Budgeting: A Comparative Study of the Main Features of Budgetary Process in the Federal Republic of Germany and the United States

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BUDGETING: A COMPARATIVE STUDY OF THE MAIN FEATURES
OF BUDGETARY PROCESS IN THE FEDERAL REPUBLIC
OF GERMANY AND THE UNITED STATES

by

Karl J. Maes

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University in Partial Fulfillment of the
Requirements for the Degree of Master of Social
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LIFE

Karl J. Maes was born February 7, 1922, in Cologne, Germany, where he also was graduated from High School.

From 1946 to 1950, he attended the Law School of the University of Cologne and the Academy of Administrative and Economic Science (Verwaltungs- und Wirtschafts-Akademie), connected with the University of Cologne. He was graduated from the Academy in December, 1950, with a Diploma in Administration. During the same period, the author was employed by the City Administration of Cologne. In the spring of 1950, he spent several months in England as an exchange student. The author entered the German Foreign Service in 1951 and, since then, has been with the legal section of the German Consulate General in Chicago. He began his graduate studies at Loyola University in February, 1955.

The writer has written a diploma thesis on "Die Einwirkungen besatzungsrechtlicher Massnahmen auf die deutsche Wohnraumbewirtschaftung" ("The Effects of Legal Acts of the Occupation Forces on the Allocation of Dwellings in Germany").
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**Chapter I. INTRODUCTION**

Budget theories in general and definition of terms—Aim, scope, and nature of the following chapters (Comparison—after 1949).

**Chapter II. LEGAL BASIS OF THE BUDGET**

Historical background—Provisions stated in legal sources: Constitution, treaties, statutes—Interpretations arising from a consideration of the federal system, the executive machinery and policy, the legislative process, and the judicial system.

**Chapter III. THE BUDGET AGENCY**

Its location in the governmental structure—Its internal organization—Its personnel.

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CHAPTER I

INTRODUCTION

The decade following World War II has seen the Federal Republic of Germany rise from a crushed and humiliated nation to economic solvency and political stability. American aid gave German ingenuity the opportunity to function. The governmental process by which funds are allocated and subsequently controlled played an important role in this process of rehabilitation. This study will be pursued to learn whether any credit for the surprising recovery of Germany may, perhaps, be attributed to its budgetary process. The system employed in the Federal Republic of Germany will, therefore, be compared to that used in the United States.

The problems involved in the control of fiscal affairs in general and the constitutional as well as the legal bases of budgeting in particular, have long and extensively been discussed in the literature on political science, finance, economics, and law of the various countries. Much attention has been given to the relations between the legislature, the executive, and the judiciary in this field. Many budgetary theories have been developed, but their actual value in practice has been judged
differently by the various leading scientists as well as known administrators. In the following pages, only those budgetary theories shall be considered which are of interest for budgeting either in the United States or in Germany.

The variety of budgetary theories and budgetary systems is, at large, conditioned by the individual country, its form of government, its economic situation, and the time when they were first developed. The effectiveness of a particular budgetary system in a country depends on many factors. A monarchy or a dictatorship, for instance, will adopt a different budgetary theory and budget system than a democratic government, such as a republic or a federal republic. The economic conditions of the country are of importance. A highly industrialized state requires different measures than an underdeveloped country. Furthermore, one must remember that conditions change and that a budgetary theory and a budget system which might have been adequate a decade or more ago, may no longer be so at the present time. In view of all these aspects, a comparison between the budgetary process of the United States as the leading world power and the Federal Republic of Germany, economically and financially recovered after its complete destruction twelve years ago, might produce some valuable results.

What is understood by the term "budget"? According to a definition developed by the National Committee on Governmental
Accounting, a budget is "an estimate of proposed expenditures for a given period or purpose and the proposed means of financing them." The budget may be a law in itself, as it is in Germany, or a proposed public fiscal policy, as it is in the United States.

Among the various budgetary systems, the following are worth mentioning at this point: the executive budget, the legislative budget, the capital budget, the national budget, and the performance budget.

Both the United States and the German governments employ executive budget systems. By "executive budget system" we mean one formulated and officially presented as a function of the executive. In the United States the responsibility for preparing and submitting the budget rests with the President; in Germany, it rests with the Federal Minister of Finance.

The legislative budget places the responsibility for compiling the budget on the legislators. Usually it is drafted by a committee of the legislature and, after passage in the form of a law, goes to the chief executive for his signature. This system is employed by England and some Commonwealth nations.

The capital budget is to provide for nonrecurring expenditures and sometimes is used in addition to the regular budget. If so, a distinction is made between the current or ordinary budget and the extraordinary or capital budget. The ordinary
budget is financed by ordinary receipts like taxes, while expenditures of the extraordinary budget are covered by loans. Germany is among the countries employing the capital budget system.

The national budget represents the most important figures in the four principal sectors of the national economy, namely: consumer, business enterprises, foreign trade, and government finances. The United States government uses this type of budgetary presentation in the economic reports of the President. Germany does not employ a national budget.

The central idea of the performance budget is interpreted by Frederick Mosher who says: "It is that the budget process be focused upon programs and functions - that is, accomplishments to be achieved, work to be done. Performance budgeting is essentially synonymous with what has long been referred to as program budgeting."¹ The federal government as well as state and municipal governments in the United States make strong efforts to employ the system of performance budgeting on a permanently expanding scale.

The following chapters are to show a comparison of budgeting in the United States and Germany, emphasizing the various steps of the budgetary process from different points of view.

¹Program Budgeting, Public Administration Service, Chicago, 1954, p. 79
Only those important points will be studied which are of special interest for a comparison of both countries.

The governments of both countries being built upon federal principles, the comparison will be made on the federal (national government) level only, and will not be extended to the state and municipal governments.

Furthermore, this study will concentrate on the federal budgetary systems prevailing in both countries after May 23, 1949, when the Constitution of the Federal Republic of Germany, also known as "Basic Law", became effective. Although both countries have considerable experience in the field of public finance, only Chapter I (Introduction) deals with the historical development. The subsequent chapters refer but occasionally to history and only in as far as seems necessary for better understanding the subject matter.

The term "United States" (U.S.A.) as used in the following chapters stands for the national or federal government having sovereign authority with regard to the forty-eight states of the Union and the Territories of Alaska, American Samoa, Guam, Hawaii, Puerto Rico, the Canal Zone, and the Virgin Islands. The term "Germany" is used for the Federal Republic of Germany, also known as West Germany, having sovereign authority with regard to the ten federal states.\(^2\) West Berlin, the eleventh

\(^2\)In the following chapters sometimes referred to as "Länder"
state, has a special status at the present time. The territory of the Federal Republic of Germany covers part of the former German Reich, from 1945 to 1949 known as the American, British, and French zones of occupation. The remaining part of the former Reich does not, at the present time, belong to the Federal Republic, but is dominated by communist regimes. The central part of the former Reich is known as Soviet Zone. Berlin has a Soviet Sector. The territories east of the Oder-Neisse Line comprising the provinces of Silesia, East Brandenburg, Posen, East and West Prussia, and East Pomerania are placed under Polish administration pending final settlement of the Polish borders. Part of East Prussia is administered by the Soviet Union, although it is not part of the Soviet Zone of occupation.

According to the German Constitution, West Berlin, however, is a state (Land) of the Federal Republic, to which the Four-Power agreements of 1945 prevent it from adhering de jure. As a result of this situation, the representatives of West Berlin in the Bundestag (lower house) and in the Bundesrat (upper house) have no voting rights.

Potsdam Agreement, IX/b, Sec. 2.
CHAPTER II

LEGAL BASIS OF THE BUDGET

The budget as a financial program of the government has been adopted by almost every country. Although some authors have traced some kind of budget or budgetary system back to the Greeks, Romans, and Egyptians,¹ the modern budget system has mainly been developed since the turn of the last century and accompanied the great extension of government functions.

The budgetary history in the United States could be said to start with the framing of the Constitution. Although, at that time, the budget system of Great Britain was not fully developed, the fathers of the Constitution did adopt from Great Britain the principle of legislative supremacy in finance. This principle found its expression in Article I, Section 9, of the Constitution which provides that "No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." This

principle is also evident in Article I, Section 7, requiring that "All bills for raising revenue shall originate in the House of Representatives." The constitutional document does not mention the setting up of a budget.

The statute establishing the Treasury Department in 1789 elaborated the requirement for financial reporting and ordered the Secretary of the Treasury "... to prepare and report estimates of public revenue, and the public expenditures ... ."

In 1800, the Secretary of the Treasury was directed by a supplementary statute "... to digest, prepare, and lay before Congress ... a report on the subject of finance, containing estimates of the public revenue and public expenditures, and plans for improving or increasing the revenues ... ."

In the years after the establishment of the Republic until the Civil War, financial problems were comparatively few and simple due to small revenues and little expenditures. Government finances were strongly directed by the Secretary of the Treasury. The House of Representatives exercised its function of criticism and control through a committee of the whole and appointed a special committee to submit bills of appropriation. This procedure was altered in 1796, when the Committee on Ways

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3 Stat. L. 79.
and Means was appointed. It became a permanent institution in 1802 with authority to introduce appropriation and revenue bills.

During the following period, the Committee on Ways and Means of the House, upon hearing the departments, undertook the financial planning and review of the budget. The unity of the Congressional review of the budget which prevailed in these years began to dissipate when, in 1865, increasing expenditures made it seem more appropriate to move the power of appropriation from the Committee on Ways and Means to a newly created Committee on Appropriations. In the following years, other congressional committees managed to deal with appropriation bills concerning the particular field over which they had jurisdiction. This was also the time when cabinet officials and department heads made recommendations to members of Congress and misused personal relations in order to secure larger appropriations for their sphere of activity. "Pork barrel" and "logrolling", aggravated by lack of coordination, led to waste and confusion in government finances. This deplorable situation prevailed in the period between 1880 and 1909 when there were some ten committees in the House and eight committees in the Senate, each authorized to recommend appropriations. With rapidly increasing federal expenditures, partly due to national expansion, partly a result of graft and corruption, the years of 1909 and 1910 produced some signs of conscious consideration of the financial situation.
Franklin Mac Veagh, then Secretary of the Treasury, followed the demands for a reform in the governmental financial procedure and claimed that a budget system was necessary to reverse the trend. In 1910, President Taft appointed the Commission on Economy and Efficiency. As a result of its studies and investigations, the Commission, on June 27, 1912, transmitted a report on "The Need for a National Budget". However, Congress opposed the recommendation of the President. When, in 1912, President Taft was defeated, no further action was undertaken to establish a national budget for several years. It was not until after World War I, that, owing to strong demands of prominent citizens interested in the improvement of government and the support of known writers and the United States Chamber of Commerce, steps were taken to establish a national budget system by law. The result was the Budget and Accounting Act of 1921.

Combined efforts of the reform groups demanding action toward restoring sound finance became irresistible in 1919, when, during President Wilson's term, the House of Representatives appointed a Select Committee on the Budget which reported favorably on an executive budget system. In May 1920, House and Senate completed action on the Budget and Accounting Act.

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4 Annual Report of the Secretary of the Treasury for the fiscal year ending June 30, 1909, p. 4.
which incorporated the establishment of a General Accounting Office, to be headed by a Comptroller General. Although not opposed to the bill in principle, President Wilson vetoed it in 1920, claiming that appointment and removal power could not be separated constitutionally. President Harding, finally, signed the Bill, and on June 10, 1921, the Budget and Accounting Act became law, in much the same form as had been vetoed by President Wilson.

The enactment of the Budget and Accounting Act of 1921 was a milestone in the development of the federal budgetary process in the United States as it installed the modern budgetary system. As a coincidence, only about one year later, namely on December 31, 1922, there was introduced in Germany the Reichshaushaltsordnung (Budget Regulation of the Reich), a statute which, for the first time, incorporated the numerous budgetary principles which, in the past, had proved valuable in the budgetary process.

The development of the budget system in Germany was not uniform but differed considerably in the various German states because of their great independence. Some sort of a "budget" can be traced back to the Middle Ages. For example, as early

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7RGBI. 1923, II, p. 17.
as 1375 under Emperor Karl IV (1316-1378) there was a statement made of the castles, municipalities, and villages belonging to the "Mark", indicating their sizes and ownership as well as their dues and revenues (Leistungen). In this statement already a difference was made between indubitable and dubious receipts. Also the oldest municipal financial statement known, which was made up for the city of Nürnberg in 1377-78, reveals traces of some sort of a municipal budgetary system.

Budgets were first developed in Prussia. Under Albrecht-Achilles (1414-1486) a rudimentary budget, subject to an economic review, was prepared for the Franconian properties and the Mark Brandenburg as a directive for the sovereign and the administration. In order to establish a uniform accounting system, receipts of natural products had to be estimated in money. In 1688, the first "General Budget of All Receipts from Domains" and their expenditures was made and remained for a long time the basis for the financial procedure of the state. Operation and auditing of state finances were later unified by the "Instruction for the Supreme Auditing Office" (Instruktion für die Oberrechnungskammer) of December 18, 1824. This instruction has influenced the budgetary development in other German states. It also had influence on the budget laws later enacted for the Reich.

The Constitution of Prussia of 1850 was the first to con-
tain in its Title VIII brief and clear principles for the budgetary procedure. Title VIII of the Constitution reads:

**About Finances**

Article 99: All revenues and expenditures of the state have to be estimated in advance for each year and entered into the state-budget. The latter is to be enacted by law each year.

Article 100: Taxes and dues for the treasury of the state may only be levied if they have been incorporated in the state-budget or have been provided for by special laws.

Article 101: No privileges can be granted with regard to taxes. The existing tax laws will be revised and any privileges be abolished.

Article 102: Fees can be collected by state and municipal officers in accordance with the law, only.

Article 103: Loans for the treasury have to be authorized by law. The same applies to the assumption of guaranties to the debit of the state.

Article 104: Exceeding the budget appropriations requires subsequent authorization by both Houses. The accounts of the state-budget are audited and ascertained by the Supreme Auditing Office. For each year, the Rechnung über den Staatshaushalt, the accounts of the state-budget and a survey on the debts of the state, together with remarks of the Supreme Auditing Office, are submitted to both Houses for the release of the government. A special law will regulate the establishment and the jurisdiction of the Supreme Auditing Office.

Although the Constitution contained the essential budgetary principles, there was no provision for the situation if the budget law was not accepted. This defect became evident in 1862 when the Prussian House of Representatives rejected the budget law. Taxes and dues could be collected because the principle of annual authorization did not apply to them. However, there was no legal basis for the expenditures of the state. This condition was remedied by the "Indemnity Act" (*Indemnitätsgesetz*)
of September 14, 1866, which sanctioned the expenditures of the state by law post factum.

Besides the "Supreme Auditing Office Act" (Oberrechnungskammergesetz) of March 27, 1872, the development of the budget law in Prussia until World War I brought forth the "Prussian Law Concerning the State Budget" (Preussisches Gesetz betreffend den Staatshaushalt) of May 11, 1898, which was amended by law of March 22, 1912.

After the Foundation of the Reich in 1871, the Constitution of the Reich of April 16, 1871, effected an alteration of the German budget law insofar as the principle of annual authorization for taxes and dues was introduced. Furthermore, the principle of previous authorization was incorporated.

The next step in the development was the Weimar Constitution of 1919. Several articles of the Constitution dealt exclusively with budgeting, i.e., Articles 85-87. The budgetary provisions of the Weimar Constitution were based substantially on the principles of the budget law of Prussia and the Imperial Reich. Article 85, paragraph 3, of the Weimar Constitution, however, contained the important restriction that the budget law must not

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8 GS., p. 278.
9 GS., p. 77.
10 RGBl., p. 63.
contain provisions concerning expenditures beyond the fiscal year and not concerning revenues and expenditures of the Reich.

Reference has already been made to the Budgeting Regulation of the Reich of 1922, which was the first budget act under the Weimar Constitution. However, before the budgetary development in Germany is further outlined, it might be appropriate to return to the United States and throw light on the American stage after 1921.

The Budget and Accounting Act of 1921 created the Bureau of the Budget and placed it in the Treasury Department. Growing responsibilities of the government and efforts to improve management in government led to the transfer of the Bureau of the Budget from the Treasury Department to the Executive Office of the President which was established by the Reorganization Plan of 1939. Another act effecting the national budget system was the Government Corporation Control Act of 1945\(^\text{12}\) which brought government owned corporations within the executive budget process. The Legislative Reorganization Act of 1946, effective since January 1, 1947,\(^\text{13}\) reformed the congressional procedure for the national budget and introduced as an important provision that the appropriate committees of the House and the Senate report to the Congress a legislative budget, based on the

\(^{13}\)60 Stat. 837; 31 U.S.C. 60.
President's recommendations thereby burdening the Legislature with the responsibility for the relation of expenditures to revenues. 14 Partly as a result of the much discussed and most valuable reports of the Hoover Commission, the Budget and Accounting Procedures Act of 195015 was passed. The act amended, revised, and simplified the Budget and Accounting Act of 1921 with regard to budget and accounting procedures as well as responsibilities of the Bureau of the Budget. Additional authority to apportion appropriations and to establish reserves against appropriations was given to the Bureau of the Budget by the General Appropriation Act of 1951. 16

Thus having reached the present state of development of the budgetary system in the federal government of the United States, a short description of the recent developments in Germany will complete the historical background.

Many important political events with a strong influence on budgetary procedures characterize the period from the end of the first World War to the present time. It has already been pointed out that the Weimar Republic brought forth the Budgeting Regulation of the Reich of 1922. The Regulation was supplemented

14 While attempted in a haphazard way on several occasions, this legislative budget has not been made feasible.
15 64 Stat. 834; 31 U.S.C. 18a, 18b.
16 Public Law 759, 81st Cong., 2nd sess.
in 1929 by the "Economic Regulations for the Governmental Departments and Establishments of the Reich" (Wirtschaftsbestimmungen für die Reichsbehörden) as Executive Order,\textsuperscript{17} in 1927 by the "Regulation for Disbursement Offices of the Reich" (Reichskassenordnung),\textsuperscript{18} and in 1929 by the "Accounting Regulation for the Reich" (Rechnungslegungsordnung für das Reich),\textsuperscript{19} of July 3, 1929.

