Reforming Institutions:

The Next President Should Not Miss This Moment to Make Government Work

Institutional reform was not a central plank of Barack Obama's 2008 presidential campaign, which had no eye-catching equivalent of Bill Clinton's promise to "reinvent government." Nor has it been the centerpiece of Obama's administration—or of the Republican critique of his administration. And in all likelihood, it will not play a major role in the 2012 campaign.

Rather, the candidates, the experts, and the pundits, when asked "What should the next president do?" will likely respond with lists of policies, often mixed with stylistic and political suggestions. Institutional reform is not going to catch voter fancy; it sounds too much like yawn-inducing "governmental reorganization." But it is always a mistake to neglect institutions, never more than in times of crisis. Throughout American history, profound challenges have summoned bursts of institutional creativity, the effects of which linger far longer than the occasions that evoked them, as illustrated by the following examples:

- The dangerous inadequacies of the Articles of Confederation set the stage for the Philadelphia

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convention and a new constitution.

- The electoral crisis of 1800 produced the Twelfth Amendment, the first significant change in the structures the men of Philadelphia had produced.
- In the aftermath of the Civil War, Congress and the American people ratified three amendments that resolved, at least in principle, the founding ambivalence between the people and the states as to the source of national authority, between the states and the nation as to the locus of citizenship, and between slavery and the equality proclaimed in the Declaration of Independence.
- Recurrent financial panics in the last decade of the nineteenth century and the first decade of the twentieth opened the door to the creation of the Federal Reserve Board.
- The Great Depression produced a flurry of new executive branch and independent agencies in the United States and the Bretton Woods international economic institutions.
- The onset of the cold war spawned the Department of Defense, the National Security Council, and the Central Intelligence Agency.
- Demands for more effective protection of the water Americans drink and the air they breathe led to the creation of the Environmental Protection Agency.
- The growing monopoly of fiscal competence and power in the executive branch led the legislature to counter by creating the Congressional Budget Office.
- The terrorist attacks of September 11, 2001, led to the creation of the Department of Homeland Security and the massive reorganization of the U.S. intelligence system.
- The near-total collapse of the financial system in 2007–08 gave rise to the Dodd-Frank Bill and the Consumer Financial Protection Bureau.

This "institution logic" is hardly confined to the United States. The ongoing crisis in the Euro zone presents European leaders with a choice between fundamental reform of the European Union's governing institutions and the possible collapse of the postwar push for a united and prosperous Europe.

The moral is clear: in challenging times, political leaders are drawn to institutional reform, not because they want to do it, but because they must. The present era is unlikely to be an exception, even if the 2012 campaigners deny this reality. Not only is the U.S. system of self-government failing to address the nation's most important questions, but it is also losing the confidence of the people. Public trust in the federal government now stands at about 20 percent. In a recent CBS/*New York Times* survey, public approval of

Congress fell to a record low of 9 percent, and in the most recent Gallup survey, a record 76 percent of respondents said that most members of Congress do not deserve reelection. Another survey found that on average citizens believe that more than half of all federal spending is wasteful and unproductive.

No democratic political system can resist such widespread public disdain indefinitely. The question is not whether new institutions will emerge in response, but how, and to what purpose. Thus significant opportunities for institutional reform await the next administration and the candidate who figures out how to talk about the issue. Specifically, the time is ripe to push for new fiscal institutions to engage in a long-overdue rethinking of the rules shaping fiscal decisionmaking, to consolidate certain related government functions within unified bureaucratic structures and undo earlier consolidations that have failed, and to adopt measures aimed at depolarizing American politics, including reforms to the judicial confirmation process and to the congressional redistricting system.

The Obama Record

Though he does not speak much about institutional reform, President Obama has been drawn to some institutional innovation, and the two highest-profile instances have both proven intensely controversial. Among hundreds of other provisions, the Affordable Care Act (ACA) of 2010 produced a new organization, the Independent Payment Advisory Board (IPAB), comprising fifteen full-time members nominated by the president and subject to Senate confirmation. Its mission is to slow the growth of Medicare spending. Under the health care law, the board is required to recommend reductions if Medicare spending per capita is projected to exceed specific targets, based initially on measures of inflation and, after 2020, on the growth of GDP plus one percentage point. The secretary of health and human services is required to implement IPAB's proposals unless Congress overrides them under a fast-track procedure the ACA establishes.

