Is Political Will on the Hill
Out of Commission?
An Introductory Essay
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Former Congressional Budget Office Director Rudy Penner used to say of proposed procedural fixes for the deficit: "The process is not the problem, the problem is the problem."

And yet, on March 31 Penner joined with a bipartisan group of 15 other economists (including former CBO directors Alice Rivlin and Robert Reischauer) in suggesting that a process change may be the only way to tackle long-term entitlement deficits.

Penner's conversion is a sign that relying solely on "political will" to eliminate deficits is no longer a realistic expectation. Congress has done little to address projected entitlement insolvencies since they were flagged several years ago. There is barely any hint of the problem in the latest budget resolutions adopted by the House and Senate. Moreover, none of the current presidential candidates is seriously discussing the issue.

So, when even the graybeards of yesteryear, who once eschewed procedural gimmickry, now call for some kind of fiscal defibrillator to jump start "Will," you know our fiscal condition is deteriorating.

What Penner and company have proposed in a paper titled, "Taking Back Our Fiscal Future," under the aegis of the Brookings Institution and Heritage Foundation, is that Congress set 30-year budget totals for Social Security, Medicare, and Medicaid, and revisit them every five years to determine whether they're on track (as determined by CBO or the Social Security and Medicare trustees). If things are not on track, a trigger would be pulled and Congress would either take legislative action to remedy the projected shortfall, or, failing that, an automatic axe would fall according to a pre-set formula to make-up the difference. The automatic formula could involve a reduction in benefits, an increase in revenues, or some combination of both. Congress could only avoid this extreme guillotine by enacting an alternative or by blocking it with a statutory waiver.

The economists refer to their approach as a "hard trigger" since there would be real consequences if Congress does not act. They contrast this to the "soft triggers" contained in numerous proposals introduced in Congress which would force action on proposals to reduce the entitlement deficits based on recommendations of commissions created for that purpose, but would not involve punitive alternatives if Congress rejects the recommendations.

This essay is adapted in part from the author's "Procedural Politics" column of Monday, May 12, 2008, in the Capitol Hill newspaper, *Roll Call*.

The idea of Congress creating commissions to recommend legislative solutions to tough problems is hardly a new one. As many people have observed, the bookshelves of Congress are bent under the weight of volumes of dusty commission reports—unread and unheeded. Nevertheless, they served the dual purposes of demonstrating Congress's concern for a problem and of giving Congress bipartisan, political cover if forced to act.

At the least, commission recommendations would receive perfunctory hearings and comment from various affected interests. Sometimes the recommendations would be introduced as legislation with all the accompanying media hoopla and maybe more hearings. And then, more likely than not, they would fade from sight as public attention waned and the media spotlight shifted to more recent and exciting developments.

Only in a few rare cases has Congress embraced and enacted a commission's recommendations. The most noteworthy when it came to entitlements were the 1983 Social Security changes recommended by the National Commission on Social Security Reform, more popularly known as Greenspan Commission after its chairman, Alan Greenspan.

The Gwirtzman Commission

Helping to lay the groundwork for those important changes in 1983, was a less remembered commission, the National Commission on Social Security, created by Congress in the 1977 Social Security Amendments Act. The Commission was comprised of nine members, all private citizens--five appointed by then President Jimmy Carter, two by the President Pro Tempore of the Senate, and two by the Speaker, with a 5-4 majority-minority party ratio overall. The Commission was chaired by attorney and author Milton Gwirtzman of Newton, Massachusetts. It was charged with looking at all aspects of Social Security, including Medicare and supplemental security income programs. The Guirtzman Commission held 25 meetings and submitted its final report to President Reagan on March 12, 1981. Among its 88 recommendations was a proposal to gradually raise the eligibility age for full social security retirement benefits from 65 to 68 by the year 2000, fund half the Medicare Hospital Insurance costs from general revenues, and use general revenues when Medicare and Social Security payroll taxes combined exceed 18 percent (9 percent employers, 9 percent employees).[1]

The Gwirtzman Commission's report landed with a dull thud on the White House doorstep of newly inaugurated President Ronald Reagan. It was largely ignored by Reagan as he and his budget director, David Stockman, unveiled their own set social security reform proposals in May which were introduced (in modified form) by Senate Finance Committee Chairman Bob Dole (R-Kans.). On the House side of the Capitol, Ways and Means Social Security Subcommittee Chairman J.J. ("Jake") Pickle (D-Texas), introduced a version of the Gwirtzman recommendations), but he was directed by his party leaders to suspend markups on the bill to allow the Administration and Dole to take the lead (i.e., stick their necks out first).