During the dictatorship of the Nazi regime from 1933 to 1945, parallel to rearmament, a disguise of the budget took place. Although the aforementioned general regulations for the budgetary process remained in effect, the extraordinary budget (which provides for nonrecurring expenditures covered by loans) was officially abolished and the fiscal authority (Finanzhoheit) of the states was repealed. There was, of course, no parliamentary review of the budget between 1933 and 1945.

With the capitulation in 1945, the financial sovereignty of the Reich and the responsibility for its execution was left to the occupational powers (United States, Great Britain, France, and Russia). The territory of the Reich was divided into four

\textsuperscript{17}RMBL., p. 49.

\textsuperscript{18}of August 6, 1927 (RMBL., p. 357) in der Fassung der Verordnung zur Änderung der Reichskassenordnung vom 8.1.31 (RMBL., p. 7).

\textsuperscript{19}RMBL., p. 439.
zones of occupation. During this period the then existing budgetary regulations were applied.

After the declaration of sovereignty by the three Western powers (United States, Great Britain, and France), the formation of the Federal Republic of Germany, and the enactment of the Constitution on May 23, 1949, came the period which is to become the basis for the comparative study of the budgetary systems in the United States and Germany.

The most significant provisions for the budgetary development of this period are embraced in the Constitution itself. The provisions of the Constitution concerning the budget are based on the Prussian Constitution of 1920. Article 110 of the German Constitution of 1949 demands as a new requirement that the budget be balanced in receipts and expenditures, thereby giving a principle long having been practiced in Germany its legal foundation by the weight of a constitutional norm.

From the above historical sketch it is clear that Germany has an older and more varied experience with budgetary techniques of a formalized type than does the United States. Germany's experience may be said to run back about 100 years, when the Prussian Constitution of 1850 introduced many of the basic principles of budgetary process which are still practiced today. In

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the United States experience with budgetary techniques of a formalized type began only with the enactment of the Budget and Accounting Act in 1921.

Having outlined the historical development of budgeting in both countries and having noted many of the legal sources, this chapter will now deal with legal provisions as applicable to the budgetary process in the United States and Germany at the present time.

The Constitution of the United States, enacted in 1789, does not mention the term budget. At that time, it did not seem important to incorporate in a constitutional document a definite and fixed fiscal procedure. However, the American Constitution and its amendments include some significant provisions which authorize the budgeting process in the United States as it exist today.

Article I, Section 7, Clause 1, says: "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." This provision and also Section 9, Clause 7, of the same article gives supremacy in financial matters to the legislative branch of the government. Section 9, Clause 7, reads as follows: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law, and a regular Statement and Account of the Receipts and Expenditures of all public
Money shall be published from time to time." As defined in Cincinnati Scrap Company v. United States\textsuperscript{21} and Knote v. United States,\textsuperscript{22} this clause is a limitation upon the power of the executive department and does not restrict Congress in appropriating moneys in the Treasury.\textsuperscript{23} As far as budgeting is concerned, this constitutional provision is further refined in Reeside v. Walker\textsuperscript{24} where the court found that "No office of the Federal Government is authorized to pay a debt due from the United States, whether reduced to judgment or not, without an appropriation for that purpose."\textsuperscript{25} A constitutional provision referring to sources of revenue is contained in the XVI Amendment which provides: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Budget and budgetary system having become of vital importance for the conduct of governmental affairs in a modern indus-

\textsuperscript{21}301 U.S. 308, 321 (1937).
\textsuperscript{22}95 U.S. 149, 154 (1877).
\textsuperscript{24}11 How. 272 (1851).
\textsuperscript{25}Corwin, p. 324.
trial society, it does not surprise us that Germany with her long budgetary tradition has incorporated in her new Constitution provisions that are not only of a general financial nature but also some which deal specifically with budgeting. The German Constitution of May 23, 1949,26 states in Articles 109-115:

Article 109

The Federation and the Länder are autonomous and independent of each other as regards their budget.

Article 110

(1) All revenues and expenditures of the Federation must be estimated for each fiscal year and included in the budget.

(2) The budget shall be established by a law before the beginning of the fiscal year. It must be balanced as regards revenue and expenditure. Expenditures will as a rule be authorized for one year; in special cases, they may be authorized for a longer period. Otherwise no provisions may be inserted in the federal budget law which extend beyond the fiscal year or which do not relate to the revenues and expenditures of the Federation or its administration.

(3) The assets and liabilities shall be set forth in an appendix to the budget.

(4) In the cases of commercially operated enterprises of the Federation the individual receipts and expenditures need not be included in the budget, but only the final balance.

Article 111

(1) If, by the end of a fiscal year, the budget for the following year has not been established by a law, the Federal Government may, until such law comes into force, make all payments which are necessary:

(a) to maintain institutions existing by law and to carry out measures authorized by law;
(b) to meet legal obligations of the Federation;
(c) to continue building projects, procurements and other services or to continue the grant of subsidies for these purposes, provided amounts have already been authorized in the budget of a previous year.

(2) In so far as revenues provided by special legislation and derived from taxes, levies or other sources, or the working capital reserves, do not cover the expenditures set forth in paragraph (1), the Federal Government may borrow the funds necessary for the conduct of current operations to a maximum of one quarter of the total amount of the previous budget.

Article 112

Expenditures in excess of budget items and extraordinary expenditures require the consent of the Federal Minister of Finance. The consent may only be given if there exists an unforeseen and compelling necessity.

Article 113

Decisions of the Bundestag and of the Bundesrat which increase the budget expenditure proposed by the Federal Government or involve new expenditure or will cause new expenditure in the future, require the consent of the Federal Government.

Article 114

(1) The Federal Minister of Finance must submit annually to the Bundestag and to the Bundesrat an account of all revenues and expenditures as well as of the assets and liabilities.

(2) This account shall be audited by an Audit Office (Rechnungshof), the members of which shall enjoy judicial independence. The general account and a summary of the assets and liabilities shall be submitted to the Bundestag and the Bundesrat in the course of the following fiscal year together with the comments of the Audit Office in order to secure a discharge for the Federal Government. The audit of accounts will be regulated by a federal law.
Article 115

Funds may be obtained by borrowing only in case of extraordinary need and as a rule only for expenditure for productive purposes and only pursuant to a federal law. The granting of credits and the provision of security by the Federation the effect of which extends beyond the fiscal year may take place only pursuant to a federal law. The amount of the credit, or the extent of the obligation for which the Federation assumes liability, must be fixed in the law.

Beside these budgetary provisions, the German Constitution includes under the heading "Finances" (Das Finanzwesen) in Articles 105-108 other financial provisions which will be referred to in the following chapters as seems appropriate. This constitutional section about finances is sometimes called "The Little Financial Constitution of the Federal Republic" (Kleine Finanzverfassung der Bundesrepublik) because of its comprehensive and systematic character which distinguishes it from the respective provisions in other constitutions including the Weimar Constitution. Although not always clear beyond doubt, the provisions concerning the budgetary process reveal an advanced spirit and set pace for the establishment of a modern budgetary system.

Quite frequently it happens that measures of foreign policy as laid down in treaties, executive agreements, and conventions, exercise influence on the budgets in the United States and in

Germany. At times, they even establish obligatory rules for the budget. Therefore, the relation between treaties and budgeting has to be examined and compared in both countries.

The President of the United States "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur,"\textsuperscript{28} i.e., for the making of treaties participation of the House of Representatives is not required. The power of making appropriations, however, is not vested in the President but in Congress. As a result, treaties of the United States which provide for obligations such as credits (e.g., Marshall Plan) or grants (e.g., supply of arms for defense purposes) might become effective in accordance with the constitution; their fulfillment, however, might be impossible because the legislative bodies refuse to appropriate the required money. It is true that pursuant to the United States Constitution, treaties have to be treated like laws,\textsuperscript{29} and expenditures based on treaties have to be entered in the initial budget of the President as existing and quasi-appropriated outlays; nevertheless, complications often occur in the appropriation procedure. President Truman, for instance, did not succeed in having appropriated in advance the total

\textsuperscript{28}U.S. Constitution, Article II, Section 2.

\textsuperscript{29}Ibid., Article VI, Section 2.
amount provided for in the four year Marshall Plan, but had to be satisfied with annual appropriations.

The situation is even more hazardous if executive agreements are concerned which can be completed by the President without the participation of the Senate or the House of Representatives. This opens even greater possibility that Congress will appropriate none or only a part of the needed funds for the fulfillment of the agreement.

Depending on their contents, conventions fall under treaties or executive agreements.

In Germany, treaties, agreements, and conventions are enacted like bills, the same way the budget bill is adopted. If the German legislative bodies have bound themselves by treaty, agreement, or convention, there is no room for objections or complications when the budget bill, including the respective

30 Ibid., Article II, Section 2.
31 Article 59 of the German Constitution reads as follows:

(1) The Federal President represents the Federation in its international relations. He concludes treaties with foreign states on behalf of the Federation. He accredits and receives envoys.

(2) Treaties which regulate the political relations of the Federation or relate to matters of federal legislation require the consent or participation, in the form of a federal law, of the bodies competent in any specific case for such federal legislation. For administrative agreements the provisions concerning the federal administration apply mutatis mutandis.

32 German Constitution, Article 110, Section 2.
items, later has to be approved, since passing of the budget bill is done by the same legislative bodies which have passed the respective treaty, convention, or agreement.

Not only in the light of the constitution do treaties and executive agreements influence the budget in the United States and Germany. Bilateral agreements, for instance, - like those to avoid double-taxation which the United States and Germany have made with several countries,\textsuperscript{33} - may reduce revenues and, thus, the funds required for the execution of the governmental programs. The same applies to multilateral agreements such as the General Agreement on Tariffs and Trade (GATT) of which both the United States and Germany are members. So far, these agreements have not carried much weight on the respective budgets, but increasing world trade and deeper economic integration among the countries might change the picture at some future time.

Numerous economic agreements and common defense arrangements such as economic aids, planning of order placements, and the multilateral NATO Treaty are in both countries of growing importance in regard to budgeting, as they seem to press upon international coordination of the budgets even in the absence of respective provisions in the agreements. The same holds true for

international and supra-national organizations like the United Nations, the International Labor Office, and the European Coal and Steel Community. So far, they have managed to get along without demanding coordination of the budgets of their member states. In the field of defense and rearmament (NATO), however, rudiments of budgetary coordination become visible in Europe and prove valuable in the many instances comparable data are required of the member states.

Another example of international coordination of budgetary planning was brought forth by the United States initiative of the Marshall Plan. The Marshall Plan does not only bear immediate effect on the receipts and expenditure of the budgets of the giving and receiving countries, but has effected, by the clearing of the European member states, an international coordination of budgetary planning in certain fields.

The Marshall Plan agreement between the United States and Germany, known as the Economic Cooperation Agreement between the United States of America and the Federal Republic of Germany\(^{34}\) of December 15, 1949, moreover, contains a provision expecting the Government of the Federal Republic of Germany to balance its budget. Here is what Article II, Section 1, says:

> In order to achieve the maximum recovery through the employment of assistance received from the Government of

\(^{34}\text{BGBl. 1950, II, p. 9.}\)
the United States of America, the Government of the Federal Republic of Germany will use its best endeavors:

(c) To stabilize its currency, establish or maintain a valid rate of exchange, balance its governmental budgets as soon as practicable, create or maintain internal financial stability, and generally restore and maintain confidence in its monetary system.

As a close examination of the statutory provisions most important for a comparison will be made in the following chapters, it should be sufficient at this point to enumerate the statutes concerned in both countries with a brief description of their contents and purposes.

The basic statute for the budgetary process in the United States is the Budget and Accounting Act, approved on June 10, 1921.\(^{35}\) It provides that the President shall transmit to Congress the proposed annual budget of the United States, together with other budgetary information. This act created the Bureau of the Budget, placed it under the immediate direction of the President, and located it in the Treasury Department. The Reorganization Plan I of 1939 transferred the Bureau to the Executive Office of the President which was established at the same time. Under the Federal Reports Act of 1942,\(^{36}\) the Bureau of the Budget is required to coordinate Federal reporting and


\(^{36}\)56 Stat. 1078; 5 U.S.C. 139-139 f.
statistical services for furnishing information to Federal agencies at lowest cost and with a minimum amount of time and effort. The Executive Order 10033 of February 3, 1949, gave the Director of the Bureau of the Budget authority to coordinate the supply of statistical information to intergovernmental organizations. Under the Government Corporation Control Act of 1945\(^{37}\) the authority of the Bureau of the Budget in preparing the budget for the federal departments and establishments was extended to the preparation and review of budgets for wholly-owned Government corporations. The Legislative Reorganization Act of 1946\(^{38}\) made detailed regulations for committee procedure and records and reduced the number of committees in both houses providing that with minor exceptions no Representative should sit on more than one committee and no Senator should sit on more than two committees. The Budget and Accounting Procedure Act of 1950\(^{39}\) amended the Budget and Accounting Act; it revised and simplified budget and accounting procedures and clarified the possibilities of the Bureau of the Budget with regard to the development of better organization, coordination, and management of the executive branch and with regard to statistical information. Further im-


\(^{38}\) 60 Stat. 812.

\(^{39}\) 64 Stat. 834; 31 U.S.C. 18a, 18b.
Improvements of governmental budgeting and accounting methods and procedures were provided by the Act of August 1, 1956, which amended both the Budget and Accounting Act and the Budget and Accounting Procedures Act. The Bureau of the Budget's functions were set forth by Executive Order 6248 of September 8, 1939, which established the divisions of the Executive Office of the President and defined their functions. Under Executive Order 9384 of October 4, 1943, the Bureau of the Budget reviews agency reports on Federal public works and improvement projects. Under Executive Order 10072 of July 29, 1949, and title X of the Classification Act of 1949, the Director of the Bureau of the Budget is required to issue and administer instructions and regulations for the guidance of the departments in making systematic reviews of their activities on a continuing base.

In Germany, the following laws and orders regulate the budgetary process. The equivalent of the Budget and Accounting Act is the Reichshaushaltsordnung - RHO - (Budget Regulation of the Reich) of December 31, 1922, as amended. It contains the

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40 70 Stat. 782.
41 Section 1001, 63 Stat. 971; 5 U.S.C. 1151.
42 RGGI. 1923, II, p. 17. This Act will henceforth be known as RHO.
43 As amended by the Fifth Revision of the Reichshaushaltsordnung of April 30, 1938, RGGI. II, p. 145.
basic directions for the estimates of receipts and expenditures for the fiscal year, regulates the execution of the budget and the accounting procedure during the fiscal year, and, finally, prescribes auditing methods and procedure and the release of the federal government at the end of the year. The Reichshaushaltsordnung was considerably refined and extended by the Wirtschaftsbestimmungen für die Reichsbehörden - RWB - (Economic Regulations for the Governmental Departments and Establishments of the Reich), the Reichskassenordnung - RKO - (Regulation for Disbursement Offices of the Reich), and the Rechnungslegungsordnung des Reichs - RRO - (Accounting Regulation of the Reich). The Wirtschaftsbestimmungen für die Reichsbehörden of February 11, 1929,\(^4^4\) gives detailed directions for the disposition of the budget bill, the execution of the budget, and the Bundeshaushaltsrechnung. The Reichskassenordnung of August 6, 1927, as amended of January 8, 1931,\(^4^5\) regulates the establishment of disbursement offices, disbursements, the accounting methods to be employed, and the auditing procedure to be followed. The Rechnungslegungsordnung des Reichs of July 3, 1929,\(^4^6\) prescribes how receipts and expenditures have to be set forth for the auditing and how proof

\(^{4^4}\) RMBl., p. 49.

\(^{4^5}\) Ibid., p. 7.

\(^{4^6}\) Ibid., p. 439.
has to be established that the items in the Federal budget account agree with the total of the individual accounts. There are, furthermore, the Gesetz über Errichtung und Aufgaben des Bundesrechnungshofes (Act Concerning the Creation and Duties of the Federal Auditing Court) of November 27, 1950,\(^{47}\) and the Geschäftsordnung der Bundesregierung (Rules of Procedure of the German Federal Government) of May 11, 1951,\(^ {48}\) the Geschäftsordnung des Deutschen Bundestages (Rules of Procedure of the German Bundestag) of December 6, 1951, in effect since January 1, 1952\(^ {49}\) the Geschäftsordnung des Bundesrates (Rules of Procedure of the Bundesrat) as amended July 31, 1953,\(^ {50}\) and, finally, the Gemeinsame Geschäftsordnung des Bundestages und des Bundesrates für den Ausschuss nach Artikel 77 des Grundgesetzes - Vermittlungsausschuss - (Joint Rules of Procedure of the Bundestag and the Bundesrat for the Committee in Accordance with Article 77 of the Constitution - Mediation Committee - ) of April 19, 1951.\(^ {51}\)

In a federal system the order of supremacy of the laws is

\(^{47}\)BGBl. I, p. 765.

\(^{48}\)Announcement of May 11, 1951, GMBl., p. 137.

\(^{49}\)As amended by the Announcement of January 28, 1952 (BGBl. II, p. 389) and December 6, 1955 (BGBl. II, p. 1068).

\(^{50}\)Announcement of August 27, 1953 (BGBl. II, p. 527).

\(^{51}\)As amended by the Announcements of May 5, 1951 (BGBl. II, p. 103), of June 19, 1952 (BGBl. II, p. 608), and of December 5, 1953 (BGBl. II, p. 602).
of prime importance. From the financial provisions of the Constitution of the United States it is clear that taxation for federal purposes and borrowing on the credit of the nation are federal powers, while taxation for local purposes and borrowing on the credit of the state fall under the jurisdiction of the states.

The German Constitution which explicitly professes the federal system provides in Article 31 that federal laws have supremacy over the laws of the Länder. The German Constitution defines and enumerates the legislative powers of the national government and that of the Länder. Besides, the German Constitution provides for concurrent legislative powers of the

52 Article 20, paragraph (1) of the Constitution reads as follows: "The Federal Republic of Germany is a democratic and social federal state."

53 Article 31 of the Constitution reads as follows: "Federal law shall supersede Land law."

54 Article 70 reads as follows:

(1) The Länder shall have the right of legislation in so far as this Basic Law does not accord legislative powers to the Federation.