In some respects, IPAB represents a response to the failure of a previous entity, the Medicare Payment Advisory Commission (MedPAC), to slow Medicare spending. Between 1997 and 2008, this body had recommended cuts totaling hundreds of billions of dollars, nearly all of which Congress ignored. Worse, Congress had pressured—even required—Medicare administrators to cover medical instruments and procedures that health experts regarded as costly and ineffective. So much money was at stake that it gave large campaign contributors an incentive to put a heavy thumb on the scales, while compliant elected officials were all too willing to go along. And even when congressional intentions were honorable, as IPAB's proponents pointed out, members lacked the expertise to determine which medical expenditures were truly worthwhile or how best to use Medicare's purchasing power to leverage real cost reductions while maintaining the quality of care.

Like IPAB, Obama's other highly visible and contested institutional innovation—the Consumer Financial Protection Bureau (CFPB)—was embedded in a massive piece of reform legislation, the Dodd-Frank Wall Street Reform and Protection Act of 2010. It was a response to the grave damage inflicted on the American and global financial systems by the subprime mortgage orgy and other abuses of the go-go years. A related concern was that sophisticated financial institutions were tempting consumers with options that few were knowledgeable and experienced enough to evaluate. Without public regulation, critics of the status quo argued, consumers—especially those with lower incomes and less education—would continue to be duped by unscrupulous lenders out to make a quick killing.

Elizabeth Warren, then an obscure Harvard law professor, kicked off the debate in the summer of 2007 with a punchy and (as it turned out) prophetic notion. If regulation makes it impossible to buy a toaster that has a one-in-five chance of catching fire and burning down one's house, she asked, then why is it possible to refinance an existing house with a mortgage that has a one-in-five chance of putting the borrower out on the street? This logic proved compelling enough for the proposed consumer protection agency to successfully run the legislative gauntlet. Its task was to supervise providers of consumer financial products that otherwise escaped government oversight and to protect families from unfair, abusive, or deceptive financial practices. The new bureau would be headed not by a multimember board typical of regulatory agencies, but by a single director. And like the Federal Reserve Board in which it was housed, its budget would draw on funds generated outside the congressional appropriations process.

A third major institutional development—the so-called super committee designed to break through fiscal gridlock—came into being through the bipartisan legislation that ended the 2011 debt-ceiling crisis. Although Obama did not initiate this proposal, he became a party to it when he signed the bill, which also resembled the framework within which his own bipartisan fiscal commission functioned in 2010. Unfortunately, although Congress was now authorized to give "fast-track" consideration to any proposal on which a majority of the super committee could agree, the deep fiscal policy differences between the political parties persisted, and even the threat of massive cuts in defense and domestic programs proved insufficient to break the gridlock.

But these high-profile examples are actually exceptions. In general, while Obama has proposed major policy reforms in a range of areas, he has generally done so within the context of existing institutions. Given the magnitude of the crises he has faced, this lack of ambition is somewhat anomalous.

As a social and political species, humans need to cooperate to achieve the goals they care about the most. And institutions are arenas of cooperation structured by rules. As such, they are systems of formal constraints on both the ends and means of action. Some institutions have the power to make decisions, and their rules shape not only the process of decisionmaking but also the content of decisions. It is a mistake to view decisions, even in democracies, as simple aggregations of individual beliefs and preferences. Variations in institutional structure can produce very different outcomes, even when the underlying distribution of beliefs and preferences does not vary. A president who ignores this fact gives up huge opportunities to have an impact on the policy process.

The reason is straightforward: no set of rules is "neutral" in its effects. Majoritarian voting rules tilt in one direction, super-majority requirements in another. And as behavioral economics is demonstrating, how one defines "default rules" (that is, what happens if no action is taken) makes a huge difference.

The Republican Critique

Obama's Republican opponents have taken a dim view of the major institutional reforms he has overseen. They charge, for example, that the IPAB would allow "unelected bureaucrats" to exercise outsized influence over the delivery of health care at the expense of doctors, patients, and democratic accountability. They also argue that the IPAB would lead the entire health care system in precisely the wrong direction and that only the discipline of the market can restrain costs in a manner consistent with the preferences of individual consumers. Price controls administered top-down do not work, Republicans say. They merely substitute the judgment of remote elites for those of citizens with diverse needs that no bureaucratic mechanism can possibly meet. Given the depth of these disagreements, it is easy to see why the IPAB has been at the heart of Republican legislative efforts to halt and reverse the ACA.