Even though Congress had enacted a large payroll tax increase in 1977 aimed at keeping the system solvent well into the next century, bad economic conditions were rapidly eroding trust fund reserve by 1981. The Administration warned that unless some action was taken immediately, the Old Age and Survivors Insurance trust fund (OASI) was expected to have insufficient reserves to send retirement checks to 39 million recipients as early as the fall of 1982. Moreover, the Administration projected a deficit for the entire Social Security System ranging from $11 billion to $111 billion in the short-term (1982-86), and a combined deficit for the OASI and Disability insurance trust funds of $1.5 trillion over the next 75 years, and a $6 trillion deficit for the Hospital Insurance trust fund over that same period.[2]

The Greenspan Commission

By the end of 1981 Congress was able to enact a stop-gap, short term financing solution, the comprehensive overhaul hoped for remained elusive. The President had withdrawn his May 12 recommendations on September 24 in the face of partisan protests that the Administration was trying to cut Social Security to balance the budget. That same day Reagan called for the creation of a 15-member bipartisan commission to address the long-term financing problems. Reagan signed an executive order creating the Social Security Reform Commission on December 16, 1981, and appointed its members that same day, tapping Alan Greeenspan as its chairman. The Commission was given a December 31, 1982 deadline to report its recommendations.[3]

Unlike the Gwirtzman Commission which was comprised solely of private citizens, the 15-member Greenspan Commission included four senators and three representatives: Sen. William Armstrong (R-Col.), Sen. Robert Dole (R-Kans.), Sen. John Heinz (R-Pa.), Sen. Daniel Patrick Moynihan (D-N.Y.), Rep. William Archer (R-Tex.), Sen. Barber Conable (R-N.Y.), and Sen. Claude Pepper (D-Fla.); plus two former members: Rep. Joe D. Waggoner, Jr. (d-La.) and Rep. Martha Keys (D-Kans.).[4]

In its final report submitted to the President and Congress in January 1983, the Commission recommended bringing Federal and non-profit employees into the Social Security system; that the system be taken off the Federal budget to keep Congress and the President from using Social Security cuts for deficit reduction purposes; that cost-of-living increases be kept 1.5 percent below wages in the economy; and that benefits for women be increased.[5]

The most dramatic and significant recommendation, however, occurred literally at the last minute before the Commission was to expire at midnight January 15, 1983 (it had been given a 15-day extension by Congress). By a 12-3 vote the Commission agreed to a combination of benefit cuts for beneficiaries and tax increases for employers that was expected to raise $168 billion in calendar years 1983-89 when the system's deficit was otherwise project to range between $150- and $200-billion. The final agreement also contained a six-month delay in the July 1983 cost-of-living increase for a projected savings of $40 billion. The Commission "agreed to disagree" on how to solve the projected shortfall in the system in the next century when the baby-boom generation began to retire.[6]

According to Chairman Greeenspan, the commission almost dissolved at the end without reaching an agreement; but members decided to put aside their differences when they realized that failure to compromise could endanger the system. "All of us swallowed very hard and accepted individual notions that we personally could not actually support," Greenspan added. Key to the final compromise was the acceptance of it by both President Reagan and House Speaker Tip O'Neill whose disagreements in 1981 had led to the formation of the Commission.[7]

The House Ways and Means Committee cleared the legislation on March 2, 1983, on a 32-3 vote with some changes, and the full House approved the bill March 9, 282-148. The Senate Finance Committee approved its version March 10, 18-1, and the full Senate approved the bill on March 23, 88-9. Conferees and the two houses cleared the measure for the President the following day as Congress recessed for Easter. The main change in the Commission's recommendation was a long-term fix to raise the retirement age for full benefits from 65 to 67 by 2027 (thereby vindicating the positions taken by the Gwirtzman Commission and Rep. Pickle in 1981).

