotment of funds. Nominal control exercised by the principal in this case is based on management of the budgetary policies, amendable in response to new *general* information; for example, the new "snapshot" for compensation. The crucial distinction is between control and impact, which remains the province of the central authority — even disproportionate impact, as from the "snapshot" that John Shope maintained

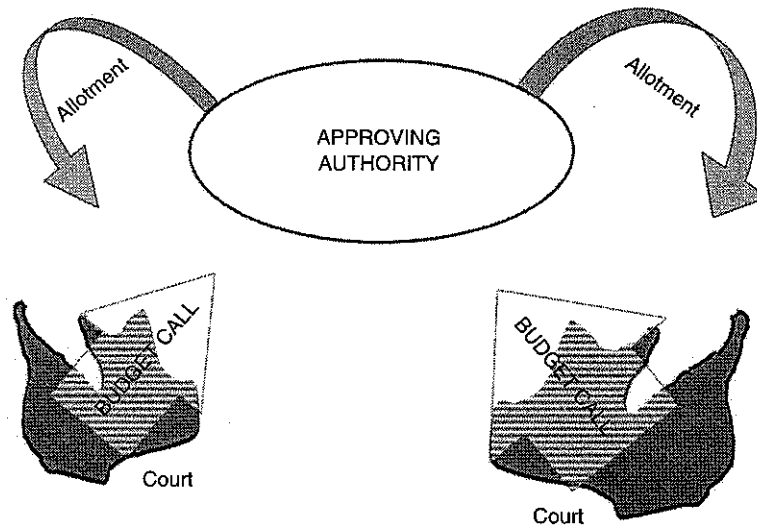


Figure 18.3 Simulation of principal-agent dynamics in interim budgetary reform.

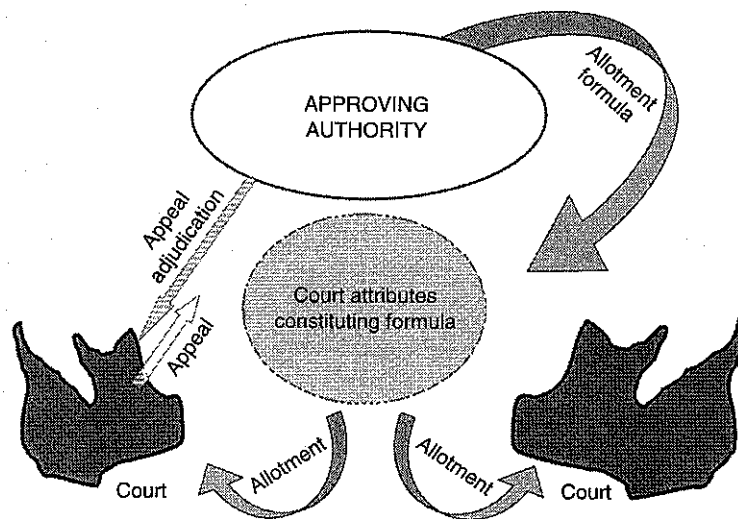


Figure 18.4 Simulation of principal-agent dynamics in mature budget decentralization.

disadvantaged fiscally conservative courts. But control is illusory without the ability to set differentiated policies or take targeted actions that apply to particular courts based on specific knowledge of the consequences. The appeal does represent such an opportunity for direct intervention, but the limited number and specific circumstances of appeals preclude systematic control by the principal.

The mechanisms of agency theory simulated above appear unable to account for the concerted efforts applied toward reforming financial management given the lack of explicit incentives in the Judiciary. To illustrate that application of agency theory would yield a starkly different result, I contrast the relaxation of hierarchical management systems shown above with the prominent role of intricate measurement schemes in the idealized behavioral description of GPRA by McNab and Melese (2003, pp. 92–93), in which carefully calibrated incentive systems serve to “discipline” agencies as a substitute for the market-based discipline meted out in the private sector.