(2) The division of jurisdiction between the Federation and the Länder shall be determined in accordance with the provisions of this Basic Law concerning exclusive and concurrent legislation.

Article 71 reads as follows:

In the field of exclusive legislation of the Federation, the Länder shall have powers of legislation only if, and so far as, they are expressly so empowered in a federal law.
Federation and the Länder and, in detail, regulates the concurrent powers to legislate on taxes. Article 109 of the Constitution finally defines: "The Federation and the Länder shall be self-supporting and independent of each other in their budget economy."

55 Article 72 reads as follows:

(1) On matters within the concurrent legislative powers the Länder have authority to legislate as long as, and to the extent that, the Federation does not use its legislative power.

(2) The Federation has the right to legislate on these matters to the extent that a need for a federal rule exists because

(a) a matter cannot be effectively dealt with by the legislation of the individual Länder, or

(b) dealing with a matter by a Land law might prejudice the interests of other Länder or of the entire community, or

(c) the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of a Land, necessitates it.

56 Article 109 reads as follows:

(1) The Federation has the exclusive power to legislate on customs and fiscal monopolies.

(2) The Federation has concurrent power to legislate on:

(a) excise taxes and taxes on transactions, with the exception of taxes with localized application, in particular of the taxes on the acquisition of real estate, on increments in value, and for fire protection;

(b) taxes on income, on property, on inheritances and on donations;

(c) taxes on real estate and businesses (Realsteuern), with the exception of the fixing of the tax rates, if it claims the taxes in whole or in part to cover federal expenditure or if the conditions laid down in Article 72, paragraph (2), exist.

(3) Federal laws relating to taxes the yield of which accrues in whole or in part to the Länder or the municipalities require the consent of the Bundesrat.
In the legislative structure, the unit state of the United States Congress is represented by the Senate, the equivalent in the German legislative structure is the Bundesrat (Upper House). As far as subsidies and grants of the federal governments of both countries to the States/Länder are concerned, which have to be entered in the budget (principle of comprehensiveness of the budget), the respective constitutional provisions are not clear and different procedures are applied in the two countries.

In the United States, the basic provision in this respect is Article I, Section 8, of the Constitution which deals with

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57 American Constitution, Article I, Section 3.

58 The German constitutional provisions read as follows:

**Article 50:**
The Länder participate through the Bundesrat in the legislation and administration of the Federation.

**Article 51:**
1. The Bundesrat consists of members of the Länder governments which appoint and recall them. Other members of such governments may act as substitutes.
2. Each Land has at least three votes; Länder with more than two million inhabitants have four, Länder with more than six million inhabitants five votes.
3. Each Land may delegate as many members as it has votes. The votes of each Land may be cast only as a block vote and only by members present or their substitutes.

59 See pages 73-75.
"spending for the general welfare." Though this constitutional provision raises two questions, namely, how may congress provide for the general welfare and what is the general welfare which it is authorized to promote, only the latter issue is of interest in this connection. The United States government gives grant-in-aid to the states under federal laws such as the Social Security Act or the earlier Smith Hughes Act, usually imposed with conditions, and, on the other hand, by means of general grants like those for the construction of schools and highways. Although these funds are made available by regular appropriations on which the states, represented by their Senators, can maintain their influence, they usually evoke impetuous debates in Congress. The question whether or not conditions may be imposed on grants-in-aid was subject of a decision of the Supreme Court in the case of the Steward Machine Company. Federal grants-in-aid are initiated by a member of the legislative bodies but frequently on the recommendation of the President. In the budget message to the Congress, which President Eisenhower signed on January 16, 1957, he says:

In the immediate future, I shall forward a message emphasizing the urgency of enactment of an adequate program of Federal aid for school construction. . . . This budget provides for the start of a four year program of aid for school construction . . . and the Congress is urged to enact a new program of grants to the states to help fight

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60 301 U.S. 548, 589, 590 (1937).
juvenile delinquency. A modest program of grants under which the states can increase their efforts to improve occupational safety should be initiated.

The President, then, goes on, and touching even on political matters he says: "I also recommend the enactment of legislation admitting Hawaii into the Union as a state, and that, subject to area limitations and other safeguards for the conduct of defense activities so vitally necessary to our national security, statehood also be conferred upon Alaska."61

In Germany, the situation is different. The Constitution forbids the national government to make certain expenditures, which cannot become the subject of the federal budget in accordance with § 17 RHG.62 The prevailing opinion in interpreting Article 106, Section 3 of the Constitution63 says that the federal government must not grant the Länder subsidies other than enumerated in that article (namely for schools, public health, and welfare), and that federal money must not be used to balance differences in the financial capacities of the Länder. The horizontal financial compensation procedure, described in

62 See page 30.
63 Vialon, p. 187.
Article 106, Section 4, is provided for this purpose.

In the interest of a better understanding some remarks on the executive branch in both countries seem appropriate at this point, especially since the positions of the Chief Executives and the Cabinet Members or Ministers, respectively, differ in the two countries.

The American Constitution defines the position of the President in stating "The executive power shall be vested in a President of the United States of America," thereby making him Chief of the executive authorized to determine the policy of the executive branch. The German Constitution refers to the executive in its Article 62 which says: "The Federal Government

64 Article 106, Section 4, of the Constitution reads: "In order to secure the financial capacity also of the Länder with low tax revenues and to equalize among the Länder a different burden of expenditure, the Federation may grant subsidies and take the funds for these from specified taxes accruing to the Länder. A federal law which requires the consent of the Bundesrat determines which taxes will be utilized for this purpose, and in what amounts and in accordance to which scale the subsidies will be distributed among the Länder entitled to equalization; the subsidies shall be remitted direct to the Länder.

65 Article II, Section 1, Clause 1.
consists of the Federal Chancellor and the Federal Ministers."\(^{66}\)

In order to get a more complete picture particularly with regard to the position of the Bureau of the Budget and the Minister of Finance, the cabinets have to be examined, too. The American Constitution referring to officials provides that the President may "require the opinion, in writing, of the principal officer in each of the executive departments."\(^{67}\) In the United States the members of the cabinet are administrators who have no direct share in lawmaking functions, they hold no seat in Congress. They are superior officers, appointed by the President, on the advice and with the consent of the Senate.\(^{68}\) The President cannot abolish the departments over which the members of the cabinet preside, for those departments have been created by acts of Congress, but he could abolish the cabinet as his advisory body. In Germany the position of the members of the cabinet is different as the respective articles of the Constitution show. Article 64 provides:

\(^{66}\)Contrary to the United States Constitution, the German Constitution distinguishes and deals with two governmental bodies. The Federal President is basically non-responsible, the Federal Government the basically responsible governmental body, responsible for its own conduct, for that of the Chief Executive and for that of the departments of the executive. Friedrich Giese, Grundgesetz für die Bundesrepublik Deutschland, (Frankfurt, 3rd edition, 1953), p. 104.

\(^{67}\)Article II, Section 2, Clause 1.

(1) The Federal Ministers are appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.

(2) The Federal Chancellor and the Federal Ministers, on assuming office, take before the Bundestag the oath provided in Article 56.

There is no constitutional provision for the number of cabinet members either in the United States or in Germany. However, the German constitution contains an important provision in its Article 65, which reads:

The Federal Chancellor determines, and is responsible for, general policy. Within the limits of this general policy, each Federal Minister conducts the business of his department autonomously and on his own responsibility. The Federal Government decides on differences of opinion between the Federal Ministers. The Federal Chancellor conducts the business of the Federal Government in accordance with rules of procedure adopted by it and approved by the Federal President.

The President of the United States is only an executive officer in the administration of the budget. The real authority for all governmental expenditures comes from Congress. This authority, the courts have held, cannot be delegated. An appropriation may be made as a lump sum, in which case the President is authorized to use wide discretion as to how the money is to be spent. Congressional action is based on recommendations by the President.

In both countries the budget is prepared by the executive and transmitted to the legislature by the Chief Executive. In the United States the Bureau of the Budget is responsible for the preparation of the budget, while the President of the Uni-
ted States submits the budget to the Congress. In Germany the preparation of the budget falls under the authority of the Minister of Finance who submits it to the Cabinet. The Federal Chancellor passes the budget on to the Bundesrat. In both countries the legislature, then, approves or alters the budget taking into consideration that certain expenditures are based on laws already in effect.\(^6^9\)

Of great importance is the veto power of the Executive. In the legislative procedure, the President of the United States can use his veto power.\(^7^0\) However, making use of this power means that the whole bill in question is not enacted. The American Constitution does not provide for an item veto. Should Congress, therefore, authorize by legislature funds more or less than provided for in the budget of the President and, thus, increase or decrease the suggested expenditures against the policy of the Federal Government, the President can by his veto\(^7^1\) nullify a bill in its entirety. Increasing attention is being

\(^6^9\)In his Budget Message of January 16, 1957, President Eisenhower said that 24 per cent of his budget are required by law. U.S. Congress, Congressional Record, 85th Congr., 1st sess. Wednesday, January 16, 1957, Vol. 103, pp. 552-557.

\(^7^0\)Article I, Section 7, Clause 2.

\(^7^1\)Congress may override the President's veto by repassing a bill by a two thirds vote in each House on roll call.
given in the United States the question of introducing the item veto. 72

In Germany this problem is solved by Article 113 of the Constitution which provides: "Decisions of the Bundestag and of the Bundesrat which increase the budget expenditure proposed by the Federal Government or involve new expenditure or will cause new expenditure in the future, require the consent of the Federal Government." This power of intervention of the Executive is a new and unusual restriction of the Legislature which cannot be modified or altered by law or rules of procedure. It has been given to the Executive to put a brake on the spending pleasure of the legislature. As long as Article 113 is in effect, there is also no possibility of replacing the aforementioned consent by a two-thirds majority vote sufficient to eliminate, change, or amend certain articles of the Constitution. 73 But, contrary to the constitutional regulation in the

72 In his Budget Message of January 16, 1957, President Eisenhower expressed his opinion on this subject and said: "And, tenth, to help assume continuing economy on the part of the Congress as well as the Executive Branch, take action that will grant the President the power now held by many state governors to veto specific items in appropriation bills." U.S. Congress, Congressional Record, 85th Cong., 1st sess., Wednesday, January 16, 1957, Vol. 103, pp. 552-557.

73 Article 79 (2) of the German Constitution requires "the affirmative vote of two-thirds of the members of the Bundestag and two-thirds of the votes of the Bundesrat."
United States, the refusal of consent of the Federal Government to higher expenditure does not prevent the budget bill from being enacted as a whole. 74

In the executive machinery another feature of the German cabinet has to be mentioned, namely the right of the Minister of Finance to raise objections if the cabinet, against his vote, decides on including new expenditures or new provisions in the budget bill. In case of objection by the Federal Minister of Finance the cabinet must vote on the issue again. Only if the majority of the members of the cabinet, including the Federal Chancellor, sustain the first resolution, is the objection of the Federal Minister of Finance overruled. 75

The Chief Executive in the United States is partly handicapped by the requirements of congressional procedures, but he can give the Bureau of the Budget instructions to impose financial ceilings on the departments or certain programs. To what extent this has been done can be seen, later on, from the budget message delivered to Congress. This method, however, gives the Chief Executive in the United States, similar as in Germany, an influence on the scope of the budgetary expenditure and the possibility of effecting saving or efficiency measures. In this

74 Friedrich Giese, p. 183.
75 RHO, § 21(3).
connection, some questions are of interest which came up for discussion in the Hearings before the Subcommittee on Fiscal Policy of the Joint Committee of Congress on June 13, 1957; Senator Paul H. Douglas (Democrat, Illinois) asked Mr. Persival F. Brundage (Director of the Bureau of the Budget): "... once the project has been authorized, once an appropriation has been made, does the President have any power as to the funds not to be expended?" The director of the Bureau of the Budget answered this question in the affirmative and, upon request of Senator Douglas, delivered a statement on the subject for the record.

A problem similar to the one discussed in the aforementioned Hearings has occupied the minds of the German budget experts. The question is, whether the Federal Government may shut down federal offices or curb an expenditure in order to balance the budget and avoid a supplemental budget in case of unexpected increased expenditure within the fiscal year. The prevailing opinion on this subject in Germany answers this question in the


77 Ibid., p. 276.
affirmative and concludes that such a revision of the budget can be done by means of administrative order and without the approval of the legislature.\textsuperscript{78} The German experts argue that the budget merely authorize the executive to make the specified expenditures after receipt of the respective funds; the budget comprise the obligation to take suitable measures for the balance of receipts and expenditure even at a time when the growth of a deficit is still uncertain but probable.

The executive body in the United States as well as in Germany, thus, has in this respect a scope of discretion, despite otherwise binding resolutions of the legislature. With the exception of legal and commercial obligations, which will be dealt with in Chapter VI, neither the executive branch in the United States nor its counterpart in Germany is compelled to a certain conduct and neither is required to adhere to each receipt and expenditure provided for in the budget.\textsuperscript{79}

At this point three subjects are to be dealt with in their relation to budgeting, namely legislative organs, limitations on legislative powers, and channels of communication between the legislative and the executive branches of government. For the comparison of the two countries it should be pointed out

\textsuperscript{78}Vialon, p. 69.

\textsuperscript{79}For Germany see RHO, § 30.
that the two components of the legislative branch in the United States, i.e., of Congress, namely Senate and House of Representatives, correspond to Bundesrat (Upper House)\textsuperscript{80} and Bundestag (Lower House of Parliament)\textsuperscript{81} of the German legislative body.

In both countries, the actual legislative work on the budget is done in committees or rather sub-committees. In the United States, the House Committee on Appropriations has fifty members. Appropriations being regarded as a key assignment, members of the House ordinarily serve on one committee only. The committee chairman designates thirteen sub-committees\textsuperscript{82} of from six to fourteen members each; there is some duplication in sub-committee assignments, and for defense appropriations there are sub-subcommittees. The committee chairman schedules the hearings, after consultation with the chairman of the sub-committees, and serves ex officio on each of the sub-committees.

\textsuperscript{80}It has to be noted, however, that the Senators in the United States are elected representatives of their State (Article I, Section 3, and XVII Amendment of the Constitution), whereas the members of the Bundesrat are officials of the Länder (Article 50 and 51 of the German Constitution).

\textsuperscript{81}The members of the House of Representatives as well as the members of the Bundestag are elected by the people (Article I, Section 2, of the American Constitution and Article 38 of the German Constitution).

\textsuperscript{82}Section 138 (a) of the Legislative Reorganization Act of 1946.
The sub-committees and their chairmen have major authority, while the whole committee has only a few responsibilities. Each sub-committee is responsible for reporting on one or two appropriation bills, the total number of which varies in any one session from twelve to fifteen. The Senate Appropriations Committee consists of twenty-three members and has ten sub-committees. These sub-committees are larger than in the House, with from ten to eleven members of the Committee on each sub-committee. Members from other related standing committees of the Senate supplement the sub-committees.

The aforementioned committees and sub-committees deal with nothing but appropriations for expenditure. There are, in addition, other committees engaged in budget work. The Committee on Finance in the Senate, for instance, is occupied with general financial matters, including the federal debt, duties, and veteran pensions. The equivalent of this committee in the House of Representatives is the Committee on Ways and Means. The Senate Committee on Expenditure in the Executive Departments is a combined savings and control commission, which receives the reports of the Comptroller General. In the House of Representatives a House Committee by the same name deals with the reports of the Comptroller General. Receipts and expenditure are not only conferred about in separate committees and procedures, they are also approved in separate acts. The
receipts are authorized in Revenue Acts, expenditure in Appropriation Acts.

Unlike the United States, in Germany receipts and expenditure are not treated separately, but in one uniform budget bill which, later on, is passed as a uniform law. In the Bundesrat, the Finanzausschuss (Committee on Finance) is responsible for reporting on the budget bill.\textsuperscript{83} The Finanzausschuss is made up of the Ministers of Finance of the Länder and supplemented by their assistants. In the Bundestag, it is the Haushaltsausschuss (Committee on Budgeting) which alone is responsible for reporting on the budget bill, i.e., on receipts as well as on expenditure.

The Haushaltsausschuss consists of twenty-nine members. It consults with other committees of the Bundestag, for instance the Committee on Finance and Taxes,\textsuperscript{84} whenever it seems appropriate. The Haushaltsausschuss of the Bundestag has only one sub-committee, namely the Rechnungsprüfungsausschuss des Haushaltsausschusses (Auditing Committee of the Committee on Budgeting), made up of thirteen members, and concerned with the

\textsuperscript{83} As noted on page 46 (footnote), the members of the Bundesrat are officials of the Länder and, therefore, bound by the directives of their Land Governments.

\textsuperscript{84} The Committee on Finance and Taxes consists of twenty-nine members of the Bundestag.
auditing reports of the Bundesrechnungshof (Federal Auditing Court).

Assignment to the Haushaltsausschuss of the Bundestag means strenuous work. The hearings of the Haushaltsausschuss usually last all day and often till very late at night. In order to distribute the workload equally, a system of reporting by specially assigned members of the Haushaltsausschuss has recently been introduced and proved valuable. For each individual budget plan one reporter and one assistant reporter are nominated. Parties representing the Government and the opposition are equally participating in this scheme. Work of the Haushaltsausschuss is not confined to the budget bill. It often occurs that other committees of the Bundestag make resolutions which fail to agree with the provisions of the budget bill. In such cases, the Haushaltsausschuss has to entrench upon matters not its own in order to have the financial burden kept within reasonable limits. Thus, the Haushaltsausschuss is pushed to play the part of a Guillotine-Committee, more so than customary in other parliaments.

A comparison of the limitations of legislative power brings about the following results.

In the United States as well as in Germany large segments of the budget consist of items made mandatory by previous legislation, which admit of no cuts by the Legislative. The only
way to insure substantial savings in the future is to keep a close watch on proposed legislation that would entail needless expense or extravagant commitments. Although the Congress of the United States is limited by only one specific constitutional restriction that "no appropriation for the army may run for more than two years,"85 there is no formal restriction on Congress to approve appropriations higher than those proposed by the Executive. Article 113 of the German Constitution86 tries to prevent the German Legislative from extensive spending. Resolutions of the Bundestag or the Bundesrat which would increase expenditure over that proposed by the Federal Government or cause additional expenditure require the approval of the Federal Government. This regulation has been adopted from the British law of 1913.87 In addition, the Rules of Procedure of the German Bundestag provide that applications by members of the Bundestag comprising increases in expenditure will be discussed only if accompanied by proposals for additional receipts. This gives further protection against needless expenditure.