Republicans also find fault with the CFPB's limited accountability. Unlike other regulatory agencies such as the Federal Deposit Insurance Corporation (FDIC) or the Consumer Product Safety Commission, the bureau has only one Senate-confirmable position—a director with a five-year term protected from removal even by the president in all but extreme circumstances. The single-director structure, Republicans argue, does not allow for a healthy diversity of perspectives. And because funding for the CFPB does not require annual congressional budget approval, this structure places an enormous amount of unchecked power in the hands of a single unelected official. Being insulated from other federal banking regulators, the CFPB could end up impairing the safety and soundness of the affected financial institutions through its oversight conducted in the name of protecting consumers.

Whatever the merits of these arguments, some of which no doubt reflect the self-interest of previously unregulated entities, one thing is clear: the concentrated powers of the CFPB director constitute a vulnerable point for the law. By blocking the confirmation of Obama's nominee, Republican critics have brought to a halt all but the most routine operations of the bureau. They have indicated their intention to persist in this strategy until the president is willing to take their concerns into account and work with them to revise the CFPB's enabling legislation. The president responded to these tactics with a recess appointment. But that is only a stopgap. As with the IPAB, the survival and powers of the CFPB will be determined by the outcome of the 2012 election.

But the Republicans, too, have been somewhat timid in proposing institutional transformations. For all the candidates' talk of abolishing components of the federal government, it is cloaked in policy, not institutional, terms. (Ron Paul's all-out assault on the Federal Reserve Board represents a controversial exception, while Rick Perry's failed struggle to recall the three cabinet agencies he wanted to abolish provided a rare and memorable moment of comic relief.)

Institutional Changes for the Next Administration

Wherever one looks today, the federal government houses mediocre—in many cases failing—institutional structures. Through reform, the new administration could get more bang for its increasingly scarce bucks and also send the public a credible signal that it will no longer be business as usual.

New Fiscal Institutions

Under today's huge deficits, the normal rules and procedures designed to produce annual budgets and facilitate long-term planning have virtually broken down, while the failings of the "super committee" have proved that ad hoc remedies are unlikely to succeed. Although the confrontation over the debt ceiling in the summer of 2011 yielded some modest first steps, neither balance nor confidence can be restored without more fundamental changes.

One option, recently proposed by a bipartisan group that includes three former directors of the Congressional Budget Office, would be to review entitlement programs such as Social Security, Medicare, and Medicaid every five years to determine whether projected revenues and outlays are in balance. If not, Congress would be required to restore balance through revenue increases dedicated to these programs, benefits cuts, or some combination of the two. After a severe financial crisis in the early 1990s, Sweden introduced a variant of this plan, and it has worked reasonably well.

This strategy could be extended to tax expenditures. The first step would be to establish aggregate targets for this vast ensemble of credits, deductions, and exemptions over a five-year period. Each year Congress would review actual and projected tax expenditures to determine whether they remain within the targeted amounts. If they do not, Congress would be required to enact changes to ensure compliance with these goals. And if Congress failed to do so, across-the-board cuts in tax expenditures would automatically go into effect.

Elected officials are not oblivious to the dysfunctions of the nation's fiscal institutions. In November 2011 House Budget Committee chairman Paul Ryan (R-Wis.) and ranking member Chris Van Hollen (D-Md.) cosponsored a bill calling for expedited consideration of line-item vetoes and recessions that the president would be empowered to propose. This rare display of bipartisanship was one item in a much longer list the House Budget Committee unveiled in December 2011. The following were among its most important proposals:

- Give the budget the force of law by converting it into a joint resolution, which would require the president's signature.
- Change the budget baseline to remove automatic inflation increases for discretionary spending.
- Establish binding limitations, enforced by sequester, on all programs growing faster

than inflation.

- Prevent government shutdowns by providing automatic spending authority at reduced levels when Congress fails to pass appropriation bills by the start of the fiscal year.
- “Sunset” all federal legislation, requiring periodic reviews and reauthorization.
- Enhance the federal government’s ability to make and enforce long-term budget plans.