Confounding such formulations, budgeting and financial management in the Judiciary proceeded more simply. Unaccountably (at least by agency theory), change occurred without the control mechanisms, relinquished by the AO, and without the chain of command exerted by the political leadership found in an executive agency. Leadership operates, of course, but in a form peculiar to the Judiciary: district-by-district and circuit-by-circuit direction established by judges, who defer to other judges within and across jurisdictions. They maintain collegial relationships partly by strict separation of duties and space (each federal judge occupies a separate courtroom) and long established protocols and rules (for example, a district’s chief judge is the longest serving judge who is less than sixty-five years old). The connection from the “center,” represented by the Judicial Conference and the AO, to the individual courts defies explicit delineation. The intermediate level ostensibly occupied by the circuit councils (chaired by the chief judge of the respective circuit courts of appeals) imposes slight to moderate constraint on the administration of the district courts within the circuit, but in no case displaces local control (Fish, 1973, pp. 404–9). For staff, who are not appointed for life, personnel actions and professional advancement derive from local factors, not from central authority. So, allegiance to their courts governs unit executives’ responsiveness to local needs and establishes the tenor of the courts’ operation. (It is worth noting in this regard that three unit executives serve at the pleasure of the district court judges through the chief judge; four in the circuit courts.)

Yet, it was precisely such parochial attention to local interests that the stewardship emphasis of decentralization training targeted. To the extent courts practiced strict financial management that deferred local spending,

they demonstrated institutional concern for the Judiciary extending beyond local jurisdictions. Courts revealed this concern by responding to the request each summer for unused funds that courts could defer spending, which Director Mecham (2001) characterized as follows:

This was not done without sacrifice ... courts had to delay or defer hiring needed staff, training, automation projects, and other important activities.

Courts' willingness to "sacrifice" counters the agential assumption of direct responsiveness to personal incentives because unit executives could expect no benefits from this corporate stewardship, given locally determined career prospects.

Assumption of greater accountability also confounds predictions limited to incentives of aggrandizement or self-preservation. Court managers' reliance on the AO's review, prior to decentralization, to excuse failure to provide staff, equipment, or other resources is an example of exploiting information asymmetries for personal advantage, i.e., job security without performance. Decentralization forced active resource management; its absence became readily apparent, forcing the departures noted above. Voluntarily undertaking greater responsibility and risk runs counter to the presumed tendency reported by Forrester and Adams (1997 p. 476) for "bureaucrats and administrators to protect themselves, whether by obscuring information ... or by putting budgetary requests in the best light." Thus, accepting a broader definition of their responsibility, encompassing the Judiciary as a whole, and greater accountability for managerial results signaled institutional rather than agential orientation. Juxtaposition of agential and institutional assumptions is, of course, an oversimplification, characterized by Scott (2001) as the

tension between those theorists who emphasize structural and cultural constraints on action and those who emphasize the ability of individual actors to "make a difference" in the flow of events (pp. 74–75).

Scott sought sufficient leeway in institutional constraints to permit "attention to the ways in which individual actors take action to create, maintain, and transform institutions" (ibid.). The roles of Bobek, Arnold, and the court managers who supported decentralization demonstrate the importance of strong individual responsibility for advancing institutional aims. Despite the prominence of "change agents," the course of budgetary reform in the courts underscores that empowering court managers represents an improvised but institutionally appropriate step, rather than rote application of

a theoretical notion: an important caveat for agencies who seek to follow the Judiciary's example. While efficiency was a real as well as a public rationale for decentralization, Judge Arnold attributes important institutional causes — "unit heads felt disrespected" under the old system — in addition to the economic ones. Contrary arguments were also less rational than institutional, for example,

the fear that the change might create a scandal: a clerk or unit head or employee would use funds in a way that would bring disrepute on the Judiciary. If you do 99 things right and one thing wrong, and the one thing is sufficiently attention-getting, then it reflects badly on the institution. Their [the courts'] image influenced their standing with the public and with Congress (Arnold, 2003).

