

# Redesigning the Budget Process: A Role for Independent Commissions?

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## Executive Summary

Public confidence in Congress has slipped to record lows, in part because of the widespread feeling that the institution is unable to carry out properly such basic functions as regular and timely budgeting. Indeed, the budget process is, if not completely broken, in need of drastic overhaul. However, changing the rules for spending decisions is challenging, and a task that is fraught with political obstacles.

When faced with such challenges as legislating on contentious and complex issues and programs, lawmakers have sometimes turned to some form of independent commission as a tool for developing acceptable legislation. Early in 2018, Congress established a Select Committee of lawmakers to examine budget and appropriations process reform, which possessed several of the characteristics shared by commissions.

This paper explores the lessons of using commissions to help facilitate action on budget issues, including procedures for formulating budgets and the long-term budgeting of politically sensitive programs. A future budget commission could carry out one of two functions:

1. Advise and offer recommendations to improve federal budgeting; or
2. Be part of the budget process itself, helping to achieve or carry out key elements of a budget agreement.

In this paper, we survey the history of commissions and point to lessons that should be borne in mind by lawmakers considering a commission as a future tool to help achieve timely and responsible federal budgets. After reviewing the history, we highlight four recommendations to keep in mind when designing an independent commission.

- There needs to be broad public and political agreement that the issue to be addressed is urgent and important, and agreement on the need to establish a commission and on its goals.
- Membership selection and voting rules matter greatly for success.
- The procedures for turning commission recommendations into law require enormous care.
- Strong congressional and executive branch support is essential for ultimate success.

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## Introduction

Early in 2018, Congress created a bipartisan, bicameral Select Committee to develop a package of budget process changes to improve the timeliness and efficiency of federal budgeting.<sup>1</sup> The fact that Congress created such a special body, rather than attempt to enact a set of proposals drawn from the many ideas circulating in Congress and the research community, underscores the belief that major budget procedural reforms perhaps can only be achieved by using an indirect approach to legislating.

As of this time the work of the Select Committee, and Congress's response to it, is not complete. But the decision to create it is an example of a strategy used in the past to tackle challenging issues: an official and temporary body charged with proposing a solution to a problem, or one that becomes a legislated permanent tool to enhance Congress's ability to enact future legislation.

Budgeting is an area of policymaking where both forms of special bodies can play an important role. It is thus valuable to review the experience of using special bodies and commissions in this area. Such special bodies can take two broad forms.

### Category 1: Advisory commissions

**Government-established advisory commission.** The legislative or executive branches of government can create bodies to assemble the expertise needed to explore a range of budget process reforms and to present findings and recommendations. Such a body can be established by Congress itself, or by the Executive Branch. They do not bypass the legislative process; rather, they make recommendations to it. The Select Committee is an example of an advisory body—though in this case one comprised of serving members of Congress, rather than the more usual panel of outside experts (the Select Committee consists of sixteen current members of Congress, divided equally between the chambers and parties).

President Lyndon Johnson's 1967 President's Commission on Budget Concepts is an example of a White House-initiated advisory commission. Such presidential commissions cannot force congressional action, but by carrying the authority of the president they can draw significant attention to proposals, and may make it easier for Congress to adopt them. Recently, some budget process experts have proposed creating a version of the 1967 President's Commission on Budget

<sup>1</sup> Joint Select Committee on Budget and Appropriations Process Reform, "About," retrieved October 2, 2018, <https://budgetappropriationsprocessreform.house.gov/about>.

Concepts in order to offer guidance on such issues as defining the scope of the federal budget.<sup>2</sup> These experts suggest a commission could clarify such topics as “tax expenditures,” and could help to design better ways of showing the economic impact of different forms of government spending.

Congressional commissions are formal groups established by Congress to provide similar independent advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty.<sup>3</sup> In their report for the Congressional Research Service, Matthew Glassman and Jacob Straus identify three types of Congressional commissions utilized by Congress: policy (constituting almost 80 percent of all Congressional commissions), investigative, and commemorative commissions. One such instance in which Congress turned to a policy commission was the National Bipartisan Commission on the Future of Medicare in 1997, which we examine later in this report.<sup>4</sup>

**Privately-sponsored advisory commissions.** A variant of the government-sponsored advisory commission is a private, independent body that brings together experts to make recommendations to Congress. Without the imprimatur of government, such bodies depend for their influence on the prestige and experience of their members. These private commissions seek to help the process by offering policy ideas and solutions for Congress and the administration to consider.