Fiscal institutions and procedures are in clear need of fundamental reform, and pressure for such reform is increasing. While many of the House proposals are controversial, the next president would be well advised to spearhead this rethinking of the rules shaping fiscal decisions.

Consolidation

Institutional reform sometimes needs to bring related functions together under a single roof. Food safety is a classic example. Responsibility for the safety of the nation’s food supply is now spread among a number of departments and agencies, including Treasury, Commerce, Agriculture, the Environmental Protection Agency, Food and Drug Administration, and Centers for Disease Control and Prevention. These entities, with their varying powers and diverse standards, are hard to coordinate. In addition, the Department of Agriculture is under pressure from producers who do not want the kind of inspections that would slow production and raise costs. Furthermore, the globalization of the supply chain has introduced a new level of complexity, as problems with vegetables from Mexico and baby formula from China have illustrated.

This situation cries out for a single, unified agency whose principal mission is to ensure the safety of the nation’s food supply. While the FDA Food Safety Modernization Act of 2011 substantially upgraded and updated the federal Food, Drug and Cosmetics Act, it did not achieve this consolidation. If the challenge of food safety were elevated out of the muck of special interests and governed solely by the criterion of serving the public good, such an agency would long since have come into existence.

Deconsolidation

Other institutional changes push in the opposite direction, calling for separate functions when consolidation proves counterproductive. When the Department of Homeland Security (DHS) was created, for example, Congress and the Bush administration cast a wide net—too wide, as it turned out. Including the Federal Emergency Management Agency (FEMA) in DHS made more sense in bureaucratic flowcharts than in the real world. To be sure, FEMA has improved its performance since the fiasco of Hurricane Katrina. But as long as this agency remains buried in a department whose principal mission is fighting terrrorism, it will be difficult for it to command top-quality management and adequate resources. As the Kennedy School's Elaine Kamarck has argued, the best and simplest remedy is to restore the status quo ante—meaning an independent FEMA, which performed with great competence during the Clinton administration.

Public diplomacy and strategic communications provide another instance of a failed consolidation. In an important speech, former secretary of defense Robert Gates argued that in waging and winning the cold war, institutions mattered as much as people and policies. In the aftermath, Washington weakened not only the nation's military and intelligence but also the institutions of "soft power" that enabled Americans to communicate effectively with other parts of the world. By 1999, as Secretary Gates put it, "the U. S. Information Agency (USIA) was abolished as an independent entity, split into pieces, and many of its capabilities folded into a small corner of the State Department."

The optimism of the 1990s that erupted when liberal democracy seemed victorious in the battle of ideas turned out to be shortsighted. Today the United States finds itself engaged in new ideological struggles—especially against radical Islamism. Public opinion surveys show that it is on the defensive and losing ground throughout the Muslim world.

Any effort to counter hostile ideologies will remain ineffective as long as it is subordinated to the State Department's traditional diplomatic priorities. Two options would give public diplomacy and strategic communications the emphasis and clout they need. First, Washington could create a twenty-first-century USIA—a new cabinet-level Department of Global Information and Communications (DGIC)—and back it with the authority it would need to succeed. Many people who support this approach in principle, however, believe that it is not feasible in the current political circumstances. The alternative would be to create a new office in the National Security Council headed by a deputy national security adviser for public diplomacy/strategic communications and backed by a presidential executive order giving that office unchallenged authority to coordinate all the public diplomacy and strategic communications activities of executive branch departments and agencies.

Reducing Polarization

Increasing political polarization in recent decades has made it much more difficult for the U.S. government to work effectively. According to a multiyear cooperative study by the Brookings and Hoover Institutions, political elites are now more sharply divided than are citizens, and the latter are more likely to place themselves at the ends rather than in the middle of the ideological spectrum than they were as recently as the 1980s. Having a smaller political center to work with, even leaders committed to bipartisan compromise have found such agreement harder to come by. The study concluded that changes in institutional design could help mute the consequences of polarization and might over time lower the partisan temperature. Here are four ideas, culled from a much longer list.