Concern above all else for the Judiciary's perceived propriety represents not only organizational loyalty, but institutional commitment to the legal system as well. Public regard for the reputation of the courts contributes to their standing as a manifestly co-equal branch of government, a reputation at least partially dependent on financial stewardship, as Glaser (1994) found true for the New York state courts. The political independence and wide discretion of the American courts, so remarkable to de Tocqueville (1956, p. 76), represent values that permeate the legal system, providing institutional values that permeate the legal system, providing fertile ground in which budgetary reforms may take root.

18.5.3 Connection with Normative Theory-Building

From the normative vantage, Forrester and Adams (1997) advocated the study of budgetary processes for organizational improvement, which follows closely on the discussion above of the assumptive basis of institutional factors versus agential ones. The premise that budgetary theory building had sought better theories rather than better functioning organizations provided their explanation for why budget reforms so frequently failed (pp. 467–71). I submit that the Judiciary's budget decentralization initiative aptly illustrates the practically oriented and organizationally sensitive reform from which Forrester and Adams promised results. The prime distinction of the organizational view of budgetary reform is that its purpose derives from intrinsic need, rather than prescription of curative technology.

Despite the apparent connection to performance-based budgeting, nothing points to budgetary reform having been conceived as an abstract ideal, rather as a practical response to exigency. Bobek (2003) points to his chief motivation as the "inability to respond to the requirements of

the courts" during a period of sustained growth. By tracing the initiative's source to an inability by the Judiciary to meet the demands of rapid growth, Bobek established budget decentralization's organizational bona fides. When NAPA's recommendation to predicate further decentralization on standardized accounting procedures provided a pretext for adding technological sophistication, he resisted it in favor of sustained momentum toward simpler but internally sanctioned methods.

Just as the "why" of budget reform was couched in organizational context, so the "how" of the Judiciary's initiative arose from within, exuding sensitivity to March and Olsen's (1989) logic of appropriateness. Budget decentralization's vanguard — working groups who developed the approach and the steering committee that ratified their products — heralded practicality while Judicial Conference sanction accorded propriety.

The joint imprimatur of court managers and judges signified an initiative of, for, and by the courts, establishing an authentic impetus for reform. While budget decentralization issued from the panoply of official organizational commitment, the hands-on engagement of court managers such as Guillot, Polsky, and Shope spanned the decade-long implementation of decentralization, for some continuing to the present day. Judge Arnold's tenure as Budget Committee chairman also coincided with the period of major changes, providing continuity of policy. Finally, AO executive direction under Bobek and Mecham ensured consistent administration of budget reforms, at least until Bobek's retirement. Pursuit of decentralization — piloted with allotments replacing requisitions, expanded to personnel flexibility, and streamlined and systemized by allotment simplifications — proceeded apace, but not beyond courts' readiness to absorb change. Bobek (2003) identified a number of key steps integrating the organizational and technical aspects of these reforms: the careful selection by a committee of peer managers of volunteer courts to follow the pilot five; the intensive training — not only about means, but ends and principles as well; supervision of the specialists developing statistical formulae by veterans of the initiative; and oversight of the formulae's implementation as an appeals board. These organizationally appropriate safeguards over the technical mechanisms epitomize the self-paced, self-directed budget reform management promoted by Forrester and Adams (1997, pp. 472–73).

Gianakis and McCue (1999) assert that budget development activities can serve as an organizational development process in local government to counteract the "centrifugal forces" of distributed operations serving separate clienteles. They suggest the forms of budgeting may provide a cohering factor, of which there is some evidence in the Judiciary's case. For example, common budgetary process manifested itself in easier access to budget projections, through the "Infoweb" computer program (Bobek, 2004, p. 48). This provides access Judiciary-wide to the funding amounts

for the coming year, based on caseload and other parameters. The process of simply looking up the planned funding, computed simultaneously for all courts, reinforces the impression that the resulting amount is the court's due, not dependent on the largesse of central administrators. Another common form is the Electronic Status of Funds reporting mechanism, through which courts report their spending to date and provide estimates for the balance of the year (Bobek, 2004, p. 50). The combined effect of these forms — funds provided as a matter of course that are accounted for by the unit executives responsible for prudent expenditure — represents trust conferred on the individual courts, their judges and managers, which reinforces the tradition of autonomy, and introduces a new norm, that of stewardship.

