



January 28 , 2014

Letter from Washington

Since the last letter, the House and Senate Appropriations Committees have agreed upon an omnibus spending bill for FY-14 that makes specific the broad outlines of the budget agreement that was reached in December.

The DoD spending bill has a number of features:

- \$486.9B is allocated for Defense, essentially the same operating level as 2013.
- \$155.8B is allocated for the modernization accounts, holding spending about 1.5% below 2013 levels, and 6% below the DoD's FY-14 budget request.
- The modernization accounts are essentially flat lined from last year, but there are significant plus ups and decrements to individual programs:
 - Almost all Air Force major programs were trimmed except the KC-46 tanker that was funded at \$1.5B, the requested level.
 - The EELV was cut by \$364M and the C-5 Modernization program by \$100M
 - The Joint Strike Fighter was scaled back by 10%, not accounted for are the mods identified in testing that are required in already procured aircraft.
 - The Navy's Virginia Class submarine program had \$1B added to the administration's request bringing the program up to \$6.2B
 - The Army's Patriot AdCap-3 program plused up by \$150M, UH-60M plused up by \$72M, and the Stryker program plused up \$45M.
 - At the same time the Army's Ground Combat Vehicle was cut by 80% and the Warfighter Tactical Information Network-Tactical was also sliced by 20% in procurement and 50% in R&D.

This evening in Washington the annual rite of the President's State of the Union address will take place. The US Constitution requires that the Chief

Executive "from time to time" address the Congress on matters of national interest and to propose legislation. This requirement has been ritualized into the event that now takes place each year at the end of January.

Part football pep rally and part revival meeting, the event has become the opportunity for the President to trot out a long laundry list of pet projects and ideas, while patting himself on the back over how well things are going. The members of the President's party leap to their feet in waves of standing ovations over even the most nitny pronouncements, while the opposition members sit in stony silence, sometimes shaking their heads sadly.

The modern State of the Union address was really perfected by Ronald Reagan, given his theatrical background and understanding of his audience in the room and the larger audience in the country. Reagan was also canny enough to stick to large themes and not to get into the recitation of every initiative. Subsequent Presidents have turned the address into a more circus-like atmosphere, with the First Lady perched in the gallery surrounded by special guests --- a gay athlete, a Boston Marathon bombing victim, a fire chief, and so on, all evidence of the further absurdification of American politics.

This year finds President Obama with three main objectives in his address.

- Get the focus off of Obamacare and the potential disaster that is unfolding.
- Assert some executive leadership to stop his free-falling popularity. Many Washington observers have concluded that the Obama Presidency is essentially over, and his ability to accomplish anything in the next three years is marginal.
- Convince the country that notwithstanding his lack of management oversight of Obamacare, that he is capable of actually carrying out some part of his agenda.

The most recent polls indicate that 63% of the American population believes that the country is on the wrong track, and 51% disapprove of the way that the President is doing his job. These are disastrous numbers for a party heading into mid-term elections in 10 months.

At this point in his Presidency, Mr. Obama does not have a foreign policy success to point to --- in fact, quite the opposite. The apparent theme that has been chosen as one that the Democrats can unite behind is "income inequality". While it's not quite clear what that really means, it does appear to be the continuation of the populist class-envy theme that has been a staple of Democratic Party politics for the last hundred years.

The idea that Obama will bring forward is that there is an innate unfairness in the fact that the wealthy, the 1%, have fared the best economically over the last several decades. What will be missing from the discussion is any acknowledgment of the hundreds of billions of dollars in wealth redistribution that occurs each year, and that there is necessarily any limit to it.

The President's position in the address will be that a significant number of people have been left behind in the economic recovery that has taken place since 2008, and that they need to be compensated with higher wages, more child care and preschool, and longer term unemployment benefits.

The Republican position will be that nothing that Obama proposes will do anything to halt this trend. Increasing the minimum wage to \$10 or extending unemployment benefits indefinitely will not cure the problem, and will in fact only serve to punish the people who have been successful with higher taxes. It is no longer enough to work hard and play by the rules in a global economy, one must also be smart and agile enough to learn new skills and to periodically reinvent oneself as the market requires.

Obama understands that most of the proposals that he will throw out in the address will not be adopted. In fact, many of the things he will mention (immigration reform, gun control, climate change) are retread ideas that he has proposed before and have died in the Congress. What is new this year is that the President and his advisors have decided that since he cannot win over the Congress by the force of the argument, he will attempt to circumvent the Congress through a series of executive orders.

Obama's strategy of working around one of the major branches of government is the direct result of his inability to develop the relationships and to practice politics at the higher levels. It has been pointed out that in operating in a unilateral fashion as he has with the constant changes to Obamacare implementation, or his decisions to selectively enforce immigration laws, that he has complete control over the result, and is not required to compromise with anyone.

Much like the Tea Party faction in the Senate that caused the government shutdown in 2013, Obama seems to believe that getting everything on your agenda without having to give anything in return is the goal of politics. The Constitution is designed so that can only happen if one party controls the White House and both Houses of Congress, so Obama and the Republicans each set up their own out-of-bounds items, while at the same time deploring the intransigence of the other side. The net result is that only the most simple, small caliber legislation can be enacted.

Depending on what the administration attempts to enact by legislative order, there will be a constitutional showdown that will have to be resolved ultimately by the Supreme Court. The President takes an oath to faithfully defend the Constitution, and the idea that he can pick and choose which laws

to enforce, or which laws to modify without consulting the Congress, is an arbitrary exercise of power that will not likely go unchallenged. More to the point, only the Congress can make laws, and the President can only implement them by executive order.

The other important factor that most observers seem to forget is that regardless of what executive order the President signs, the Congress holds the checkbook and will have to fund any initiative by the authorization and appropriations process. In the ultimate exercise of legislative over executive authority, the Congress can vote to not allow funds to be spent in carrying out a Presidential order. Recall that the Congress passed a joint resolution (H.J.Res. 636) in 1973 prohibiting any further appropriation or expenditure of funds for "combat in or over or from the shores of North Vietnam, South Vietnam, Laos or Cambodia." President Nixon chose not to veto the resolution, knowing his veto would be overturned, and the war effectively ended at that point.

This will take some years to play out in the courts, but it is interesting to note that the Democratic Senate is largely supportive of the executive order idea, and is basically urging the President to usurp its power and prerogatives. It would be interesting to see how supportive they would be of a Republican President claiming similar executive authority.

Finally, the President's advisors in previewing the speech have indicated that the major thrust is to "put a difficult year behind us". That may be more difficult than imagined, since the second increment of health care cancellations has begun with several big box stores (Target, Home Depot) announcing that they are discontinuing health care offerings for many of their employees. This has the effect of forcing those employees into the government run exchanges, which is a highly predictable outcome. Why should companies continue to absorb the cost of employee health care when the government will do it? The cancellations are not restricted to the big companies but involve many small concerns as well. All of these people, potentially 50 million, will realize the full effect in October, just before the mid-term elections.

The President is in a big bind. He needs those relatively young and healthy people in the exchanges to subsidize the sick and elderly. Already Aetna, one of the major insurers has raised a flag on the demographics of their sign-ups and said that they would either have to raise premiums massively or exit the government health insurance market all together if present trends continue. Obama needs to flush those people out of their present insurance and into the government programs to keep the exchanges from imploding financially, but in doing so he risks the Democrats losing the Senate in 2014.

The year the President is trying to put behind him may end up looking pretty good in the rear view mirror.