For example, “Choosing the Nation’s Fiscal Future” was a two-year study of the long-term fiscal challenges, released in 2010 by the National Research Council and National Academy of Public Administration.<sup>5</sup> The Academy, chartered by Congress, is comprised of former government and private officials. The report provided a framework for leaders to systematically consider a range of choices to put the federal budget on a sustainable course.

Similarly, under the leadership of the late Senator Pete V. Domenici and former Office of Management and Budget and Congressional Budget Office director Dr. Alice Rivlin, the Bipartisan Policy Center released “Proposals for Improving the Congressional Budget Process” in 2015, which included three broad themes for budget process reform and ten specific

<sup>2</sup> Barry Anderson and Rudy Penner, “Time for a New Budget Concepts Commission.” Brookings Economic Studies, *Re-Imagining the Federal Budget Process Discussion Paper Series*, No. 3, January 2016, <https://www.brookings.edu/research/time-for-a-new-budget-concepts-commission/>.

<sup>3</sup> Matthew E. Glassman and Jacob R. Straus, “Congressional Commissions: Overview, Structure, and Legislative Considerations,” Congressional Research Service, R40076, November 17, 2017, <https://fas.org/sgp/crs/misc/R40076.pdf>.

<sup>4</sup> Federal Register, “National Bipartisan Commission on Future of Medicare,” Vol. 63, No. 123, June 26, 1998, <https://www.federalregister.gov/agencies/national-bipartisan-commission-on-future-of-medicare>.

<sup>5</sup> National Research Council, “Choosing the Nation’s Fiscal Future,” 2010, The National Academies Press, <https://doi.org/10.17226/12808>.

recommendations.<sup>6</sup> The 2010 Peterson-Pew Commission on Budget Reform likewise advanced a number of changes in budget rules.<sup>7</sup> And early in 2018, The Convergence Center for Policy Resolution also released a set of bipartisan consensus-based recommendations from lobbyists and budget scholars for improving the federal budget process.<sup>8</sup>

## Category 2: Government-established bodies that become part of the budget process

In addition to bodies that propose procedural reforms, Congress or the Executive Branch have also created some commissions to function as part of the budget process itself, either by helping to achieve or to carry out elements of a budget agreement. Examples discussed later in this paper include the Defense Base Realignment and Closure Commission (BRAC) and the Independent Payment Advisory Board (IPAB).

Bodies like BRAC can help Congress enact politically difficult budget decisions by taking the heat off lawmakers. With polarization and partisanship growing in intensity in recent years, it is important to consider these cooperation-facilitating indirect legislative procedures. Thus as part of our series of reports and blogs on redesigning the budget process, we explore in this paper the utility of delegating some budget process design decisions to an independent commission, as a way to present ideas for process reform, help reach budget agreements, and as a tool to enforce budget procedures.

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## Why Commissions Can be a Useful Tool

The framers intended our democracy to timely complete the nation’s business in a measured and deliberate manner. However, in recent years, congressional lawmakers have struggled to carry out even the most basic responsibilities of budgeting. In the past 41 years, Congress has managed to pass all the required appropriations measures to fund the government only four times.<sup>9</sup> One factor

<sup>6</sup> Pete V. Domenici and Alice M. Rivlin, “Proposal for Improving the Congressional Budget Process,” Bipartisan Policy Center, July 17, 2015, <https://bipartisanpolicy.org/library/proposal-for-improving-the-congressional-budget-process/>.

<sup>7</sup> Peterson-Pew Commission on Budget Reform, “Options for the Federal Budget Process,” December 13, 2011, <http://budgetreform.org/>.

<sup>8</sup> Convergence Center for Policy Resolution, “Building a Better Budget Process Project,” April 18, 2018, <http://www.convergencepolicy.org/latest-projects/federal-budget-process-reform/>.