As most observers agree, the leadership from the top by President Reagan and Speaker O'Neill was crucial in getting an agreement both in the Commission and then in Congress. The fact that so many senior members of Congress from both houses were Commission members gave Congress early ownership and comfort with the plan and certainly helped expedite its consideration in committees and on the floor.

The Kerrey-Danforth Entitlement Reform Commission

Entitlement commissions have been less successful in recent decades (but that hasn't stopped Congress or the President from trying). The first out of the box was the Bipartisan Commission on Entitlement Reform which President Bill Clinton created by executive order on November 5, 1993. It was charged with recommending long-term budget savings involving revisions in statutory entitlement programs and alternative tax reform proposals (the Commission later came to be known as the Commission on Entitlement and Tax Reform).

The Commission was comprised of 30 persons, ten each from the House and Senate (divided equally between the parties, and 10 persons appointed from the public and private sectors (the Commission was later expanded to 32 members with the addition of two more senators). The President appointed Sen. J. Robert Kerrey (D-Neb.) as chairman, and Sen. John Danforth (R-Mo.) as vice chairman. House Members included Ways and Means Committee Chairman Dan Rostenkowski (D-Ill.) and ranking Republican Bill Archer (R-Tex.). The House and Senate Budget Committee chairmen Sen. Jim Sasser (D-Tenn.) and Rep. Martin Sabo (D-Minn.) were also among the members. Former House Members William Gray, III (D-Pa.) and Thomas Downey (D-N.Y.) were among those appointed as public-private sector members.

The Panel held nine meetings in 1994, capped by the 30-1 vote adoption on August 8 of an "Interim Report to the President" in which it made a number of "findings" about the nature of the problem, and the likely consequences if Congress did nothing to fix the imbalances in entitlement programs. That report, however, proved to be the high-water mark for the Commission, as it was never able to forge a consensus on what had to be done. The Commission did release a staff summary paper on December 5, 1994, listing 53 groups of reform options along with three sample reform packages--each of which would bring entitlement spending and revenues into balance by 2030 and restore the long-term stability of Social Security and Medicare. Moreover, on December 9, Senators Kerrey and Danforth offered their own proposals to bring entitlements into balance while keeping the deficit from rising from its current level. The Commission debated these to an indecisive standstill on December 14, and the following day, Senators Kerry and Danforth sent a three-page letter to the President and Congressional leaders, affirming their earlier findings, and outlining broad recommendations to encourage the future development of entitlement and tax reforms.[8]

The Breaux-Thomas Medicare Commission

The next attempt at tackling entitlements was the National Bipartisan Commission on the Future of Medicare created in the conference report to the Balanced Budget Act of 1997. The 17-member commission, co-chaired by House Ways and Means Committee member, Rep. Bill Thomas (R-Calif.), and Senate Finance Committee member, Sen. John Breaux (D-La.), was given a March 1, 1999, reporting deadline. As the deadline neared in January 1999, Breaux and Thomas presented what they called a "premium support plan" for Medicare that would allow private plans to compete on an equal footing with Medicare's fee-for-service program. The Breaux-Thomas plan would also increase Medicare's eligibility age from 65 to 67 to match the planned increase in the Social Security eligibility age (enacted in 1983). Most other Democrats on the Commission, however, held out for including a prescription drug benefit under Medicare.

Under the Commission's authorizing statute a supermajority of eleven votes (out of 17 members) was required to approve any plan. The Breaux-Thomas plan thus failed on an 10-7 vote, producing yet another deadlocked commission. Sen. Breaux and Sen. Bill Frist (R-Tenn.) nevertheless introduced a modified version of the proposal in November 1999, but the legislation went nowhere in the 106th Congress. Instead, the parties went their separate ways with House Republicans developing their own prescription drug alternative, and House and Senate Democrats and President Clinton settling on a plan originally drafted by a group of moderates led by Sen. Bob Graham (D-Fla.). When Republicans failed to make the Democrats' alternative in order on the House floor, a mass walkout by the minority ensued followed by a series of protest votes. The GOP bill passed the House on a party line vote. Efforts to revive a bipartisan measure in the Senate Finance Committee were for naught, and only a modest Medicare "giveback" bill eventually passed.[9]

The Moynihan-Parson Commission on Social Security

In May 2001, newly inaugurated President George W. Bush appointed a 16-member bipartisan Commission to Strengthen Social Security, co-chaired by former Sen. Daniel Patrick Moynihan and AOL/Time Warner Chief Operating Officer Richard Parson. The commission was equally comprised of persons from the public and private sectors, but included no sitting Members of Congress. Besides Moynihan, only two other former Members of Congress served on the Commission: Rep. Bill Frenzel (R-Minn.), and Rep. Tim Penny (D-Minn.).