As far as relations between the Legislature and the Exec-

85 Article I, Section 8. This has been modified in practice by the use of "no-year" appropriations for long-range procurement.

86 See page 22.

87 Standing Orders No. 78.
utive are concerned, it has to be pointed out that in the United States as well as in Germany members of the Executive Branch are bound to give information to the congressional committees and sub-committees, if requested. Section 206 of the Budget and Accounting Act of 1921 forbids officials of the government to confer on budgetary matters with members of Congress, unless requested by either House of Congress. In both countries essential part of the hearings of the committees and sub-committees are the testimonies given by department heads or budget officers of the agencies. In Germany, most of the testimonial work is done by the Federal Minister of Finance himself and representatives of the Budget Division of the Ministry of Finance, whereas in the United States representatives of the Bureau of the Budget itself are seldom present at the hearings.

Reference has already been made to judicial activities in interpreting the Constitutions and laws of the two countries in question. At this point consideration should be given to the functions of the courts with relation to the budget process.

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88 Section 206 of the Budget and Accounting Act of 1921 reads as follows: "No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the Government should be met, shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress."
Legislative review, as a second type of review, will be treated later.

The Supreme Court of the United States has repeatedly paid high tribute to the importance of public finances of which the national budget is a part. In 1899, the Supreme Court declared "The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy but also the power to keep alive."89 The power to tax and, thus, procure means to cover expenditure is one of the great attributes of a sovereign government without which it could not exist. In the words of Chief Justice Marshall, this power "may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it."90

There are many cases in which the Supreme Court has ruled on questions concerning public finances. Taxes and taxation were the principal issues involved. Being the most important source of governmental receipts and of equal significance as the budget itself, taxes, as dealt with in the decisions of the United States Supreme Court, deserve special attention.

90 McCulloch v. Maryland, 4 Wheaton 316, 428 (1819).
The Supreme Court cases have touched on taxation as a medium of regulation, as a means of revealing economic policy, and as a method of defining the General Welfare Clause of the Constitution. They have reviewed grants-in-aid because this device frequently threatens to interfere with the rights of the states (conditional grants-in-aid). Repeatedly, declarations of the Supreme Court have affirmed the right of Congress to use the tax method in the regulation of fields assigned by the Constitution. When the Constitution says that Congress may tax to "pay the debts and provide for the common defense and general welfare of the United States," the United States Supreme Court has defined and limited this broad provision in its interpretation by the rule that all taxes must be for a public purpose. While the Supreme Court admitted the rights of Congress to make grants of money within fields reserved to the states, if those grants are voluntarily accepted, it refused to see that the Agricultural Adjustment Act of 1933 was anything less than a compulsory regulation of agriculture and that this control belonged to the States. The court has held that the general welfare clause is rather a limitation to the objects enumerated in the Consti-

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91 Article I, Section 8, Clause 1.

92 While Congress is empowered to levy taxes for the general welfare, it is not, however, authorized to legislate for the general welfare. Thus, the power to tax and to appropriate money is broader than the power to legislate.
tution than an unlimited grant of power to the federal government. 93

These and similar opinions of the court show the importance which the Judicial Branch of the United States Government has in the interpretation of the Constitution.

One is unable to find in German court decisions a parallel to this most significant administration of justice by the U.S. Supreme Court. The main reason for this might be found in the differences in the provisions relating to finances as found in the constitutions of both countries. The American Constitution which has held its own for almost two centuries, does not contain detailed provisions relating to finances. This gives the courts the possibility of up-to-date interpretation of the constitutional principles. The above illustrations should substantiate this point. At least since 1850, 94 Germany, as compared to the United States, has taken another course. The legislators have tried to set up rules as comprehensive and detailed as possible, thus leaving hardly any room for judicial interpretation. This might be a satisfactory and appropriate solution for a certain period of time. However, it does not prevent the rules from possibly becoming inadequate at some

94 See page 12, the Constitution of Prussia.
future time and of proving obstructive because of rigidness and limitations in interpretation. Although a consideration of these basic questions of constitutional policy lies beyond the scope of this study, this issue leads to the conclusion that, at least since the Weimar Constitution — if not since the Constitution of Prussia — there can be in Germany no court decisions comparable to those in the United States, since definite rules have existed by law in Germany, whereas in the United States they have to be created by judicial interpretation.

A comparison of the judicial systems in both countries brings about the following results: In the United States the decisions referred to above have been made exclusively by the Supreme Court, which is the highest judicial authority. This one Supreme Court system compares with a multiple Federal Supreme Court system in Germany. Disregarding the question of jurisdiction, the Bundesverfassungsgericht (Federal Constitutional Court) is the most important among the six courts. Although each of the six Federal Supreme Courts representing the Judicial Branch of the government is completely independent, has independent judges subject only to the law, the Bundesverfassungs-
gericht takes certain precedence, because the other courts depend on the decisions of the Bundesverfassungsgericht, if constitutional rules have to be clarified in connection with certain proceedings. This explains why in Germany the Bundesverfassungsgericht has original jurisdiction if financial provisions of the constitution have to be decided, as compared to the jurisdiction of the Federal Supreme Court in the field of finances in the United States. As far as budgeting is concerned, where basic questions of the Constitution are not involved, the Bundesverwaltungsgericht and the Bundesfinanzhof are the courts of original jurisdiction.

Brief reference must be made to the position of the Comptroller General in the United States and the corresponding authority in Germany, the Bundesrechnungshof. Both authorities are by their nature administrative but, of necessity, exercise quasi-judicial functions in accordance with law. Therefore, they have to be mentioned under this heading as quasi-judicial authorities. In both countries disputed legal questions in the budgetary process may be submitted to the Comptroller General or the Bundesrechnungshof (Federal Auditing Court), respectively, for advisory opinions.

96 Article 93 of the German Constitution and § 13 of the Act Concerning the Federal Constitutional Court (Gesetz über das Bundesverfassungsgericht) of March 12, 1951 (BGBI. I, p. 243).
CHAPTER III

THE BUDGET AGENCY

The budget agency of the government of the United States is the Bureau of the Budget. Established in 1921 by the Budget and Accounting Act,¹ the Bureau was organizationally located in the Treasury Department from 1921 to 1939, but placed under the immediate direction of the President.² The Reorganization Act of 1939 and the subsequent executive orders moved the Bureau to the Executive Office of the President,³ created at the same time, where it has been firmly established until today. Originally an agency with narrowly conceived functions, the transfer to the Executive Office transformed the Bureau into a major agency of presidential management.

The budget agency of the Federal Republic of Germany is located in the Ministry of Finance. As far back as the German history of the budget can be traced, the budget agency has always been a special division of the Ministry of Finance. No

²Budget and Accounting Act, Title II, Section 208.
³Executive Order 8248 of September 8, 1939.
law placed the budget agency in the Ministry of Finance; however, the traditional responsibility of the Minister of Finance for governmental finances, including preparation of the budget as well as enforcement of the budget law, has made it seem appropriate to have the budget agency connected with the Ministry of Finance.

In the present governmental structure, the budget agency is one of the five divisions of the Ministry of Finance.

In comparing the locations of the budget agencies in the governmental structures of the United States and Germany, the affiliation of the U.S. Bureau of the Budget with the Executive Office of the President emphasizes its significance as a major managerial staff agency of the Chief Executive, while the location of the budget agency of the Federal Republic indicates that it operates more or less as a bureau of the Ministry of Finance. The difference in the locations of the budget agencies seems justified if one considers that in the United States the President has to "... transmit to Congress ... the budget," whereas in Germany the Minister of Finance is responsible for the preparation of the budget and its submission to the Cabinet. Although the Bundeskanzler (Federal Chancellor) transmits the budget bill to the Bundesrat, the Minister of

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4Budget and Accounting Act, 1921, Title II, Section 201.
Finance is the one who explains and justifies the budget bill in both Houses, and in their committees, if necessary.

The present organizational structure of the Bureau of the Budget was set up in 1952 as the result of an internal reorganization which was possibly initiated by the recommendations of the Hoover Commission in 1949. The Bureau has five divisions, four offices, an Accounting Group, a Lease-Purchase Officer, plus the so-called "housekeeping services"—information, administrative services, budget, and personnel.

The divisions are: Internal Division, Military Division, Resources and Civil Works Division, Commerce and Finance Division, and Labor and Welfare Division. Each division conducts activities related to and contingent on the review of estimates for its program area, and gives continuing attention to the execution of the budget. The divisions assist and stimulate the agencies in the improvement of management and organization; they work on special projects especially those for long-range budgetary and fiscal analysis and organizational planning. The divisions are the major channels through which the Bureau maintains its working relations with departments and agencies in the federal government.  

The activities of the four offices—Office of the Legis-

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Legislative Reference, Office of Management and Organization, Office of Budget Review, Office of Statistical Standards - are Bureau-wide in character. In close cooperation with the White House, the Office of Legislative Reference reviews all legislative proposals for the President emanating from departments and agencies, and coordinates the views of agencies on enrolled bills and other similar documents. Legislative Reference works closely with the program divisions and serves as legislative clearance center for the Bureau. The Office of Management and Organization guides and coordinates management improvement studies of the Bureau divisions and conducts government-wide surveys to improve management and services practices and procedures. The office prepares or receives all reorganization plans which the President submits to Congress. The Office of the Budget Review prepares the budget message, the Federal Budget in Brief, and other documents. This office is responsible for the coordination of the President's and the Director's budgeting policies. It "... develops general budget procedures and guides, prepares fiscal analyses, schedules the review of estimates, supervises the preparation of the budget document and supplemental estimates, and plans improvements in the budget process and structure." 6 The Office of Statistical Standards reviews and

approves all statistical forms and questionnaires used in the federal government and works on improvements in federal statistical services. It maintains surveillance over statistical publications and serves as the focal point for United States participation in statistical activities of international organizations.  

In cooperation with the executive agencies and departments, the Accounting Group works on improvements of accounting practices and procedures used in the federal government. The Bureau participates through this group in the Joint Accounting Program carried out together with the General Accounting Office and the Treasury Department under the Budget and Accounting Procedure Act of 1950.

The Lease-Purchase Program Officer works as the principal Bureau staff officer on the Lease-Purchase Program under the act of July 22, 1954.

The Division of the Budget in the German Ministry of Finance was organized in 1949, after the pattern of the Division of the Budget as it existed in the Weimar Republic. The Division of the Budget consists of ten Sections, nine of them

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7 Ibid., p. 61.
8 See page 29.
being responsible for several individual plans of the total budget plan, one being in charge of special financial programs and budgetary efficiency control. Two Sections, in addition to working on individual budget plans, conduct activities concerning grants-in-aid, commercially operated enterprises, and disbursement and accounting offices. The office of the head of the Division is responsible for legislative clearance, the coordination of work performed in the Sections, and the assembly of the budget law.

The following plan shows the organizational and functional structure of the Division of the Budget:

Office of the Head of the Division

  Legislative Clearance
  Coordination of Work
  Assembly of the Budget Law

Section I

  Federal Minister of Finance
  Federal Minister for Postal Affairs (including Federal Printing Office)

Section II

  Federal Minister for Transportation
  General Administration of Finance
  Federal Debt
  Grants-in-Aid
  Commercially Operated Enterprises

Section III

  Federal Minister for Food, Agriculture and Forestry
  Federal Minister of Labor
Section IV

Federal President and Office of the Federal President
Bundestag
Bundesrat
Federal Chancellor and Office of the Federal Chancellor
Foreign Office
Federal Minister of Justice
Federal Constitutional Court

Section V

Federal Minister of the Interior
Federal Minister for Expelled Persons
Disbursement and Accounting Offices

Section VI

Federal Minister of Economics
Federal Minister for Economic Cooperation

Section VII

Federal Auditing Court
Federal Minister for Housing
Federal Minister for All-German Affairs

Section VIII

Federal Minister for Defense
Defense Burdens Connected with the Stationing of Foreign Military Forces in Germany

Section IX

Efficiency Control
Financial Relations to Foreign Countries
Settlement of War Claims.

The internal organization of the Division of the Budget reflects the organizational structure of the German Federal Government.

The head of the Bureau of the Budget in the United States is the Director, who has as his aid an Assistant Director. The
Director and the Assistant Director are appointed by the President without Senate confirmation for an indefinite term. The Director is below cabinet rank. He is an administrative officer with absolute responsibilities to the President, but he is very powerful in his position.

The head of the German budget agency, i.e., the Division of the Budget in the Federal Ministry of Finance, is also an administrative officer. He has the rank of a Ministerialdirlektor (Section or Division Chief), which puts him two grades below the Minister of Finance. He is a career civil servant who may be transferred to another similar position within the federal government at any time. However, he cannot be removed by his superiors, unless for violation of official duties.

For the performance of his budgetary duties, the Director of the Bureau of the Budget has a staff of more than four hundred people. This staff comprises officers as well as employees. With very few exceptions, this personnel is subject to the Civil Service Laws. This means that recruitment of new personnel is connected with passing the Civil Service Examinations. It, further, means that salaries and wages are paid in accordance

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10 Budget and Accounting Act, 1921, Title II, Section 207.
11 Ibid., Section 208 (c).
12 Competitive examinations.
with the Classification Act of October 28, 1949.13

The head of the German Division of the Budget has a staff of merely one hundred people. Each of the ten sections of the Division of the Budget is under the direction of a Ministerialrat, whose position is two grades under that of a Ministerialdirektor. Like the United States, the staff consists of officers and employees. The main legal basis for the employment of officers (career civil servants) is the Bundesbeamtengesetz (Federal Civil Service Act) of July 14, 1953,14 and for employees the Tarifordnung für Angestellte (Employment Regulation for Employees) of April 1, 1938,15 as amended, and the respective collective bargaining agreements. The staff of the Division of the Budget, as in other departments of the government, is compensated in accordance with a promulgated pay schedule for public service (officers and employees) of the federal government, which resembles the classification plan and pay structure called General Schedule (GS) in the United States. There are four different closed careers graduated according to the educational background and experience of the civil servant, and each requires an entrance examination. A relatively large

13. Public Law 429, 81st Congress.
15. RArb.Bl. 1938, VI, 475.
fraction (almost one third) of the staff members of the Division of the Budget belong to the upper career group which, beside the entrance examination, requires academic training. A great number of the civil servants fall under the classification of upper medium career civil servants, which means that they have a college education. The remainder are mostly clerical workers, representing the medium and lower career groups. Standards of education for these two groups are relatively lower.

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16 At least three years of graduate study at a university are required.
CHAPTER IV

THE PROCESS OF BUDGET FORMATION

In the following pages, an attempt will be made to compare the process of budget formation in the United States and Germany. In order to facilitate the investigation of the numerous significant aspects involved, the basic requirements for the formation of the budget in both countries will first be examined. For this purpose, it seems appropriate to start from the four budget principles: (1) annuality, (2) prior planning and authorization, (3) comprehensiveness, and (4) clarity, generally accepted by most West European budget theorists.\(^1\) Although much of the American literature on budgeting declares budget principles to be unrealistic, the following investigation will show that they are valuable instruments for a comparative study of the essentials in the process of budget formation.

The principle of annuality requires that budgets be presented each year and that they cover only one fiscal year. The provisions of the American Constitution and its Amendments do not provide for a specific fiscal year.\(^2\) However, when the

\(^1\)Some budget theorists distinguish as many as nine budget principles.

\(^2\)Article I, Section 9, Clause 7.
Budget and Accounting Act of 1921 was made, its framers recognized the importance of the time factor for the budget and, on the principle of annuality, introduced the fiscal year. The American author A. E. Buck emphasizes the suitableness of the annual budget when he writes: "The year, being a natural cycle, is generally regarded as the proper unit of time for the voting of the budget. It is not too long for accurate estimating, and it is probably the shortest period that will not consume too much of the legislative session in the consideration of the budget."

The German Constitution explicitly provides for the principle of annuality of the budget in Article 110, Sections 1 and 2 which read:

(1) All revenues and expenditures of the Federation must be estimated for each fiscal year and included in the budget.

(2) The budget shall be established by a law before the beginning of the fiscal year. It must be balanced as regards revenue and expenditure. Expenditures will as a rule be authorized for one year; in special cases they may be authorized for a longer period. Otherwise no provisions may be inserted in the federal budget law which extend beyond the fiscal year or which do not relate to the revenues and expenditures of the Federation or their administration.

Although this provision allows the exceptional authoriza-

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3 Budget and Accounting Act, 1921, Title II.
4 Budgets in Governments of Today (New York, 1934), VI 349, p. 127.
tion of expenditures for a period longer than one year, the annuality of the budget is secured by the provision that the budget law has no effect beyond the fiscal year and can relate to revenues and expenditures of the Federal Government or their administration only. The Reichshaushaltsordnung of 1922 contains a similar regulation in its § 30 which, however, stresses exceptions from the rule of annuality rather than the rule.5

The American budgetary system is also based on "one-year accounts." But, in addition, "multiple-year" and "no-year accounts" are known.

The reader will have noticed that Article 110, Section 2, of the German Constitution 6 requires the Federal budget to be balanced each year in revenue and expenditure, a provision which emphasizes the annuality of the budget. Although there is no such requirement for an annually balanced budget in the United States, it is assumed that also the United States government aspires to have its budget balance each year.

5Usually appropriations for extraordinary purposes such as major building projects are authorized for a period of several years. In exceptional cases, also ordinary expenditures, upon special provision in the budget law, may be carried over into the next year. Reichsfinanzordnung § 30, Section 1, and § 6, Section 4, and Wirtschaftsbestimmungen § 17, Section 3.

6See page 68.
In the United States the fiscal year begins July 1, and ends June 30; in Germany it runs from April 1 to March 31.