18.6 Lessons for Other Agencies from the Judiciary's Experience

Convincing appropriators while instituting financial management reforms to ensure funds were well spent, the Judiciary's apparent success depended on a tricky combination of top-down program planning and local autonomy in budget execution. Before too much is made of the significance of these achievements beyond the Third Branch, however, it would be well to consider crucial differences that many limit broad applicability.

Crucial differences attend the constitutional prerogatives of a co-equal branch of government: foremost, the unique posture before congressional appropriators, befitting special considerations denied to agencies generally. Notwithstanding scholars' dubious assessments of a co-equal branch's special status, Judge Arnold (2003) observes, "the Department of Agriculture . . . does not appear in the Constitution" and Congress is "respectful" of this distinction. The essence of the Judiciary's successful collaboration with Congress is trust, as Judge Arnold (2003) identifies: "We are always very frank; our greatest asset is our candor." The Judiciary's rapport with Congress issues partly from budgetary law — the budget's direct submission bypassing OMB — but clearly redounds to the significance of constitutional structure and the institutional significance of a politically independent judiciary. Finally, Bobek (2003) credits the "stability of executive direction in the Judiciary," with its current head, Director Mecham, approaching two decades of service, and Judicial Conference committees led by long-serving judges. Accordingly, he is skeptical of the ability of executive agencies — with typical tenures of assistant secretaries for administration under two years — to sustain the attention necessary for completing such an initiative (Bobek, 2003).

Studying the Judiciary's budget decentralization initiative illuminates distinct vantages vying to explain the mechanisms that impel and sustain organizational change. The theoretical tension between institutional and agential frameworks permeates the account of changes wrought in the Judiciary's budgetary process. The norms that underlie institutionalism impacted this evolution significantly; so too a the formal accountability of designated agents for outcomes. Clearly, institutional norms and structures played a great role in gathering the impetus and sustaining the direction for decentralization in budget execution. The most basic norm is that of autonomy: courts have been self-administered throughout their history. Regard for the reputation of the Judiciary and the need to show respect for court managers are institutional considerations that weighed heavily, along with the economic rationale, in the decision to proceed with decentralization. Their role in crafting the rules and the perceived fairness of the rules were keys to the court managers' acceptance of the initiative. Continued scrutiny of the evenhandedness of new developments occasioned by recent fiscal straits introduces the new role of observer: gauging the relative austerity of their budgets and judging the equity of the system accordingly. Despite the appearance of outcome-based budgeting, fair share is manifested by the sensitivity of the Judiciary's principal negotiators to what executive agencies request, and the willingness to reset, suspend, and recalibrate its workload-based requirements mark a negotiated rather than engineered budgetary approach.

But, above all, the Judiciary's case demonstrates how overriding necessity inspired ingenuity and opportunistic action — reform molded around organizational contours as Forrester and Adams have urged rather than forced to fit. Whether similar results are obtainable by cultivation of a comparable culture to nurture change through shared belief systems, or through selection and empowerment of change agents, remains indeterminate. Although there are clearly lessons to be drawn by other agencies observing the Judiciary's budgetary reform, they must be drawn from the underlying motives — institutional commitment, stewardship, and managerial accountability and risk tolerance — rather than skimmed from the surface.

Note

1. Outlays by the Department of Justice grew from \$2,538 million in 1979 (Office of Management and Budget, 1998, p. 67) to \$14,310 million in 1997 (p. 69), accounting for the 463% increase cited by Rubin (2000, p. 128). During the same period, outlays for the Judiciary grew from \$481 million to \$3,259 million, a 577% increase.

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