In appointing the Commission at a Rose Garden announcement, Bush said, "We can postpone action no longer. Social Security is a challenge now; if we fail to act it will become a crisis. We must save Social Security and we now have the opportunity to do so." The

Commission was by charged by the President's Executive Order "to study and report specific recommendations to preserve Social Security for seniors while building wealth for younger Americans." Among the six guiding principles in the President's Executive Order were directives not to increase Social Security payroll taxes and to "include individually controlled, voluntary personal retirement accounts," to augment Social Security.

The Commission released its final report on December 21, 2001 (and a revised report in March 2002) presenting three models for modifying the current Social Security program. As instructed by the President's executive order, all three options included some version of the President's proposed personal savings accounts that would allow workers to invest some of their Social Security contributions in private markets. The 141-page report made clear that the accounts alone would not solve Social Security's financial problems but would allow Americans to "build substantial wealth" in a way they could not through the 12.4 percent annual payroll tax. The report concluded that some combination of benefit reductions and tax increases would be needed to keep the program solvent.

The report generated only modest interest among the public and on Capitol Hill (where the obligatory committee hearings were held). No one stepped in to introduce legislation incorporating any of the options. It was eclipsed by the events of September 11, 2001. Moreover, the President's announced intention not to bring the plan to a vote prior to the 2002 elections removed any sense of urgency to act. The evaporation of the on-budget surplus that might have taken some of the pain out of a Social Security overhaul plus Democrats' exploitation of the stock market decline to question the wisdom of putting any Social Security funds in stocks, all combined to undermine any realistic chance of action on any of the options.[10]

Entitlement Commissions Redux

Undaunted, President Bush called on Congress in his 2006 State of the Union Address " "to join me in creating a commission to examine the full impact of baby boom retirements on Social Security, Medicare, and Medicaid." He went on, "This Commission should include members of Congress of both parties and offer bipartisan solutions. We need to put aside partisan politics and work together and get this problem solved." Bush noted that, as the first of about 78 million baby boomers turn 60 in 2006 (including himself), unprecedented new strains are being put on the federal government. "By 2030, spending for Social Security, Medicare and Medicaid will be almost 60 percent of the entire federal budget," confronting future Congresses "with impossible choices—staggering tax increases, immense deficits, or deep cuts in every category of spending.[11]

While the 109th Congress took no final action on the President's proposal to create an entitlement commission to deal with the challenge, several commission proposals were introduced by Members of the House and Senate, including Sen. Chuck Hagel (R-Neb.), Rep. John Tanner (D-Tenn.), and Rep. Frank Wolf (R-Va.). Two measures, one by Sen. Judd Gregg (R-N.H.) and the other by Rep. Todd Tiahrt (R-Kans.) were reported by the Senate Budget and House Government Reform committees, respectively. Neither bill received floor action, due mainly to strong Democratic opposition.[12]

In the 110th Congress, the idea of an entitlement commission is still very much alive. The most notable of these proposals was introduced by Senate Budget Committee Chairman Kent Conrad (D-N.D.) and Budget Committee ranking Republican, Sen. Judd Gregg (R-N.H.). A companion bill has been introduced in the House by Reps. Jim Cooper (D-Tenn.) and Frank Wolf (R-Va.).

The bills would create a Bipartisan Task Force for Responsible Fiscal Action consisting of 16 members: eight majority party and six minority party members (drawn equally from the two houses), plus two Administration representatives. The task force would be required by December 9, 2008, to report to Congress detailed legislative recommendations "to significantly improve the long-term fiscal balance of the Federal Government, including the fiscal balance of the Social Security and Medicare programs." A three-fourths vote of commissioners would be required for approval. The proposal would be introduced at the beginning of the 111th Congress and put on a 20-day fast-track for required committee and floor action, without change in both houses for approval, with no amendments allowed. A three-fifths vote of each house would be required for final approval.