Next to be examined is the principle of prior planning and authorization. In the United States as well as in Germany, prior planning and authorization are considered to be essential requirements for the formation of the budget. The American Constitution contains provisions which stress both elements. The requirement of prior planning of the budget is based on Article II, Section 3, where it says that the President "shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Article I, Section 9, Clause 17, distinctly demands prior authorization for the disposal of federal monies and says: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." The element of prior planning and authorization of the budget is evident all through the Budget and Accounting Act of 1921. The head of each department is required to furnish the Bureau of the Budget with the departmental estimates for the budget on or before a fixed date. "In case of his failure so to do, the President shall cause to be prepared such estimates and data as are necessary to enable him to include in the Budget estimates and statements in respect to the work of such department or
In Germany prior authorization of the budget is prescribed in Article 110, Section 2, of the German Constitution, where it says: "The budget shall be established by law before the beginning of the fiscal year." Like the Budget and Accounting Act of 1921 in the United States, its German counterpart, i.e., the Reichshauushaltsordnung (RHO) lays stress upon the elements of prior planning and authorization of the budget. The RHO goes as far as to provide in its § 20, Section 2, that departmental estimates not submitted to the Ministry of Finance in time can be inserted in the budget in exceptional cases, only.

The German Constitution contains in its Article 111 a very important provision which applies the principle of prior authorization to the so-called Haushaltsnotrecht (budget emergency law). The German federal budget being a uniform law which expires at the end of the fiscal year, the framers of the Constitution established an emergency regulation for the case that, by the end of a fiscal year, the budget for the following year has not been established by law. In order to secure uninterrupted continuation of governmental operations, Article 111 gives the Federal Government the following authorization:

(1) If, by the end of a fiscal year, the budget for

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7 Budget and Accounting Act, 1921, Title II, Section 215.
the following year has not been established by a law, the Federal Government may, until such law comes into force, make all payments which are necessary:

(a) to maintain institutions existing by law and to carry out measures authorized by law;
(b) to meet legal obligations for the Federation;
(c) to continue building projects, procurements, and other services or to continue the grant of subsidies for these purposes, provided amounts have already been authorized in the budget of a previous year.

(2) In so far as revenues provided by special legislation and derived from taxes, levies or other sources, or the working capital reserves, do not cover the expenditures set forth in paragraph (1), the Federal Government may borrow the funds necessary for the conduct of current operations to a maximum of one quarter of the total amount of the previous budget.

In the American legislation the problem of Haushaltsnotrecht is not regulated. The reason for this might be found in the fact that there is not one budget law in the United States. Rather, spending authorization finds its expression in a number of appropriation acts, usually authorizing government programs. Appropriation measures combine obligational and expenditure authority. Obligational authority is generally extended for a specified period. When this period expires, the obligational authority expires. But, and this is important, once the obligation is incurred, goods and services may be charged against the commitment for a period of two years after the close of the fiscal year. Thus, continuation of governmental operation is, at large, secured beyond the fiscal year. In addition, it is customary for the Congress, by joint resolution, to authorize
departments and agencies to incur obligations at the same rate as during the preceding fiscal year, should appropriation bills not be enacted by the beginning of the fiscal year.

Comprehensiveness of the budget is required by Title II, Section 201, of the Budget and Accounting Act of 1921, which enumerates the components to be contained in the budget. The President's budget document which is introduced by a budget message of about one hundred pages, reflects the requirements of comprehensiveness, although with certain limitations. The document contains summary tables showing estimated expenditures, recommended appropriations, and estimated revenues. The bulk of the document, however, is concerned with expenditure and appropriation estimates, while revenue estimates are usually underemphasized. This makes the United States budget primarily an expenditure document.

Based on Title II, Section 202, of the Budget and Accounting Act, the budget document also reflects the considered views of the President on matters of expenditure and tax policy, including existing and proposed programs. The summary budget accounts distinguish between recommendations based on existing legislation and recommendations based on legislation which the President proposes. Aggregate dollar amounts are totaled as a part of budget expenditures, under the heading "proposed for later transmission." Also, as a separate category, the budget contains a
"reserve for contingencies" to cover specific appropriations which Congress may provide during the forthcoming months. It is significant that the appropriations later to be enacted by Congress as authorization of the budgetary proposals do not reflect the principle of comprehensiveness. They authorize the departments to incur obligations, to make expenditure, or both, but they do not embrace revenue measures. Budget authorization in the United States, thus, applies only to the expenditure side of the budget.

In Germany, the Constitution explicitly prescribes that "all revenues and expenditures" must be estimated for each fiscal year and included in the budget. This provision makes it obligatory for the executive and the legislative not to omit any revenues and expenditure of the Federal Government in the budget bill and in the budget law. Unlike the practice in the United States, the German budget must only contain revenues and expenditure which can with certainty be expected. Dubitable revenues and expenditure must not be included in the budget. This eliminates the insertion of expenditure for which there exists no legislative base at the time of the enactment of the budget. There is no reserve for contingencies as exists in the American budget document. Means for new legislation to be provided during

8 Article 110, Section 1. Also RHO § 9.
the fiscal year have to be procured by a supplemental budget.

Legislation in both the United States and Germany require that all estimates have to be gross estimates, with the exception of commercially operated enterprises or government corporations for which net figures have to be inserted.\textsuperscript{9}

The principle of clarity of the budget, as applied in the United States, can only be applied to the budget document of the President which is the only official document presenting the budgetary program for the forthcoming year as a whole. The budget document is drafted according to a definite plan and rather clearly organized. The first part contains the President's message to Congress which includes pertinent facts about the financial state of the Union, a brief comparative statement of estimated expenditures and revenues for the current year with those of prior fiscal periods. The second part contains the general budget summary and supporting schedules, which include receipts and expenditures, funds appropriated, a general fund balance, and the public debt of the United States. In part three and four may be found estimates of revenues, receipts, appropriations, and expenditures, respectively, with a brief analysis of each. Part five contains the detailed estimates of

appropriations for all the departments and agencies of the federal government. Part six provides for certain annexed budgets, such as the Post Office Department. The last part contains informational tables, sometimes known as supporting data, that are of value in interpretation and explanation of the foregoing divisions.

Working toward performance budgeting, the United States government uses the following budget classifications: functional classification, organizational classification, and classification based on objects. Functional classification, designed to facilitate program formulation, serves as the framework for the President's budget message to Congress. Organizational classification reflecting the departmental and agency structure of the government has in recent years been used to present a unit summary for both expenditures and obligational legislative authority. Object classification is used as a supplementary classification, but, in recent years, has widely been replaced

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10 The performance budget, as defined by the Hoover Commission, is: "A budget based on functions, activities, and projects . . . which would focus attention upon the general character and relative importance of the work to be done, or upon the service to be rendered, rather than upon the things to be acquired, such as personnel service, supplies, equipment, and so on . . . . The all-important thing in budgeting is the work or the service to be accomplished and what that work or service will cost." (Budget and Accounting, Vol. IV of the Reports to the Congress of the Commission on Organization of the Executive Branch of the Government, U.S. Government Printing Office, 1949).
in the budget document by activities schedules.

The German budget is one project of law. It consists of the budget law and its appendix, - the total budget plan of the federal government. The budget law gives the instructions for the use of the monies during the fiscal year. The total budget plan contains in detail a summary of the receipts and expenditure for the forthcoming fiscal year. It consists of an ordinary and an extraordinary budget. The latter comprises extraordinary receipts and such expenditures as are covered by those receipts. The total budget plan is divided into individual plans according to the organizational structure of the government. Bundestag, Bundesrat, and the President have their own individual budget plan like the executive departments. In addition, some individual budget plans cover government programs. Each individual plan starts with a foreword, describing the functions of the budget unit, its organization, and its requirements for personnel, services, materials, and supplies. Then follow receipts and expenditure. Horizontally, they are divided into broad groups of personnel, materials and supplies, general budget expenditure, and expenditures occurring once. Vertically, they fall into Kapitel (chapter) and Titel (title). A key-system using numbers for Kapitel, Titel, and sub-divisions makes receipts and expenditures comparable and suitable for statistical purposes. The technical balancing of the budget

10a In addition, the provisions of the HCO and its executive orders have to be observed.
(ordinary and extraordinary budget) is performed by the individual plan of General Finance Administration, which contains the bulk of the receipts.

The German budget is not so modern as to follow the performance budget system. Only on the highest level of individual budget plans is there used some classification based on programs. There prevails, however, for the individual budget plans classification according to the organizational structure of the government. The division and subdivision of the individual plans into Kapitel and Titel is made according to functions and objects. This makes the German budget rather clear in all its details. It would, however, add to clarity to have summaries based on performance classification.

The budget procedure considered from time aspects is generally divided into three phases identified as: (1) executive preparation, (2) submission, and (3) legislative authorization.

In the United States, the budget process begins generally in spring with preliminary planning work in the departmental units and divisions where efforts are made to translate program requirements into budgetary figures. From the operating levels appropriation requests move up the organizational hierarchy to influence budgetary decisions at higher levels. At the same time, program decisions move down to the operating levels and influence decisions there. Although an exact precision in
Timing the budget formation does not exist, a certain time schedule is followed which may be described as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to April</td>
<td>Bureau (unit) planning</td>
</tr>
<tr>
<td>April</td>
<td>Budget call from departmental budget officers</td>
</tr>
<tr>
<td>May</td>
<td>Consolidation of department's field budget with over-all budget for department</td>
</tr>
<tr>
<td>June</td>
<td>Over-all budget policy development; clearance from President; Bureau of the Budget; Director's policy letter; call for estimates; announcement of ceilings</td>
</tr>
<tr>
<td>July-August</td>
<td>Departmental review, hearings and adjustments</td>
</tr>
<tr>
<td>September 15</td>
<td>Departments submit appropriation requests</td>
</tr>
<tr>
<td>September-November 15</td>
<td>Bureau of the Budget examiners' review</td>
</tr>
<tr>
<td>October 10-November 20</td>
<td>Hearings in the Bureau of the Budget</td>
</tr>
<tr>
<td>October-November</td>
<td>Review by the Director of the Bureau of the Budget</td>
</tr>
<tr>
<td>November-December</td>
<td>Presidential review; preparation of the budget message; preparation of the budget document</td>
</tr>
<tr>
<td>January</td>
<td>Submission of the budget to Congress</td>
</tr>
<tr>
<td>January-July</td>
<td>Congressional review and authorization</td>
</tr>
<tr>
<td>July 1</td>
<td>Begin of the fiscal year</td>
</tr>
</tbody>
</table>
As this schedule shows, the preparation phase at the operating level starts about fifteen months before the beginning of the fiscal year to which the estimates apply. Approximately nine months of the working period preceding the beginning of the fiscal year are consumed by executive preparation and submission, approximately six months by congressional review and authorization.

The German time schedule, in comparison, has the following time dimensions:

April

Federal Minister of Finance informs departments about financial policy and furnishes them with forms for budget estimates

July 15

Consolidation of department's field budget with over-all budget for department

August 15

Submission of departmental requirement estimates to the Federal Minister of Finance (individual budget plans); review; hearings

December

Submission of budget bill to the Cabinet

January 5

Submission of budget bill to the Bundesrat

Three weeks later

Submission of budget bill to the Bundestag

April 1

Begin of the fiscal year.

Budgetary preparation work in Germany, thus, takes one year. Approximately nine months of this period are consumed by executive preparation. While the preparatory period is three
months shorter in Germany than in the United States, it is interesting to find that in both countries two-thirds of the total time needed for the formation of the budget is consumed by executive preparation and one-third by legislative preparation.

Some dates of the time schedules are fixed by law in both countries. The Budget and Accounting Act of 1921 provides in Section 215 that "departmental estimates have to be submitted to the Bureau of the Budget on or before September 15 of each year." Section 201(a) prescribes that "the estimates for the legislative Branch and the Supreme Court of the United States have to be transmitted to the President on or before October 15th of each year." Section 201 demands: "The President shall transmit to Congress on the first day of each regular session, the budget . . . ."

The Reichshaushaltsordnung and its executive orders contain similar directives. RHO § 19 authorizes the Federal Minister of Finance to determine the date for the submission of the individual budget plans. Based on this provision, August 15 was fixed as submission date in the Wirtschaftsbestimmungen für die Reichsbehörden § 7. According to § 22 of the Reichshaushaltsordnung the budget bill, after approval by the Cabinet, has to be submitted to the Bundesrat on or before January 5. The budget bill being a legislative proposal of the Federal Government

11 See page 17.
as provided for in Article 76 (2) of the German Constitution, the bill has first to be transmitted to the Bundesrat, which may give its opinion within three weeks. This constitutional provision sets the date for the submission of the budget bill to the Bundestag.

It should be mentioned in this connection that the President's budget, as was said before, does include a reference to taxation; the administration's tax program, however, is customarily submitted to Congress at a different time than the budget, usually in February or March. According to the German Constitution, revenue and expenditure have to be included in the budget law which makes separate submission of the tax program and the expenditure program or difference in point of time impossible.

The budget as a legal institution is based on the constitution and the laws of the government, which endow the executive and the legislature with certain financial and managerial responsibilities. Considerations of economic and fiscal policy are channeled into the budgetary process at various points. Two questions arise in this connection: (1) Who determines the

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12 Article 76, Section 2, of the German Constitution reads as follows: "Bills of the Federal Government shall be submitted first to the Bundesrat. The Bundesrat is entitled to state its position on these bills within three weeks."
overall policy for the budgetary process and who is responsible for it, and (2) how does the determination of overall policy find its expression and how is it realized.

The Budget and Accounting Act of 1921 makes it the duty of the President to formulate the budget and it endows the President with the responsibility for the submission of the budget.\textsuperscript{13} Hence it can be inferred that the determination of overall policy first of all and in the highest resort lies with the President. The chief executive in Germany, the Bundeskanzler, who presides the Cabinet,\textsuperscript{14} according to Article 65 of the Constitution, has the following powers and duties:

The Federal Chancellor determines, and is responsible for, general policy. Within the limits of this general policy, each Federal Minister conducts the business of his department autonomously and on his own responsibility. The Federal Government decides on differences of opinion between the Federal Ministers. The Federal Chancellor conducts the business of the Federal Government in accordance with Rules of Procedure adopted by it and approved by the Federal President.

This might give the impression that the German Bundeskanzler has the same position as the United States President with regard to determination of overall policy for the budgetary process. The Bundeskanzler's respective powers, however, are

\textsuperscript{13} Budget and Accounting Act, 1921, Section 201.

\textsuperscript{14} German Constitution, Article 62: "The Federal Government consists of the Federal Chancellor and the Federal Ministers."
curbed by other constitutional provisions which emphasize the position of the Federal Minister of Finance and endow him with special powers and duties concerning the federal budget and the overall policy applied to it.\textsuperscript{15} The position of the Federal Minister of Finance is further strengthened by § 128 of the \textit{RHO}.\textsuperscript{16}

For the performance of his duties in compliance with the Budget and Accounting Act of 1921, the President has at his disposal a staff-agency, the Bureau of the Budget, which was established by the Budget and Accounting Act. Although the act endows the Director of the Bureau with certain powers and duties, the Director always acts through the delegated power of the chief executive, the President. The Director acts for the President when "his calls upon the chiefs of bureaus and other administrative officers for purposes of consultation or informa-

\textsuperscript{15}German Constitution: Article 108, Section 4; Article 112; and Article 114, Section 1. The Federal Minister of Finance (not the Federal Government or the Bundeskanzler) is the one who, according to Article 114, must submit annually to the Bundestag and to the Bundesrat an account of all revenues and expenditures as well as of assets and liabilities.

\textsuperscript{16}\textit{RHO} § 128 provides that special regulations, almost equalling a veto-power of the Federal Minister of Finance, apply if differences of opinion occur between the Federal Minister of Finance and other Federal Ministers with regard to provisions of the \textit{RHO} concerning the power of the Federal Minister of Finance to fix dates, set forth regulations, or make certain measures depend upon his approval.
tion take precedence over the cabinet head of a department." 15
He consults with the White House staff and the President himself
to secure initial clearance on major program decisions, before
he issues his policy letter, which informs the heads of the
departments and agencies about the overall policy for the pre-
paration of the budget and sets ceilings for a number of depart-
ments. He is responsible for the review and coordination of
departmental programs and estimates. Although the line between
policy coordination and policy determination might often be
thin, the Director of the Bureau of the Budget has no power to
determine on his own right the budgetary policy of the govern-
ment. 16 Final determination of overall budgetary policy is
rather made by the President himself, who reviews the proposed
budget as it emerges from the Bureau of the Budget and transmits
it to Congress together with his budget message.

In Germany, determination of overall policy for the budget
takes place on the cabinet level, where the Federal Minister of
Finance enjoys special powers. The Federal Minister has his
Budget Division prepare the sample budget plan17 and the policy

15 Executive Order No. 3550, replaced by No. 3578.
16 Jesse Burkhead, Government budgeting, John Wiley and
17 As sample for the initial individual budget plans.
circular which he sends to the various budget units. In the policy circular he explains the economic assumptions on which the budget is to be prepared, sets ceilings, and appeals for economy. In all these activities, the head of the Budget Division does not come into view. His responsibility is directed toward the performance of work within the Budget Division.

While in the United States final determination of overall policy is made by the President, the German system provides that problems of major importance, upon application of the competent Federal Minister, may be decided by the Cabinet. The Minister of Finance can veto decisions which are in contradiction to his policy. Against the voices of the Bundeskanzler and the Minister of Finance an alteration of the budget bill is not possible. If voting against the Minister of Finance, the Bundeskanzler needs the majority of the Federal Ministers to overrule the Minister of Finance.

Although the President of the United States or the Minister of Finance, respectively, are responsible for the determination of overall policy for the budget process, the many budgetary proposals made on the different levels and in the various organizational units of the government influence each other

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and contribute to the policy which, finally, emerges as the result of a flow-up and flow-down of decisions. This is especially true for the budgetary policy in the United States, but characterizes the German budgetary policy, too.

While in both countries the collection of estimates for the budget is done in the executive branch of the government, with regard to review of estimates, a distinction has to be made between administrative and congressional review. At this point, the collection of estimates and their review by the administration will be examined in both countries. Congressional review will be examined later.