<sup>9</sup> Drew Desilver, “Congress has long struggled to pass spending bills on time,” Pew Research Center FactTank, January 16, 2018, <http://www.pewresearch.org/fact-tank/2018/01/16/congress-has-long-struggled-to-pass-spending-bills-on-time/>.

in this dismal record is that political polarization among members has increased sharply, reflecting the partisan divide among voters.<sup>10</sup> This growing rift has made it increasingly difficult for lawmakers ability to govern; indeed, some scholars argue that this problem is an inherent feature of America’s geographically based representational system.<sup>11</sup>

In response to these difficulties of legislating on many issues, lawmakers have often turned to commissions as a partial tool for tackling contentious and complex issues.<sup>12</sup> California State University, Northridge professor Lawrence Becker argues that Congress opened to delegating authority to a commission under three conditions: the issue entails a geographical concentration of costs and benefits, the scope of the policy arena is relatively narrow, and the timing is politically advantageous to lawmakers.<sup>13</sup>

Under these conditions, Becker argues, commissions can help members of Congress solve collective action problems by essentially tying their hands together in delicate public votes. Commissions can help build consensus and compromise by creating a flexible space for dialogue among diverse stakeholders. This supportive environment gives members, parties, and also informal congressional caucuses—which have been increasing in number and bipartisanship<sup>14</sup> — the opportunity to circumvent undue partisanship and create common ground. To illustrate, in 1988 all three of Becker’s conditions were met for the creation of the successful Defense Base Realignment and Closure Commission (BRAC), which delegated authority to an expert commission made up of non-politicians to determine slates of selected military base closures.

As a legislative tool, independent commissions can also furnish significant value to the quality of the policymaking process because they are outside the traditional committee structure in Congress and can be explicitly structured to draw upon policy expertise<sup>15</sup>. While Committees in Congress do have access to the same information and expertise as an independent commission, election-minded legislators often avoid proposing controversial reforms because of the potential political costs.

Commissions, on the other hand, can shield policy ideas from political pressures and advance policy reform solutions. As Brookings scholar Molly Reynolds shows, members embrace procedural ways to find optimal policy solutions outside the traditional political boundaries under

<sup>10</sup> Pew Research Center, “The Partisan Divide on Political Values Grows Even Wider,” October 5, 2017, <http://www.people-press.org/2017/10/05/the-partisan-divide-on-political-values-grows-even-wider/>.

<sup>11</sup> Frances E. Lee, “Geographic Representation and the U.S. Congress,” *Maryland Law Review* 67 (2007), [https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1075&context=schmooze\\_papers](https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1075&context=schmooze_papers).

<sup>12</sup> Glassman and Straus, “Congressional Commissions: Overview, Structure, and Legislative Considerations.”

<sup>13</sup> Lawrence Becker, *Doing the Right Thing: Collective Action and Procedural Choice in the New Legislative Process* (Columbus: OSU Press, 2005).

<sup>14</sup> Stuart M. Butler and Matthew Sommerfeld, “Could caucuses help rebuild bipartisanship on Capitol Hill?,” Brookings Economic Studies, *Re-Imagining the Federal Budget Process Series*, February 9, 2017, <https://www.brookings.edu/research/could-caucuses-help-rebuild-bipartisanship-on-capitol-hill/>.

<sup>15</sup> Colton Campbell, *Discharging Congress: Government by Commission* (Westport: Praeger, 2002), p. 51.

which members of Congress must operate.<sup>16</sup> Delegation exceptions, Reynolds argues, are a way for Congress to deal with a problem for which the regular legislative process is ill equipped. Delegating the responsibility for developing proposals around difficult issues to a commission reduces the political costs associated with reforms, while enabling the public to recoup the collective fiscal benefits of more effective lawmaking.<sup>17</sup>

## Drawbacks and limitations

Commissions do have potential drawbacks. For instance, some scholars have expressed concerns over the quality of democratic accountability when issues are delegated to commissions.<sup>18</sup> According to that view, members of commissions are sometimes unelected, and voters have little recourse for holding them accountable for decisions perceived to be made outside the regular lawmaking process. This accountability concern has often led lawmakers to define the policy parameters of a commission quite narrowly, and to retain authority over membership selection and commission duration.

Advocates of commissions respond that by having the opportunity to deliberate in private and outside the political and procedural limitations of the normal legislative process, commissions produce outcomes that are actually more societally beneficial. Proponents add that the secrecy of commission deliberations enable nonpolitical experts, and even political appointees, to resist narrow influences. That said, commission recommendations often fall on deaf ears in Congress, in some cases precisely because commission proposals are not sensitive to political conditions.<sup>19</sup>

Commissions also lack legislative teeth. A commission that produces recommendations has no guarantee of wide consideration or adoption. Still, lawmakers in recent decades have in practice given some commissions advancing legislation the equivalent of legislative power by adding into the statute certain fast-track provisions, meaning that a commission's recommendations receive expedited action by Congress.<sup>20</sup> In a few cases, such as the IPAB, Congress even allows a commission's recommendations to go into effect unless Congress explicitly blocks them.