Another prominent commission bill, the National Commission on Entitlement Solvency Act, was introduced by Senators Diane Feinstein (D-Calif.) and Pete Domenici (R-N.M.). It would create a 15-member bipartisan commission consisting of seven Democrats, seven Republicans, and one independent (appointed by the President. It would be tasked with reporting back to the Congress every five years on the status of Social Security and Medicare along with a recommendation for financial corrections, if needed. A two-thirds vote of the commissioners would be required for approval. Its recommendations would be considered in both houses under expedited procedures. Unlike the other approaches, amendments could be considered to the commission recommendations.

The third approach, The Securing America's Future Economy (SAFE) Act, has been introduced by Senator George Voinovich (R-Ohio) and Rep. Frank Wolf (R-Va.). It would create a 16-member commission, with four majority and three minority members from each house, plus the OMB Director and Treasury Secretary. It would make a single recommendation to restore future solvency to entitlement programs, following a year's study and town hall meetings. A three-fourths vote of commissioners would be required for approval. The recommendations would be considered under under expedited legislative procedures in both houses, and no amendments would be permitted.

While some hearings have been held on these proposals in this and the last Congress, none has yet been reported from committee. The closest either body has come to endorsing an entitlement commission approach this year was in the non-binding concurrent resolution on the budget for fiscal year 2009, adopted by the House on March 13, 2008. It included a "Sense of House" provision "Regarding Long-Term Fiscal Reform," calling attention to CBO projections showing the gap between federal spending and revenues over the next 75 years will reach nearly 7 percent of GDP. The resolution went on to call for "immediate policy action" to address these "long-term fiscal challenges….including the rising costs of entitlements, in a manner that is fiscally responsible, equitable, and lasting, and that also honors commitments made to beneficiaries." The resolution continues, "such action should be bipartisan, bicameral, involve both legislative and executive branch participants, as well as public participation, and be conducted in a manner that ensures full, fair, and timely Congressional consideration."[13] The Senate had no comparable provision in its budget resolution.

**The Purposes and New Look of Commissions:
Bringing Delegation Back to Congress**

The track record of presidentially- and congressionally-created national advisory commissions over the years has been a mixed one, to say the least. And those which have attempted to deal with the nettlesome problems of fixing financially plagued entitlement programs have perhaps been even more intractable and unsuccessful given the politically volatile nature of the subject matter.

Each time a commission is proposed, there are those who raise the legitimate question of why Congress would want to delegate its authority to an outside entity which can only produce unpredictable recommendations that may be politically unpalatable. And that is one reason so many commission recommendations have ultimately been ignored by Congress.

On the other hand, commissions have an enduring appeal to many in Congress and to the American people. Political scientist Colton Campbell says there have been two traditional explanations for commissions: expertise and blame avoidance. Members see them as a way to kick the can down the road—to appear to be doing something about a problem when it is really only passing it off to others. The public sees the advantage of having non-political experts, free of special interest influence and all the horse-trading that goes on in Congress, recommend solutions that are truly in the national interest.

After surveying the staff of 47 House and Senate members who had introduced commission proposals in the 103rd and early 104th Congresses (1993-1995) on the reason for sponsoring the legislation, Campbell concludes that it is not an either/or explanation of either blame avoidance or expertise, but rather a combination of the two in most decisions to propose a commission. Moreover, he discovers a third reason, based on his interviews: workload management. When Members cannot get the leadership or relevant committee chairmen to give high priority to a particular problem because of lack of time and resources within the Congress, they opt for delegating the study to an outside group of experts to keep the focus alive.[14]

One of the new elements in commission proposals that was not common to earlier commissions is the requirement that commission recommendations be submitted as legislation and be subject to mandatory actions by Congress within specified time frames. This is in response to past criticisms that so many commission reports have been ignored. Action-forcing mechanisms and up or down votes, without amendments, are not new to Congress. They have been used in the past on Executive Reorganization Plans of Presidents, on approving or disapproving trade agreement implementation legislation, and all manner of other executive actions.