In the United States and in Germany the preparation of budget estimates starts on the operating or bureau level of the departments and agencies. The estimates flow together in the agency budget office, which in Germany is known as the Haushaltsreferat. The agency budget officer — Haushaltssachbearbeiter in Germany — reviews the estimates and transmits them to the head of the agency for final departmental review and consolidation. From the departments the estimates move on to the central budget office, the Bureau of the Budget in the United States and the Budget Division of the Federal Minister of Finance in Germany.

There is one fundamental difference in the phase of administrative collection and review of estimates: in Germany the
collection and review of estimates comprises revenues and expenditures, while in the United States departmental collection of estimates and their review concerns expenditures only. The estimates of revenue are prepared by the Secretary of the Treasury, who transmits them to the Bureau of the Budget for inclusion in the budget document.

The budget estimates of the organizational units in the United States are submitted in terms of "activities" or "programs." In Germany, where performance budgeting is not used, estimates are classified according to functions and objects. While there are no directives given for the determination of the values of the estimates for the United States budget, revenues and expenditures for the German budget have to be calculated under conditions as they prevail on July 1 of the current fiscal year. This regulation is to make certain that initial planning on the operating levels is not started too early, but produce figures as realistic as possible for the forthcoming fiscal year. Later developments that change the basis for the calculation have to be reported.19

In both countries budget estimates have to be submitted in accordance with the directions of the Bureau of the Budget or the Federal Minister of Finance, respectively. They have to be

19RWB § 6, Section 7.
within the limits prescribed in the policy letter of the Director of the Bureau of the Budget and the budget circular of the Federal Minister of Finance, respectively. In both countries a special justification has to be given if estimates are higher than the year before or exceed the announced ceilings. In Germany the Federal Minister of Finance must be informed before June 1 about new appropriation requests which are of importance.\textsuperscript{20} He decides whether or not these so-called pre-requests can be considered.\textsuperscript{21} In the United States, agency budget presentation has to include last year's and current year's appropriations for reason of better comparison. This is not required for the German budget proposals.

During this first phase of budget preparation the Bureau of the Budget in the United States discusses with the departments and agencies the nature of their probable requirements for the forthcoming year. After having obtained this information on the budgetary outlook and, in addition, preliminary revenue estimates from the Treasury Department, the Director of the Bureau of the Budget consults with the White House and, then issues the policy letter for the heads of the departments and agencies.

\textsuperscript{20}Ibid., § 7.
\textsuperscript{21}Ibid., § 20.
Now the departments and agencies in communication with the Bureau of the Budget start conducting intensive examinations of their budgets in the light of ceilings and policy directives. Departmental estimates are finally submitted to the Bureau of the Budget during the month of September.

There is no such interchange of views between the departments and the Budget Division in Germany during this first phase. The agency budget offices obtain the sample budget plan and the budget circular of the Federal Minister of Finance in April and prepare their estimates strictly in conformance with the directives they contain.

The process of budget formation finds its administrative termination in the final assembly. In the United States, final assembly of the budget is done in the Bureau of the Budget; in Germany, by the Budget Division of the Federal Minister of Finance. The estimates of the executive branch, the legislative and judicial branches, flow together in those two bureaus. It is at this point that final administrative decisions are made which may involve the President or the Federal Cabinet, respectively.

This final phase of administrative budget formation, lasting in the United States from October to December and in Germany from September to December, starts in both countries with informal hearings in the central budget agency. The budget
officer of each department or agency is responsible for coordinating and organizing the defense of the estimates as submitted. He is assisted by members of his staff. In the United States, the hearings may be opened with a statement by the head of a department or his deputy. In Germany, the heads of the departments, namely the Federal Ministers, do not come to the hearings; their deputies, however, might be present.

In the United States, there is a more or less formal internal hearing following the informal hearings, the Director's Review, which is conducted by a committee appointed for this purpose. The Director's Review gives the departments and agencies an opportunity to appeal for a reconsideration of their estimates.

The decisions of the Bureau of the Budget concerning estimates are final.\(^{22}\) They can only be modified by the President. In Germany the Budget Division decides disputes of minor importance autonomously; differences of opinion on major issues are decided by the Minister of Finance or in the Cabinet, where the rules described before apply.\(^ {23}\) In case of disagreement on questions of a technical or legal nature, the United States executive may appeal to the Comptroller General for a ruling or

\(^{22}\text{Budget and Accounting Act, Section 207.}\)

\(^{23}\text{See page 84.}\)
advisory opinion. The German Federal Minister of Finance, in such a case, can request the President of the Bundesrechnungshof to deliver an advisory opinion.

In the United States the President must include in the budget, without revision, the estimates of Congress and of the Supreme Court, although estimates for the remainder of the federal judiciary may be reviewed. Unlike the United States, the estimates of the six German Federal Supreme Courts are included in the individual budget plan of the Federal Minister of Justice and are subject to executive review. The RHO, however, provides that the Federal Minister of Finance has to inform the Cabinet of retrenchments that have been made concerning the requests of the President of the Bundestag and the President of the Bundesrechnungshof. On differences of opinion between the Federal Minister of Finance and the aforementioned Presidents, the Cabinet must pass a resolution. Remaining entrenchments in the estimates of the President of the Bundestag have to be submitted to the legislature together with the original estimates. The President of the Bundesrechnungshof

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24 Budget and Accounting Act, Section 312(a).
25 Ibid., Section 201(a).
26 See page 55.
27 RGB1. 1923, II, p. 17.
has to be satisfied with the decision of the Cabinet. Since the Comptroller General is not named in Section 201(a) of the Budget and Accounting Act of 1921, he does not have an exceptional position with regard to the review of his budget estimates.

In the last stage of executive budget preparation, the Bureau of the Budget in the United States puts the budget document together. After approval by the President, the budget document is printed for formal transmission by the President to Congress.

The Federal Minister of Finance is responsible for the final assembly of the budget bill in Germany. He submits the budget bill to the Cabinet for consultation and review. The formal approval of the bill by the Cabinet terminates the executive preparation of the budget. The bill is printed after approval in the Cabinet.

28 See page 43.

29 According to § 24 of the Rules of Procedure of the Federal Government, the cabinet is a quorum if one half of its members, including the chairman, are present.
CHAPTER V

OFFICIAL ENACTMENT OF THE BUDGET

Usually in the third week of January the President of the United States as the chief executive submits to Congress the budget document together with his budget message. At about the same time, the President delivers before Congress the State of the Union Message and the Economic Report, thus furnishing Congress with an outline of his fiscal and economic program for the forthcoming year, - information Congress needs for legislative decisions on the budget proposals of the executive.

In the United States, budget day is of no particular significance. The budget document does not contain spectacular announcements on taxation, and the President's recommendations for expenditures are subject to considerable congressional revision and modification.

The German budget, having the form of a regular bill, has to be presented to the legislative bodies in accordance with the constitutional provisions. After approval by the Federal Cabinet, the Federal Chancellor submits the budget bill to the Bundesrat. From there it goes to the Bundestag,¹ at about the

¹See page 80.
end of January. It is at this point that the Federal Minister of Finance formally addresses the Bundestag with a comprehensive report (Haushaltsrede) explaining and justifying the budget in the light of the economic and financial outlook for the forthcoming fiscal year. The members of the Bundesrat traditionally are present at this occasion. The event, however, does not attract particular public attention for the very reason that new tax programs are not introduced with the budget bill.

Regardless of whether the executive presents the budget as a program (as in the United States), or as a bill (as in Germany), the legislative process in amending the budget is of major importance.

In the American system of government, Congress is responsible for reviewing and, if it sees fit, for amending the budget. Apart from previous legal obligations, it is entirely up to Congress to alter and modify the President's budget at its discretion. The veto power of the President, already mentioned before, is the only legal means the executive has to defend his budget program. This power, however, is rarely used with regard to appropriation measures. It is not too strong either, since the veto of the President may be overruled by a two-thirds majority of each House. Since the United States budget need

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2See page 41.

3United States Constitution, Article I, Section 7, Clause 2.
not be balanced and since there is no formal machinery existing in Congress to achieve a balance of expenditure and revenue measures, Congress actually increases or cuts the appropriation requests of the executive as seems appropriate.

Under the German system, the legislature - Bundesrat and Bundestag - in their power to review and amend the budget are far more limited than Congress in the United States. Article 113 of the German Constitution which provides that decisions of the legislature causing increased expenditure require the consent of the Federal Government, tends to minimize budget increases by legislative decisions. The United States Constitution, on the other hand, restricts the executive in spending money when it states in Article I, Section 9, Clause 7: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Moreover, the legislature in Germany has to review and authorize the budget as a whole, and it has to be careful that changes in revenues and expenditures do not unbalance the budget. If increases in expenditures are decided, the legislature must simultaneously establish new sources of revenue to cover them.

In practice, the legislative process of authorizing and amending the budget follows this pattern: After the President of the United States has transmitted the budget document to

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4See pages 42-43.
Congress, it is passed on to the House Committee on Appropriations. Here, the document is split up into twelve to fifteen appropriation bills each of which may cover several departments and agencies. Each of the thirteen subcommittees of the Committee on Appropriations is responsible for reporting on one or two appropriation bills. There is no occasion provided for an examination of aggregate revenues and expenditure. The budget is reviewed and enacted piecemeal.

The hearings of the subcommittees are informal and seldom open to the public. The budget officers of the departments, supported by heads of bureaus and divisions, defend the estimates as submitted. Representatives of the Bureau of the Budget are seldom present. After the hearings, the subcommittee determines the appropriations to be recommended and submits its report together with the appropriation bill to the House Appropriations Committee. Usually the bills are sent unchanged to the House where they are debated and voted upon.

From the House, the appropriation bills go to the Senate and are reviewed there by the subcommittees of the Senate Appropriations Committee. They act primarily as courts of appeal for the departments and often restore a part of the reductions made by the House.

A conference committee reconciles the bills and adopts final figures. The conference committee draft is, then, reported
to the House and the Senate. It is usually accepted by both bodies and adopted.

The German budget is reviewed and amended as a whole project of law. In this process it goes first to the Bundesrat\(^5\) and not to the Bundestag which would correspond with the United States House of Representatives. The Finanzausschuss of the Bundesrat consisting of the Ministers of Finance of the Länder are in charge of reporting on the budget bill before the Bundesrat. For review and amendment the Finanzausschuss refers the budget bill to its subcommittee made up of the finance officers of the Länder. They very thoroughly review the bill in informal conferences. Representatives of the federal administrative departments are not present, but officers of the Budget Division of the Federal Minister of Finance attend the meetings. Article 106, Section 3, of the German Constitution allows the Federal Government to use part of the income and corporation tax to cover those expenditures not covered by other revenues. The representatives of the Länder try to keep federal spending as low as possible. A comprehensive report with recommendations for the decisions of the Bundesrat is submitted by the subcommittee to the Finanzausschuss. The Finanzausschuss revises the recommendations of the subcommittee and reports the bill to the

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\(^5\)German Constitution, Article 76, Section 2.
Bundesrat which, usually, votes on the budget bill as recommended by the Finanzausschuss.

Together with a report and recommendations for amendments, the budget bill is sent from the Bundesrat to the Bundestag. In very much the same way the President of the United States submits the budget to Congress with a budget message, the German budget bill is now transmitted to the Bundestag with a budget report of the Federal Minister of Finance. This report not only gives a well organized explanation and justification of the budget bill as a whole and with regard to its parts, but it also informs the public about the financial and economic program of the Federal Government for the forthcoming fiscal year. The report of the Federal Minister of Finance is addressed to the Bundestag, but the members of the Bundesrat are usually present on the occasion.

In the Bundestag, the Haushaltsausschuss is responsible for reporting on the budget bill. It submits the bill with its recommendations to the Bundestag. The assembly of the Bundestag reviews the budget bill by debating the individual budget plans one after the other in constant consideration of the whole project of lay. After the Bundestag has voted upon the budget bill, the Bundesrat according to Article 77, Section 2, of the

6 Notice, not the Federal Chancellor, but a member of his Cabinet submits the budget to the Bundestag.
Constitution may raise objections against the decisions of the Bundestag within two weeks. If the Bundesrat uses this constitutional right, the bill is referred to a joint reconciliation committee consisting of members of the Bundestag and the Bundesrat. The Bundesrat may again raise objections against the recommendations of the joint committee which can be overruled by a qualified majority of the Bundestag.

In addition to the fundamental difference that the United States federal budget is enacted as a multitude of separate appropriation bills whereas the German budget is enacted as a uniform law, the final phase of determining the budget reveals further dissimilarities between the two countries.

In the United States, after passage in both Houses, the "enrolled" appropriation bill is sent to the President for his approval or veto. Before the President decides on the bill, he refers it to the Bureau of the Budget which passes it on to the departments and agencies affected by the legislature. If it so desires, a department may comment on the bill in a memorandum to the Bureau of the Budget. The Bureau coordinates the views and prepares a final memorandum recommending that the

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7A bill does not become the law of the land until after (1) Presidential approval; or (2) failure to return with objections within ten days when Congress is in session; or (3) the overriding of a veto. It does not become law without the President's signature if the Congress by their adjournment prevent its return. This is known as a "pocket veto."
President veto the bill, or that the President's signature be accompanied by a comment pointing out deficiencies in the legislation. On the basis of this memorandum and possibly other pertinent information, the President rejects the bill or signs it, with or without comment. According to the American Constitution, an item veto of appropriation measures is not possible. They must be rejected or accepted in toto.

In Germany, after passage in the Bundesarat and Bundestag, the budget bill, like any other enrolled bill, has to be submitted to the Federal President. He signs the bill after it is duly signed by the Federal Chancellor and the Federal Minister of Finance. This procedure constitutes the original document and certifies that the budget as a federal law is formally (procedurally) and materially (competently) in accordance with the Constitution. While the Federal Chancellor and the Federal Minister of Finance (who sign the bill first) are responsible for its being constitutional, the Federal President is authorized and obliged to make sure that this requirement is fulfilled. If there should be any doubts with regard to this question, the Federal President may ask the Federal Constitution.

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German Constitution, Article 82, Section 1, Clause 1, reads as follows: "Laws passed in accordance with the provisions of this Basic Law will, after countersignature, be signed by the Federal President and promulgated in the Federal Gazette."
tional Court to deliver its legal opinion. This opinion binds the Court in any subsequent suits. The date on which the Federal President signs the budget bill becomes the date of the budget law.

The final requirement for making a law effective, namely its publication, is done in the United States by the Administration of General Services. The original enrolled bill, if approved by the President, is sent there by the White House or by the body which last overrides the veto of the President. The first official publication of a law (appropriation bill) is in the form generally known as the slip law. For the purpose of providing a permanent collection of the laws of each session of the Congress, bound volumes which are called the Statutes at Large are prepared by the General Services Administration.

In Germany new laws are published in the Bundesgesetzblatt (BGBl.). The Bundesgesetzblatt is the means of publication that must be used in order to make a law legally binding. With its publication in the Bundesgesetzblatt the German budget law becomes effective.


10 The United States Code contains a consolidation and codification of the general and permanent laws of the United States.
The United States provide for further official publication of appropriation bills. Each month during the session, a summary of appropriation measures is printed in the *Congressional Record* and, at the end of each session, a summary of appropriation measures adopted is inserted in the appendix to the *Congressional Record*. A comprehensive document under the title "Appropriations, Budget Estimates, Etc." is published a few weeks later containing the complete text of all appropriation measures and pertinent information on each of the measures. There is no such additional publication of the budget law in Germany. The budget law, however, is officially commented on in government publications like the *Bundesanzeiger* and *Finanzpolitische Mitteilungen des Bundesfinanzministeriums*.

Before finishing this chapter, brief reference has to be made to supplemental appropriations in the United States and supplements to the budget bill in Germany.

In the United States it is quite common that requests for supplementary appropriations are transmitted while Congress is in session. They may arise from changes in the departmental programs, from unforeseen events like droughts or floods, or from new legislation. There is no special form required for requests for supplemental appropriations. The executive submits

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11 Supplement to the *Bulletin der Bundesregierung*. 
evidence that the appropriation is needed, whereupon the aforementioned congressional actions of reviewing and authorizing the appropriation bill are taken.

In Germany, a difference is made between supplementing the budget bill and appending the budget law. As long as the budget bill has not been passed by the legislative bodies, but is still under legislative review, supplements to the budget are inserted in a so-called supplemental budget plan which becomes part of the initial budget bill. The supplement to the budget bill (Ergänzung zum Entwurf des Haushaltsplans) is a bill of the Federal Government which changes the budget bill; it has to be reviewed and authorized by Bundesrat and Bundestag together with the initial budget bill. Changes to the budget proposed by the Federal Government after the budget is enacted have to be submitted in a separate bill which has to follow the regular legislative process in order to become a law. This law is called appendix to the budget law (Nachtrag zum Haushaltsplan). Both the executive and the legislature are anxious to avoid an appendix to the budget law, but sometimes the appendix becomes a necessity because of circumstances unforeseen at the time of the enactment of the budget.
CHAPTER VI

GENERAL METHOD OF ENFORCEMENT

After the budget is enacted, either in the form of appropriation acts or as a uniform law, execution of the budget sets in and with it various types of expenditure control.

In the United States the executory phase starts with the signed and published appropriation act being referred to the Department of State which acts as the guardian of all federal laws. In the Department of State two copies are made of each act, one going to the General Accounting Office, the other to the Treasury Department, where they serve as a basis for the accounting and auditing process.

According to RHO, § 23, "the Federal Minister of Finance has to submit the enacted budget to the Federal Auditing Court." Although attached to the German budget law is only the total budget plan showing the totals of the individual budget plans, the aforementioned provision refers to the total budget plan plus the individual plans.\footnote{Vialon, p. 199.} In order to avoid any doubts about contents and formulation of the total and the individual plans in the process of departmental execution of the budget, § 13 of
the **RWB** provides that the Federal Minister of Finance must transmit to the Federal Ministers, the President of the Bundestag, the President of the Bundesrat, the Office of the Federal President, and the Federal Auditing Court one certified copy each of the individual budget plan covering the department of the recipient. At the same time he must inform the aforementioned heads of the departments whether certain parts of the individual plan have to be made available to other departments. This provision of the **RWB** makes the Federal Minister of Finance responsible that the departmental execution of the budget is performed on the basis of documents which are in accordance with the provisions of the Constitution and the decisions of the parliamentary bodies.