In addition to members ignoring a commission's findings, Congress or the Executive Branch can create substantial hurdles for a Commission to overcome. An example is a supermajority

<sup>16</sup> Molly Reynolds, *Exceptions to the Rule: The Politics of Filibuster Limitations in the U.S. Senate* (Washington, DC: Brookings Institution Press, 2017), p. 40.

<sup>17</sup> Becker, *Doing the Right Thing: Collective Action and Procedural Choice in the New Legislative Process*.

<sup>18</sup> David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People through Delegation* (New Haven: Yale University Press, 1995).

<sup>19</sup> Cambell, *Discharging Congress: Government by Commission*.

<sup>20</sup> If a commission is submitting legislation, fast-track procedures ensure that a commission's recommendations are given special consideration, such as an up-or-down vote basis, voting without the opportunity to make substantial changes, or even disallowing legislative amendments.

requirement or voting threshold for a report to be official. The failure of the Simpson-Bowles commission in 2010 to reach its required threshold for a formal report—despite 60 percent support among its members—is an example of how such a hurdle can weaken a commission’s impact.

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## Experiences with Independent Commissions

Over the last century, Congress has often found commissions to be a valuable tool in the policy making process.<sup>21</sup> It has opted on several occasions to use a commission to reach an agreement on politically difficult issues. Budget-related commissions have met with varying degrees of success due to several factors, both endogenous and exogenous to the commission itself. Reviewing the record of a number of commissions suggests some important lessons in considering an independent commission as one way to achieve a more orderly and effective budget process.

### Category 1: Government-Established Advisory Commissions

#### *The President’s Commission on Budget Concepts (1967)*

As public confusion grew surrounding the competing budget concepts, and the major impact of the President’s budget became clearer, President Johnson established the President’s Commission on Budget Concepts in March of 1967 to thoroughly and objectively review the U.S. federal budget.<sup>22</sup> The sixteen member Commission consisted of the chairmen and ranking minority members of both the Senate and House Committees on Appropriations, the Secretary of the Treasury, the Director of the Bureau of the Budget, the Comptroller General, and nine private citizens.<sup>23</sup>

The 1967 Commission helped to reframe thinking on the budget process and led to such decisions as the creation of a unified budget and the overhaul of the budget process in 1974. The majority of the President’s Budget Commissions’ recommendations were not adopted, but the unified budget was an important change in the scope of the federal budget. The embraced unified budget included

<sup>21</sup> Glassman and Straus, “Congressional Commissions: Overview, Structure, and Legislative Considerations.”

<sup>22</sup> M. Rodgers and D. Sullivan, “Reconsidering the President’s Commission on Budget Concepts of 1967,” Harvard Law School, Federal Budget Policy Seminar, *Briefing Paper* No. 30, May 10, 2006, [http://www.law.harvard.edu/faculty/hjackson/President\\_Commission\\_30.pdf](http://www.law.harvard.edu/faculty/hjackson/President_Commission_30.pdf).

<sup>23</sup> Ellsworth H. Morse, Jr., “Report of the President’s Commission on Budget Concepts in Retrospect,” *Public Administration Review* 31, No. 4 (1971): 444.

trust funds and thus provided a more comprehensive measure of total government activities. Former budget officials Barry Anderson and Rudy Penner recently made the case for a new commission to address several budget concepts including the scope of the budget, defining spending and revenues, and the economic impact of different types of spending.<sup>24</sup>

### *The Greenspan Commission (1981)*

In order to address the long-term fiscal problems of the Social Security program, President Reagan created the National Commission on Social Security Reform in 1981 by Executive Order 12335.<sup>25</sup> The Commission was commonly known as the Greenspan Commission, named after its chairman, Alan Greenspan, whose initial attempts to reform Social Security were met with resistance from lawmakers in both parties.<sup>26</sup> The Commission's fifteen members were chosen in a bipartisan manner and tasked with saving Social Security from impending insolvency by agreeing on a mixture of benefit cuts and tax increases.<sup>27</sup> If no action had been taken by the fall of 1982, the Old Age and Survivors Insurance trust fund (OASI) would have been fully depleted and unable to send full benefits to 39 million recipients. The Commission proposed a package of reforms, which became the heart of congressional reforms of the program. The final agreement of the commission proposed raising the retirement age from 65 to 67 (phased in by 2027), enacting a delay in the cost-of-living adjustment and requiring government employees to pay into Social Security for the first time.