First, the judicial confirmation process has become poisonously adversarial. One possible response: rely more on bipartisan commissions to generate slates of possible nominees from which the administration would have to choose. This would give the president less opportunity to fire up his base with strongly liberal or conservative picks and would limit his ability to transform the ideological makeup of the federal judiciary. On the face of it, this prospect would not appeal to most presidents. One way to render commissions more attractive to an otherwise unreceptive White House would be to link them to a fast-track procedure for confirmation: judicial nominees selected on a bipartisan basis would have Senate Judiciary Committee hearings expedited and would be assured a prompt up-or-down vote on the floor. The use of Senate "holds" and filibusters would be ruled inadmissible. This would reduce the time, attention, and political capital the White House would have to expend on the confirmation process, freeing up resources for tough legislative battles.

Second, congressional redistricting offers another opportunity for depolarizing reform. While population flows account for much of the growth in safe seats dominated by strong partisans, political science studies indicate that gerrymanders have accounted for somewhere between 10 and 36 percent of the reduction in competitive congressional districts since 1982. This is not a trivial effect.

Few Western democracies draw up their parliamentary districts in so patently politicized a fashion as do U.S. state legislatures. Given the Supreme Court's reluctance to enter the thicket of redistricting controversies, and given the limits of the federal role in these questions, the president will have limited impact here. Any changes will be up to the state governments. But a president can provide pressure and leadership toward reform. In recent years, voter initiatives and referendums in four states—Alaska, Arizona, Idaho, and Washington—have established nonpartisan or bipartisan redistricting commissions. These local efforts have struggled to solve a complicated riddle: how to enhance competitiveness while respecting other parameters, such as geographical compactness, jurisdictional boundaries, and the natural desire to represent "communities of interest." Iowa's approach, which gives a nonpartisan legislative staff the last word, is often cited as a model but may be hard to export to states with more demographic diversity and complex political cultures. Arizona has managed to fashion some workable, empirically based standards that are yielding more heterogeneous districts and more competitive elections.

Third, the president can also push—albeit indirectly—for greater participation of less ideologically committed voters in the electoral process. Some observers do not view the asymmetric power of passionate partisans in U.S. elections as any cause for concern. Why *shouldn't* political decisions be made by the citizens who care most about them? While this argument seems plausible on the surface, it is less than compelling. Although passionate partisanship infuses the system with energy, it has built-in disadvantages, one being that it erects roadblocks against problem solving. Many committed partisans prefer gridlock to compromise, which is not a formula for effective governance.

To broaden the political participation of less partisan citizens, who tend to be more weakly connected to the political system, a number of major democracies have made voting mandatory. Australia has instituted its own version of mandatory voting, using small fines for nonvoting but escalating them for recidivism, with remarkable results. The turnout rate in Australia now tops 95 percent, and more than ever, citizens regard voting as a civic obligation. The civic benefits of higher turnouts seem significant as candidates for the Australian House have gained an added incentive to appeal broadly beyond their partisan bases. One wonders whether U.S. members of Congress, if subjected to wider suffrage, might also spend less time transfixed by symbolic issues that are primarily objects of partisan fascination and more time coming to terms with the nation's larger priorities.

The United States is not Australia, of course. Although both have federal systems, the U.S. Constitution confers on state governments much more extensive control over voting procedures. While it might not be flatly unconstitutional to mandate voting nationwide, it would surely chafe with American custom and provoke opposition in many states. Moreover, federalism American-style has some compensating advantages, including its tradition of using states as “laboratories of democracy” that test reform proposals before they are elevated for consideration at the national level. If a few states experimented with mandatory voting and demonstrated its democratic potential, they might smooth the way to considering the idea on the national level.

Fourth, the president could find inspiration in the military practice of seriously monitoring institutional performance and using the results to improve future operations. Because the military’s costs of failure are so high, its units constantly engage in what they call “after-action reviews.” The goal is to assess, as honestly and bluntly as possible, what went right and what went wrong at the strategic as well as tactical level, and to use the findings to do better next time.

It would be a quiet revolution if the rest of the government were to adopt the after-action review as a standing operating procedure. The performance of each program would be measured against clearly defined benchmarks. If a program were deemed to have fallen short, the next step would be to figure out why and then change the program’s structure and administration accordingly. The American people know that everything made by human beings—including their political institutions—is imperfect. They can accept imperfection. What infuriates them is the typical pattern of denying that anything is wrong, followed eventually by an epidemic of finger-pointing that thwarts a sober assessment of what is needed to put things right.