At this point it should be mentioned again that in the United States, unlike Germany, budget authorizations are extended by Congress directly to the spending departments and agencies, not to the President nor to the Bureau of the Budget. Appropriation acts authorize the departments or agencies to incur obligations, make expenditures, or both. The only prominent exceptions are made for foreign military and foreign aid programs where funds are appropriated to the President.

Budget execution in the United States is connected with two major administrative expenditure controls: apportionments by the Bureau of the Budget, and allotments by agencies and
Before incurring obligations, the departments and agencies have to ask for release of the authorization from the Bureau of the Budget. This procedure is known as apportionment. It is to regularize the rate of obligation in order to keep the need for deficiency or supplemental appropriations low. The procedure is initiated by the specified agency which, within fifteen days after the approval of a budget authorization by Congress, must transmit to the Bureau of the Budget a request for apportionment, outlining the agency's need for funds over the forthcoming year and suggesting appropriations, usually on a quarterly basis. The appropriation request is examined by the Bureau of the Budget, and the agency is notified of the decision. At the end of each month the agencies must report to the Bureau of the Budget and the Treasury Department the current status of their budgetary authorizations. These reports provide the basis for a re-examination of apportionment status.

Allotment is expenditure control exercised within the departments and agencies. It is customarily administered by the budget officer of each agency, who acts on authority of the head of the agency. Allotment consists in the extension of obligation authority to the units or divisions of departments, usually on a monthly or quarterly basis. Although the allotment must be harmonious with the apportionment of the Bureau of the Budget,
the latter has no supervision over its terms or procedures.

These two types of administrative expenditure control being primarily a control on obligations to be incurred and not a fiscal control, have only a remote parallel in the German system of control over budgetary expenditures.

With the aforementioned transmission of the individual budget plans with explanations, e.g., the Bewirtschaftungsunterlagen, the heads of the departments and agencies are informed about the obligations which they are allowed to incur during the fiscal year and the funds available. The heads of the departments and agencies, in turn, furnish the subordinate administrative units with the parts of the individual budget plans concerning expenditures under their responsibility, or they pass on to them a so-called Kassenanschlag, e.g., a compilation of the funds available to the specified unit. The subordinate administrative units, finally, pass on to the bureaus and offices those parts of the individual budget plans which cover their field of operation. This procedure guarantees that down to the operating administrative level each unit receives its Bewirtschaftungsunterlagen. The heads of departments and agencies and those units having passed on Bewirtschaftungsunterlagen to subordinate administrative units maintain records on

\[2\] RWB, § 14.
their distribution of Bewirtschaftungsunterlagen. At the beginning of the fiscal year every budgetary unit must set up in detail a program for the execution of the budget. This program must be worked out carefully so that expenditures during the fiscal year will not exceed the amount of funds authorized. Execution of the budget in accordance with the program is controlled by a so-called Haushaltsüberwachungsliste, a record to be kept by the budget officer into which all vouchers for payment (with the exception of those for personnel expenditure) have to be entered before obligations are liquidated by the disbursing officer.

In addition to the above administrative controls of budget expenditure there is exercised in both countries a pattern of fiscal controls over expenditures.

In the United States fiscal control consists primarily of the maintenance of accounting records "to show appropriations, obligations, and disbursements, thus assuring that budget execution is conducted within the framework of legal authority, in accordance with the constitutional prescription that 'No money shall be drawn from the Treasury, but in consequence of appropriations made by law ...' (Article I, Section 9)."

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3 RNK, § 16.
4 RNK, § 42.
5 Jesse Burkhead, Government budgeting, p. 102.
Accounting records are kept on the department and agency level as well as on the operating levels. They record transactions as the budget is carried out and serve for measuring past performance.

In addition, all government payments are subject to a control. Before a disbursing officer issues a check to liquidate a public obligation, the appropriate administrative officer in the agency has to certify the payment. The certifying officer is liable for the performance of vouchers for payment in accordance with statutes and regulations, i.e., for the legality of payments. He is also responsible for balances available to meet the payment. The disbursing officers draw checks for public creditors on accounts maintained in Federal Reserve Banks which are made available by the Treasurer of the United States on the direction of the Secretary of the Treasury after appropriation bills have been signed by the President. All receipts of the Federal Government - from taxes, duties, etc., - are deposited to the credit of the Treasurer of the United States in accounts in Federal Reserve Banks.

While the departments and agencies have general responsibility for the proper and legal handling of appropriations made to them, Congress has an independent power of control of expenditures through the General Accounting Office (GAO), headed by the Comptroller General. The GAO has not only responsibility
for the settlement of accounts maintained in the agencies, it also supervises the accounting systems installed in the departments and agencies. It conducts various types of audits, the most significant of which is the general audit. In the general audit the accounts of administrative officers, including certifying and disbursing officers entrusted with public funds, are examined.

In Germany, fiscal control of budget expenditure is centrally directed and supervised by the Federal Minister of Finance. He conducts his control over expenditure by a so-called Betriebsmittelwirtschaft, a strictly operated credit system. Each month, the heads of the departments and agencies must submit to the Federal Minister of Finance a request for funds needed for the forthcoming month. After careful examination in the Budget Division of the Ministry of Finance, the Federal Minister of Finance directs letters of authorization to the heads of the departments and agencies (Ermächtigungsschreiben) granting the requested credit in full or with deductions. Copies of the letters of authorization are sent to the disbursement officers of the departments and agencies who control the current status of expenditures by means of a so-called Betriebsmittelüberwachungliste. As soon as the funds for the current month are

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6 Bundesgesetzbblatt, Hefte 84, 491 (5).

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spent, the disbursing officer must stop making payments. Funds not used at the end of the month expire for the disbursing officer.

On the fifteenth of October, the fifteenth of January, and from then on to the end of the fiscal year on the fifteenth of each month, every departmental unit entrusted with public funds must report to its superior administrative unit on the current status of its expenditures. These reports are coordinated by the budget officers of the departments and agencies, supplemented by estimates of expenditures for the rest of the fiscal year, and submitted to the Federal Minister of Finance. This procedure guarantees that the Federal Minister of Finance is fully informed about all financial transactions. This differs from the American control system of apportionments and allotments primarily in so far as, instead of obligational authority, a definite amount of money is made available each month which limits expenditures making the control in Germany stricter than in the United States.

The making of payments to public creditors is controlled in much the same way as in the United States. Orders for payment must be given in writing by the head of the departmental unit, who may, and usually does, delegate his power to the

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7RB, §§ 43–44.
budget officer. Each order for payment must be accompanied by vouchers. The officer who gives orders for payment is responsible for the correctness and legality of the orders. Payments are made by disbursement officers who act according to statutory directions. They have no right to examine the legality of the orders for payment. According to the departmental level where they are installed, there are **Amtskassen** (disbursement offices at operating levels), **Oberkassen** (disbursement offices at department level), and **Bundeshauptkasse**, the central disbursement office. Disbursing offices are regularly controlled by control officers. So-called ordinary controls are conducted every month, and extraordinary controls take place at least once a year.

The Federal Government maintains accounts with the **Deutsche Bundesbank** and its branches, the **Landessentralbanken**. All federal receipts must be deposited in those accounts. In exceptional cases only may private banks and savings banks be used for financial transactions of the Federal Government. The respective regulations are contained in the **KHO**, §§ 55-86, the **KHO**, and in the **Rechnungslegungsordnung für das Reich**.

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8The system resembles to a certain degree that of the Federal Reserve System in the United States.

9See page 30.

10See page 31.

11See page 31.
As pointed out before, in both countries authorization for the execution of the budget comes from the legislative bodies. The legislative bodies by their authorization determine the degree of budgetary control. Lump sum appropriations leave wider discretion in the use of funds than itemized budget authorization which may almost eliminate discretion. While in both countries the administrators are responsible to their superiors for discretionary acts as well as those defined by law, judiciary in the United States and also in Germany does not undertake to review discretionary acts, which depend upon the judgment of an official. But ministerial duties, clearly defined by law, are subject to judicial control in both countries.

In the United States every government official, including the heads of the departments, may be sued for failure to carry out properly his duties or for acting in excess of authority. The only person immune from legal sanctions is the President of the United States, whose position places him above all courts. For not performing in full measure the specified tasks of his office, proceedings may be instituted against an administrator which could result in perhaps a writ of mandamus by the court ordering the performance of such duties. Should an administrator take a step which, in the opinion of the court, is beyond his authority, process often lies in the form of a writ of quo warranto, inquiring into and requesting proof of legal author-
ization. The customary remedy for deliberate abuse of power by
an official, for damage to property caused by unauthorized of-
official action, and in cases where there is no other recourse,
is suit for damages, civil or criminal. Widely used by the
government in the United States - but not known in Germany -
to protect itself against defaulting officials or employees is
the suit against the bondsman, a supplementary action which has
developed from the practice of bonding officials. With refer-
ence to the budgetary process in the Federal Government of the
United States the above principles mean that where expenditures
or receipts have been illegally or improperly handled, recovery
procedures are instituted against the responsible officers.
More specifically it means that if, for instance, upon making
the audit, the Comptroller finds that an expenditure was ille-
gally made, the Treasury is reimbursed from the disbursing
officer's bond. The disbursing officer, in turn, may attempt
to get the money back from the person to whom it was paid,
and settle with his bondsman.

At large, the system of legal sanctions for violations of
duties in connection with the execution of the budget is similar
in Germany to that in the United States. However, the fact that
authorization of the German budget by the legislature is done
in the form of a more or less itemized budget law, leaving
very little choice of decision to the administrators, opens
a far wider field for judicial review than in the United States, where lump sum appropriations are no rarity.

The RHO, § 32, Clause 1, prescribes that funds appropriated by the budget law must be administered so that they suffice for covering the specified authorized expenditures. An official or employee who, against this directive, gives an order for payment or, by his measures, causes expenditures in excess of budget items is personally liable for damages. If, however, the head of a departmental unit has ordered an official or employee to make or cause excessive payments or is responsible for same, he is liable instead of the official or employee. There is no liability for damages if the official or employee acted in order to prevent a danger threatening the government and if he kept his measures in adequacy with the emergency; if, furthermore, the Federal Minister of Finance is immediately informed about the measure and approves it.

In addition to §§ 32 and 33 of the RHO, the provisions of the German Civil Code referring to liability for damages are applicable. They are regularly applied in cases of contributory liability and for determining the extent of damage.

Of hardly less importance than the method of preparing and

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12 RHO, §§32 and 33.

13 Vialon, p. 243.
voting the budget is the system by which the execution of the budget is controlled. While in both countries certain methods of expenditure control are exercised as the budget is carried out, the actual examination of books and accounts with a view to determine their adequacy, accuracy, and fidelity to the laws takes place after the fiscal year is terminated. This process is known as "post-audit." In both countries post-audit of the budget is done by an agency outside and independent of the administration - the General Accounting Office in the United States and the Federal Auditing Court in Germany.

Before the audit process by the independent agency sets in, there are certain types of internal budget audit made by the administrative process in order to avoid objections by the auditing agency. In the United States these internal pre-audits are conducted by the comptroller at the department level, as well as the comptrollers in the Army, Navy, and the Air Force. Public Law 216 prescribes that "... the comptroller of the military departments shall be responsible for all budgeting,


15 Section 402(b) of the Act of 1949. The Act established the Office of Comptroller in the Department of Defense and in the three services.
accounting, progress and statistical reporting, and internal-audit in their respective departments and for the administrative structure and managerial procedures relating thereto. 16

According to the KHO, § 92, all bills presented to the German Federal Government have to be internally audited by the appropriate administrative authority. The head of the department decides which office is responsible for the internal audit. The internal audit can be omitted only if the Federal Auditing Court waives it, 17 or if the audit method to be applied by the Federal Auditing Court excludes an internal audit (e.g., if the Federal Auditing Court conducts a so-called "present-situation" audit before internal audit by the administrative offices could be started). In Germany the internal audit is part of the audit process; it is one of the integral parts of departmental supervision and an effective means of internal governmental control. The objectives of the internal audit are facilitation of the investigation work of the Federal Auditing Court by eliminating deficiencies in the use of money, and information of the Federal Auditing Court in a report on the results of the internal audit with a view to the efficiency of

16 Author's italics.

17 KHO, § 92, Section 3.
administrative activities and management.

The independent auditing agency in the United States, the General Accounting Office (GAO), was created by the Budget and Accounting Act of 1921 and placed under the direction of a Comptroller General. The Comptroller General is appointed by the President with the advice and consent of the Senate for a term of fifteen years, and is ineligible for reappointment. He cannot be removed by the President but only by impeachment or by joint resolution of Congress for cause, and after notice and hearing. The Comptroller General has authority to examine the legality and the constitutionality of all administrative activities involving the use of money. Under the responsibility of the Comptroller General fall all general accounting and audit functions and, in addition, the following special duties:

18 Title III, Section 301.

19 The Comptroller General describes the purpose of his audits as follows: All auditing performed by the General Auditing Office has the same over-all objective. It is directed at determining the extent to which accounting and related financial reporting result in full disclosure of the receipt and expenditure of public funds; the adequacy of internal controls of the departments and agencies over their financial operations; the extent of compliance with laws, regulations, or other legal requirements pertaining to public funds; and, except for the Government corporations and other agencies which are not subject to the settlement and disallowance powers of the General Accounting Office, providing a basis for the settlement of the accounts of the fiscal officers of the Government. (Comptroller General of the United States, Annual Report for the Fiscal Year Ended June 30, 1951, p. 19).
the auditing and settling of public accounts; prescriptions and
supervisions of the accounting systems in the executive depart-
ments and agencies; the countersignature of Treasury warrants;
and the supervision of re-payments of debts due to the Federal
Government. While general responsibility for compliance with
legalities of appropriations lies with the departments and agen-
cies to whom appropriations are made, Congress regards the Gen-
eral Accounting Office as its own agency for checking the
financial transactions of the administrative agents. Although
the congressional committees frequently suggest subjects for
investigation to the General Accounting Office, the latter
tends to deprive the expenditure committees, to a certain ex-
tent, of investigation work and to narrow, rather than enlarge,
their jurisdiction and influence. There is no central control
over all aspects of accounting, but responsibility is divided
between the heads of the executive agencies, the General Ac-
counting Office, the Bureau of the Budget, and the Bureau of
Accounts in the Treasury Department. The Budgeting and Account-
ing Procedures Act of 1950,20 in an attempt to coordinate ac-
counting control, confirmed the authority of the Comptroller
General to prescribe the form of accounts, to review accounting
systems after consultation with the Treasury and the Bureau of

20See page 29.
the budget, and to exercise auditing functions. The Act made
the heads of the individual executive departments and agencies
definitely responsible for their accounting systems, for fur-
nishing full information on their financial operations, and
for giving the data needed for effective internal management
and budgeting. The Secretary of the Treasury retained his
central responsibility for accounting in the executive branch.

Responsibility for the auditing process in Germany lies
in the hands of the Federal Auditing Court\textsuperscript{21} in \textit{Frankfurt am
Main}.\textsuperscript{22} This court is an independent autonomous superior govern-
ment agency, subject only to the law, which means that it
is a superior judicial authority, which takes no orders for the
methods it applies in the auditing process, either from Parlia-
ment or from the Executive.\textsuperscript{23} Because of its autonomy and in-
dependence from the executive and the legislature, the Fed-
eral Auditing Court guarantees an unbiased budget audit. The
Court consists of the President, the Vice President, directors,
and high officials (\textit{Ministerialräte}), who have been appointed
members of the Court. Furthermore, there are a number of

\textsuperscript{21}German Constitution, Article 114, Section 2.

\textsuperscript{22}\textit{Gesetz über Errichtung und Aufgaben des Bundesrechnungs-
hofs} of November 27, 1950.

\textsuperscript{23}Ibid., § 1, Section 2.
comptrollers working for the Court. 24 The members of the Court must be more than thirty-five years of age and qualified for the office of judge. 25 They are independent in the performance of their work and subject only to the law. 26 Having the same legal status as the members of the superior federal courts, they cannot be dismissed, permanently or temporarily suspended from office, transferred to another post, or retired against their will, unless by a judicial decision for cause, and in the form provided for by law. 27 An official of the Federal Auditing Court must not be a member of the Bundestag, Bundesrat, or the Federal Government, nor of the respective bodies of Land government. The Federal Auditing Court supervises all aspects of budgeting and administrative management in the Federal executive, legislative, and judicial bodies, which means that its jurisdiction of control comprises not only the executive, but also the Bundestag, the Bundesrat, and the federal superior courts. Furthermore, being the only agency empowered with authority to audit, jurisdiction of the Federal Auditing Court is much more comprehensive and its position much stronger than

\[24\text{Ibid., s 11; REO, s 119.}\]

\[25\text{REO, s 120.}\]

\[26\text{Gesetz über Errichtung und Aufgaben des Bundesrechnungshofs, s 11.}\]

\[27\text{REO, s 121.}\]
that of the Comptroller General in the United States.

The President of the Federal Auditing Court, on the request of the Bundestag, Bundesrat, the Federal Government, or the Federal Minister of Finance, has to deliver advisory opinions on budgeting and administrative management.\textsuperscript{28} The auditing process must include the following examinations: (1) Whether the budget was executed in accordance with the budget law and the pertinent instructions. (2) Whether the individual payments were justified and furnished with vouchers in compliance with the prescriptions. (3) Whether assessment and collection of receipts, use and spending of federal funds, as well as acquisition, use, and disposal of federal property were made pursuant to the laws and prescriptions and under strict observance of the principles of economy. (4) Whether establishments were maintained, positions continued, or whether expenditures were made for other purposes which could have been curbed or eliminated. (5) Whether the summary of the assets and liabilities of the Federal Government submitted by the Federal Minister of Finance is accurate and correct.

In both countries government owned commercial enterprises are subject to control by the Comptroller General or the Federal Auditing Court, respectively. The Government Corporation

\textsuperscript{28}Ibid., \textsection 101.
Control Act of 1945\textsuperscript{29} provides for an annual audit of the accounts of each corporation wholly owned by the federal government and submission of an audit report to the Congress by the Comptroller General. Although the Comptroller General does not have power to disallow specific transactions, he must report irregularities to the Congress. The corporation maintains its own books, but its accounting system must be approved by the General Accounting Office.