The idea of combining this mechanism with an advisory commission's recommendations is a more recent innovation, the most famous example being the defense Base Closure and

Realignment Commission (BRAC) which was the brainchild of a relative back-bencher and non-Armed Services Committee Member, Rep. Dick Armey (R-Tex.) back in 1988. Under the law, the President must approve or disapprove the 9-member independent commission's recommendations in its entirety. Congress then has a set period in which to disapprove the recommendations in their entirety (subject to a likely presidential veto). If it does not disapprove or does not act, the recommended base closings take effect (since the President already has statutory power to close them unilaterally. It is a classic case of blame avoidance or political cover for eliminating something very dear and near to the hearts of every Congressman with a military base in his or her congressional district.

Attempting to apply this mechanism to the more complex and intricate business of entitlement benefits, taxes, eligibility ages, and cost-of-living adjustments is quite another matter—especially on a single up or down vote on approval. That's why many of the entitlement commission proposals require a supermajority vote of commissioners for approval and some even require a supermajority vote in Congress as well.

Finally, Members recognize that commissions comprised solely of outside experts tend to be ignored more than those who have Members of Congress as commissioners. Thus the other important element found in many pending entitlement reform commission proposals turns the old, "outside experts" concept on its head by filling the commissions either exclusively or predominantly with Members of Congress and administrations officials. In effect it is what has been informally used in recent years for budget agreements—a legislative-executive summit of key leaders from both branches.

That is not to say such a commission could not employ outside experts to staff the commission—it most likely would if it is to derive any workload management benefit. In effect it institutionalizes those old "gang of 13" summits held at places like Andrews Air Force Base where important decisions were hammered out in the waning hours of a Congress. The new proposals, however, aim at getting these decisions in Congress well before election year politics complicate the prospects for passage.

In short, the new model of ad hoc advisory commissions is more an institutionalization of the old, informal bipartisan, bicameral, and inter-branch summits than it is of the old progressive era notion that a board of scientifically trained experts can better solve national problems than elected politicians. Moreover, it is a realization of the extent to which decision-making power in Congress has shifted more to party leaders (including their key committee chairmen and ranking minority members) and that the general membership of Congress actually prefers such delegations to handle politically sticky and tricky problems that urgently demand resolution.

This new commission model in effect establishes a fourth purpose for commissions, and that is to bring the delegation back to Congress in two ways: first, by making sitting Members comprise a majority of the commissioners; and second, by ensuring their work product is considered by committees and given an up or down vote on the floor of each house. Before approving such a process, however, Members should clearly recognize that it reverses the traditional legislative process by effectively creating a front-end, super-House-Senate-Executive-Branch-conference-committee whose final product is then reviewed by the standing committees and then given up-or-down floor votes on final passage (with some proposals allowing limited amendments and others no amendments).

Conclusion

One is right to ask why Congress even needs to create a special commission to do something it has grown more accustomed in recent times to doing informally within the institution because of the inadequacy of normal legislative channels and procedures. The answer may well be a combination of the political timing involved (forging final agreements up-front in the process); the extra prestige the general public attaches to the aura of a national blue ribbon commission in terms credibility, respect, and acceptance; the political cover it provides Members; and the prospect that such commissions can infuse at least a temporary euphoria in the body politic over bipartisanship transcending partisanship for the greater good of the country.

At the same time, institutionalizing such a process further diminishes the role and importance of standing committees and that of individual Members in the lawmaking process. The mechanism should therefore be relied on only rarely and under the most critical circumstances. It should not be routinely resorted to for every difficult problem that arises.

While procedural devices can be symbolic substitutes for real solutions, they can also serve as the proverbial 2x4 on a mule--the only way to get Congress's attention. In the case of various proposed entitlement commissions, a bipartisan, two-step process can avoid stepping on too many toes at once. The first step of getting consensus on confronting the challenge is far preferable to Congress's record to date of total avoidance. If Congress must look to national commissions to muster the political will to confront a problem, it is better that it look within its own commission of public trust than attempt to fabricate it whole-cloth from the designs of others.

Endnotes

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