Commercially operated enterprises of the German Federal Government must employ the accounting system prescribed for the Federal Government in the Reichskassenordnung of August 6, 1927, or bookkeeping by double entry.\textsuperscript{30} Changes require the approval of the Federal Auditing Court. At the end of the business year, which has to correspond with the fiscal year, commercially operated enterprises have to submit their books, a balance of accounts, a profit and loss statement, and an annual report\textsuperscript{31} for auditing by the Federal Auditing Court.\textsuperscript{32}

The last phase of the budget cycle is the post-political control. Heinig describes this phase as follows:

\begin{itemize}
  \item \textsuperscript{29}See page 29.
  \item \textsuperscript{30}RHG, §§ 55 and 85.
  \item \textsuperscript{31}Ibid., § 85.
  \item \textsuperscript{32}Ibid., § 91.
\end{itemize}
It is the objective of the post-political control to determine the efficiency effect of the government, i.e., to review the results of its financial functioning, to examine the effect of the parliamentary resolutions, and to release the government from its responsibility or come to appropriate conclusions. Furthermore, budget control is a critical self-examination of the legislative body. It is an appeal for judgment to the public. Public opinion and the free citizens should stand above the legislative body, they are the last court of appeal, the highest jurisdiction. 33

In the United States, the Comptroller General, as the head of the General Accounting Office, submits an annual report of his activities to Congress. This annual report, however, is no audit report supplemented by a financial statement, but an administrative report outlining objective and extent of the auditing work and proposing reforms. Copies of this report are referred to the Committees "on Expenditures in the Executive Departments" of the Senate and the House of Representatives. Each committee has to engage in "receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate (or to the House) as it deems necessary or desirable in connection with the subject matter of such reports." 34 The post-political control, thus, results in mere recommendations to the Federal Government; there is no formal release of the government.

34 Legislative Reorganization Act of 1946.
Unlike the United States, a formal release of the government takes place in Germany. Bases for the release are: (1) The account of revenue and expenditure of the Federal Minister of Finance,\(^{35}\) (2) the account of assets and liabilities of the Federal Minister of Finance,\(^{36}\) (3) the report of the Federal Auditing Court. The account of revenue and expenditure comprises the final accounts of all books which were examined by the Federal Auditing Court. The account of assets and liabilities shows changes in federal assets as occurred during the fiscal year. The report contains the major results of the examination of the Federal Auditing Court. The Federal Auditing Court on its own responsibility must write the comments (Bemerkungen) on its auditing findings. They contain a statement on whether the budgetary accounts agree with the disbursement accounts and whether receipts and expenditures are correctly furnished with vouchers. They also enumerate violations of laws as found by the Federal Auditing Court on account of its independent judicial position, furthermore, violations of the principles of economy and efficiency, if reminders of the Federal Auditing Court have not brought about necessary improvements. Major objections concerning government owned commercially operated

\(^{35}\)German Constitution, Article 114, Section 1; RHQ, § 72.

\(^{36}\)Ibid.
enterprises are laid down in a report which equals the comments.

The Federal Auditing Court submits its report and comments to the Federal Minister of Finance who passes them on to Parliament. Before voting in the assembly of the Bundesrat and Bundestag, the report and the comments are reviewed in the Committee of Finance of the Bundesrat and in the Sub-Committee for Auditing Reports of the Federal Auditing Court of the Committee on Budgeting of the Bundestag, where questions will be answered by representatives of the executive branch. If Bundesrat and Bundestag have no major objections, the Federal Government will be released for the audited fiscal year by a formal resolution. This release certifies that Parliament, on the basis of its examination and the material submitted for control, has found no objections to the execution of the budget by the Federal Government. In case major violations of the principles of a correct budget execution have been found, the Parliament has several ways of procedure. It may give release under the proviso that certain measures be taken, or it may suspend release until the Government has taken the required measures. If violations of considerable weight have been established, Parliament can express its lack of confidence in the Federal Government. At the same time, individual persons can be held personally responsible and liable for damages. Release of the Federal Government can only be secured from the Bundesrat and the Bundestag.
CHAPTER VII

CONCLUSION

In the preceding chapters the budgetary systems employed in the Federal Governments of the United States and Germany have been outlined and compared under various aspects and the budget process in both countries as it develops through the several phases of the budget cycle has been explained in detail. It could be established that there are parallels in certain respects while differences of varying degree prevail in others. Based on these observations, the following summary will concentrate on points of special significance which stand out in the comparison of the budgetary systems of both countries.

(1) Both the United States and Germany have a federal system of government. In both countries governmental powers are divided between the national government and the individual states. The powers of the national governments are laid down in written constitutions. Both countries are republics.

(2) Both the United States and Germany employ executive budget systems. However, responsibility for preparing and formulating the budget of the federal government in the United States lies with the Chief Executive, in Germany with a member
of the federal cabinet, i.e., the Federal Minister of Finance. As a result, the budget agency of the United States Federal Government, the Bureau of the Budget, is a staff agency of the Chief Executive; whereas the German budget agency is a division of the Federal Ministry of Finance.

(3) In the United States the budget document is merely a financial plan of the government which, later on, is enacted by Congress in the form of individual appropriation bills. It features expenditures primarily and includes reference to revenue only incidentally. Revenue bills are introduced separately from appropriations. In Germany the budget is one project of law consisting of the budget law (ordinary and extraordinary\(^1\)) and its appendix, the total budget plan of the Federal Government. Following the principles of comprehensiveness and unity of treatment, the budget presents a complete financial plan containing revenue as well as expenditures and showing the correlation between the two.

(4) In both countries, actual legislative work on the budget is done in the committees or rather subcommittees. Without considering the budget as a whole and coordinating their work, as many as sixteen subcommittees in the United States

\(^1\)In 1933 the United States Federal Government, too, divided its budget into two parts, labeled ordinary and extraordinary, but this division was soon abandoned.
House of Representatives and ten subcommittees in the Senate review appropriation bills. The German budget bill is reviewed as a whole by one committee in the Bundestag and one committee in the Bundesrat. The reporter system is being employed for speedier and more efficient work.

(5) In the United States the legislative body may, at its discretion, curb or increase budget expenditures proposed by the executive. The German legislative body may retrench the budget, but an increase of expenditures is permissible only if, at the same time, additional receipts are secured by the legislature. The German constitution prescribes that the budget must be balanced, and borrowing is only allowed in case of extraordinary need.

(6) The veto power of the President of the United States can be compared with the veto power of the Federal Minister of Finance in Germany. However, the United States President has no item veto,² whereas the Federal Minister of Finance in Germany may veto individual changes made to the budget by the leg-

²An item veto would probably require a constitutional amendment. Such an amendment was introduced in the 83rd Cong., 2nd sess. (1954), as Senate Joint Res. 30 by Senator Harry Flood Byrd (D., Va.). Hearings were held by a subcommittee of the Senate Committee on the Judiciary. They did not indicate that the proposal commands widespread support in the Congress. A similar resolution was introduced in the 84th Congress, 1st session (1955), as Senate Joint Res. 52, with a companion measure in the House.
(7) In both countries the budget is established for one year. However, in the United States the fiscal year begins July 1st, in Germany April 1st. In the United States preparatory work for the budget starts approximately fifteen months before the begin of the fiscal year, in Germany approximately twelve months prior to the fiscal year, i.e., the period of preparation is three months shorter in Germany than in the United States.

(8) In the United States the trend is toward the modern conception of performance budgeting, meaning that expenditures are classified according to government programs. The German Federal Government employs primarily the conservative classification according to the organisational structure of the government. Only on the level of individual budget plans is there used some classification based on programs.

(9) In both countries expenditure control during the execution of the budget is exercised by apportionment and allotment of funds - in the United States mainly on a quarterly basis, in Germany on a monthly basis. Further controls are exercised through the accounting systems of both governments. They differ, however, in so far as accounting in the United States Federal Government is done not only in the budgetary units of the departments and agencies but also in the Treasury Department and
primarily in the General Accounting Office, the agency which is also responsible for the auditing of accounts, whereas in Germany, accounting is centralized in the executive departments and administrative agencies, while the independent Federal Auditing Court does no accounting but is restricted to auditing.

After having studied the budgetary systems in the Federal Governments of the United States and Germany, the investigator has come to the conclusion that the budget systems in both countries are not ideal in every respect but could be improved by reforms with a view to greater efficiency and economy. The investigator has the impression that, if budget work in both countries could be coordinated more closely, simplified, and shortened, the results should be to the advantage of governmental fiscal and economic policies in both countries.

In an attempt to furnish proposals of reform, the investigator would suggest changes concerning the following subjects: (1) budget document, (2) location and functions of the budget agency, (3) time dimensions of the budget cycle, (4) budget execution, control and accounting, (5) auditing.

(1) The budget document should be a uniform complete work of law and be treated as such from the very beginning of preparatory work. It should contain all revenues and expenditures
as estimated for the fiscal year and show their correlation. Expenditures should, as a rule, be authorized for one year. Should they in special cases (e.g., for armament or major building projects) be authorized for a longer period, the amounts due during the fiscal year would have to be inserted. Actual expenditures, only, should be included in the budget; no requests for authorization to incur obligations without definite determination of funds needed should be permitted.

The budget law should consist of three integral parts:
Part I should contain the total figures for revenue and expenditures, prescriptions for transferable funds and regulations for restricted disposal of monies. Part II should show revenue and expenditures classified according to sources and spending agencies. In order to facilitate accounting and auditing, as well as the collection of statistical information, all items should be organized in an elaborate system of indices. A division into an ordinary and extraordinary budget might be chosen if this seems appropriate. In coordination with Parts I and II,

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Vialon is of the same opinion. See Haushaltsgesetz, p. 23. Task Force Report on Budget and Accounting in the United States Government (Commission on Organization of the Executive Branch of the Government, June 1955) states on page 13 as follows: "The President’s role is both to recommend to the Congress a unified and comprehensive budget and to administer the budget as finally enacted. The obligation to present a unified program for the government is part of the President’s responsibility to the electorate."
Part III should give the various sources of receipts (taxes, duties, etc.,) with the corresponding amounts and a summary of the expenditures classified according to programs.

(2) In consideration of the significance which the budget has with regard to government administration as well as the whole economy of the country, the budget agency should be an independent agency at least on the department level. For several reasons, it might be a good idea to make the Vice President or the Vice Chancellor, respectively, head of the budget agency. He is very close to the Chief Executive (President or Chancellor), keeps in constant contact with him, shares his political views, and supports his objectives. In this way the conferral of special powers on the Federal Minister of Finance as head of the budget agency (as happens in Germany) could be avoided and all the heads of the departments and agencies would have equal status. The budget agency should have the following functions: administrative preparation of the budget, determination of overall policy, issuance of prescriptions for the preparation and execution of the budget, final assembly, presentation of the budget to the President or Cabinet, respectively, monthly apportionment of funds to departments and agencies, constant supervision of budget execution, and control over efficient and economical administration of funds. A council of economic advisors should assist the Chief Executive and the
head of the budget agency in determining overall budgetary policy.

(3) In order to keep the budget as close to reality as possible, time dimensions of the budget cycle should be curtailed in both countries. Preparatory budget work should not be started earlier than one year prior to the begin of the fiscal year to which the budget relates. The year of preparation could be divided as follows: Four months for the collection and compilation of estimates in the executive departments according to a policy letter or sample budget plan with explanations. The estimates should go up from the operating levels to the department levels only once, and they should be reviewed in this process. Three months for review in the budget agency in consultation with the department budget officers. Three months for review by the legislative bodies. In the Senate and House of Representatives and the Bundesrat and Bundestag there should be only one committee concerned with the review of budget estimates. The reporter system should be employed for greater speed and efficiency. The two months remaining until the beginning of the fiscal year would allow time for the consideration of late requests, proposed changes, or even supplements. Post audit by an independent auditing court should be settled not later than one year after the end of the fiscal year, so that three years from the beginning of preparatory
work for the budget, the federal government could secure release from the legislative bodies.

(4) General responsibility for budget execution should lie with the departments and agencies which should allot funds on a monthly basis to subordinate units, do the accounting in accordance with the prescriptions of the auditing court and the budget agency, supervise the execution of the budget and perform an internal audit at the end of each fiscal year. Accounting should be concentrated in the departments and not split among several agencies.

(5) The auditing court should be independent from the executive branch and the legislative bodies, and subject only to the law. Its powers should be limited to auditing accounts and securing efficient and economical administrative management. The report and comments of the auditing court should simultaneously go to the executive and legislature and represent the basis for the release of the federal government.
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APPENDIX I

GLOSSARY OF TERMS

Amtskasse
Disbursement office.

Berichterstatter
Referee or reporter.

Betriebsmittelüberwachungsliste
Working capital control

Betriebsmittelwirtschaft
Working capital planning.

Bundesanzeiger
Official federal publication for certain declarations and regulations of the Federal Government.

Bundesarbeitsgericht
Federal Supreme Labor Court.

Bundesbeamten gesetz
Federal Civil Service Act.

Bundesfinanzhof
Federal Supreme Finance Court or Federal Supreme Revenue Court.

Bundesgerichtshof
Federal Supreme Court.

Bundesgesetzblatt
Federal Register. Equivalent of American Federal Register. It has been published since 1949 and is divided in three parts, namely I, II, and III according to subject matter.

Bundeshauptkasse
Federal supreme disbursement office.

Bundeskanzler
Chancellor of the Federal Republic of Germany.

Bundesarat
Upper House. Equivalent to the U.S. Senate.
<table>
<thead>
<tr>
<th>German Term</th>
<th>English Translation</th>
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<tbody>
<tr>
<td>Bundesrechnungshof</td>
<td>Federal Auditing Court.</td>
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<tr>
<td>Bundessozialgericht</td>
<td>Federal Supreme Court for Social Insurance and Welfare Matters. This is a court of</td>
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<td></td>
<td>last jurisdiction of disputes involving the German Social Security Act, Workmen's</td>
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<td></td>
<td>Compensation Act, and the like. It has also last jurisdiction in cases involving</td>
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<td>special social security rights of veterans.</td>
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<tr>
<td>Bundesverfassungsgericht</td>
<td>Federal Constitutional Court. This Court has original and final jurisdiction. No</td>
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<tr>
<td></td>
<td>higher appeal is possible.</td>
</tr>
<tr>
<td>Bundesverwaltungsgericht</td>
<td>Federal Supreme Administrative Court.</td>
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<tr>
<td>Deutsche Bundesbank</td>
<td>German Federal Bank.</td>
</tr>
<tr>
<td>Finanzausschuss</td>
<td>Committee on Finance as found in the Bundesrat as well as the Bundestag.</td>
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<tr>
<td>Finanzpolitische Mitteilungen</td>
<td>Review of the Ministry of Finance concerning financial policies.</td>
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<tr>
<td>des Bundesfinanzministerium</td>
<td>Committee on Budgeting (only in Bundestag).</td>
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<tr>
<td>Haushaltsausschuss</td>
<td>Agency budget office.</td>
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<tr>
<td>Haushaltsreferat</td>
<td>Budget officer.</td>
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<tr>
<td>Haushaltssachbearbeiter</td>
<td>Chapter.</td>
</tr>
<tr>
<td>Kapitel</td>
<td>State and states. The following Länder (states) form the Federal Republic of Germany:</td>
</tr>
<tr>
<td>Land and Länder</td>
<td>Baden-Württemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-</td>
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<tr>
<td></td>
<td>Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Saarland, Berlin.</td>
</tr>
</tbody>
</table>
Landessentralbanken
Ministerialdirektor
Ministerialrat
Oberkassen
Rechnungsprüfungsausschuss
Reichsarbeitsblatt
Reichshaushaltsordnung
Reichsgesetzblatt
Tarifordnung für Angestellte
Vermittlungsausschuss
Regional branches of the German Federal Bank.
Section or division chief.
Councillor of a ministry.
Superior disbursement offices.
Committee on Auditing. (Subcommittee of the Committee on Budgeting).
Official publication of the former Ministry of Labor of the Reich.
Budget Regulation of the Reich.
Until 1945. Equivalent of American Federal Register; it was divided in Part I and Part II according to subject matter. It was discontinued in 1945 (see "Bundesgesetzblatt").
Employment regulation for employees in Civil Service.
Title.
Mediation Committee. Joint Committee of Bundestag and Bundesrat.
### APPENDIX II

### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>BA.</td>
<td>Bundesanzeiger: Official federal publication for certain declarations and regulations of the Federal Government.</td>
</tr>
<tr>
<td>BGH.</td>
<td>Bundesgerichtshof: Federal Supreme Court.</td>
</tr>
<tr>
<td>GMBL.</td>
<td>Gemeinsames Ministerialblatt: Joint Gazette of the Federal Ministries.</td>
</tr>
<tr>
<td>GS.</td>
<td>Gesetzesammlung: Register of Statutes.</td>
</tr>
<tr>
<td>RArbBl.</td>
<td>Reichsarbeitsblatt: Official publication of the former Ministry of Labor of the Reich.</td>
</tr>
<tr>
<td>RGBL.</td>
<td>Reichgesetzesblatt: Register of Statutes of the former Reich.</td>
</tr>
<tr>
<td>RHO.</td>
<td>Reichshaushaltsordnung: Budget Regulation of the Reich.</td>
</tr>
<tr>
<td>RKO.</td>
<td>Reichskassenordnung: Regulation for Disbursement Offices of the Reich.</td>
</tr>
<tr>
<td>RMBL.</td>
<td>Reichsministerialblatt: Official publication of the former Ministries of the Reich.</td>
</tr>
<tr>
<td>RRO.</td>
<td>Reichsrechnungslegungsordnung: Accounting Regulations of the Reich.</td>
</tr>
<tr>
<td>RBW.</td>
<td>Reichswirtschaftsbestimmungen: Economic Regulations for the Governmental Departments and Establishments of the Reich.</td>
</tr>
</tbody>
</table>
The thesis submitted by Karl J. Maes has been read and approved by three members of the faculty of the Institute of Social and Industrial Relations.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Social and Industrial Relations.

January 20, 1958

Date

Signature of Adviser