Although accounts differ on the internal maneuverings and the degree of the consequential role of the Commission in producing a legislative agreement, at the eleventh hour the Commission reached a deal and sent its report to President Reagan and Congress on January 20, 1983.<sup>28</sup> By a vote of 12-3, Commission members approved a package of benefit cuts and revenue increases that proved politically palatable to both Republicans and Democrats. Reform legislation ultimately passed by a vote of 282-148 in the House and 88-9 in the Senate. Significantly, it did not appear to be a political liability for members who voted in favor of the Commission's recommendations. Two key factors appear to have been important to the Greenspan Commission.

- The nature of the problem was universally recognized as urgent and it was widely accepted that the status quo was undesirable for everyone.<sup>29</sup> Therefore, although there were disagreements over the specific reforms necessary, particularly the extent to which cuts and

<sup>24</sup> Anderson and Penner, "Time for a new budget concepts commission."

<sup>25</sup> Social Security Administration, "Greenspan Commission," January 1983, <https://www.ssa.gov/history/reports/gspan.html>.

<sup>26</sup> Paul C. Light, "The Crisis Last Time: Social Security Reform," Brookings, March 5, 2005, <https://www.brookings.edu/opinions/the-crisis-last-time-social-security-reform/>.

<sup>27</sup> Rudy Penner, "Myth and Reality of the Safety Net: The 1983 Social Security Reforms," Urban Institute, October 1, 2014, <https://www.urban.org/research/publication/myth-and-reality-safety-net-1983-social-security-reforms>.

<sup>28</sup> Robert M. Ball, *The Greenspan Commission: What Really Happened* (New York: The Century Foundation Press, 2010).

<sup>29</sup> Penner, "Myth and Reality of the Safety Net: The 1983 Social Security Reforms."



benefits should be on the table, there was strong public support for fixing the program's finances. This gave politicians some much-needed leeway in developing a legislative solution as the insolvency deadline approached.

- Just as important, the compromise solution received the crucial behind-the-scenes buy-in of powerful party leaders and the White House.<sup>30</sup> The degree of bipartisan support was only possible because a considerable degree of trust among political adversaries had developed from personal relationships built up over the years. Despite their ideological differences, Speaker Thomas “Tip” O’Neil (D-MA) and President Reagan both strongly endorsed the recommendations publicly.<sup>31</sup> In addition, Senate Republican Leader Robert Dole (R-KS) offered public support by writing an influential op-ed in the *New York Times* and led the “gang of five” Commission members who facilitated the final agreement.<sup>32</sup>

By contrast, these same two conditions were largely missing when Congress created the nine-member Gwirtzman Commission authorized by Congress in 1977 to make broad recommendations for Social Security and Medicare.<sup>33</sup> President Reagan largely ignored that Commission's recommendations, released early in 1981, as he came into office with his own set of preferences regarding Social Security reform. Moreover, the problems of the Social Security and Medicare programs lacked the immediate urgency that was to take center stage later in Reagan's first term. Compared with Democrats in 1982 after the Greenspan Commission report, Republicans in Congress were not under such public pressure to support the Gwirtzman recommendations.

### *The National Commission on Fiscal Responsibility and Reform (Simpson-Bowles) (2010)*

After several attempts to reach agreement on a comprehensive plan for long-term debt reduction, President Barak Obama signed an executive order in 2010 creating the National Commission on Fiscal Responsibility and Reform, or the Simpson-Bowles Commission.<sup>34</sup> The impetus for the creation of the Commission was the deteriorating fiscal situation in the aftermath of the 2008 and 2009 recession and other related efforts to address the long-term budget imbalance.<sup>35</sup> One such

<sup>30</sup> Ball, *The Greenspan Commission: What Really Happened*, p. 69-70.

<sup>31</sup> Chris Matthews, *Tip and the Gipper: When Politics Worked* (New York: Simon and Schuster, 2014).

<sup>32</sup> Robert Dole, “Reagan’s Faithful Allies,” *The New York Times*, January 3, 1983, <https://www.nytimes.com/1983/01/03/opinion/reagan-s-faithful-allies.html>.

<sup>33</sup> Social Security Administration, “National Commission on Social Security,” May 1981, <https://www.ssa.gov/policy/docs/ssb/v44n5/v44n5p3.pdf>.

<sup>34</sup> Exec. Order No. 13531, February 18, 2010.

<sup>35</sup> Senators Kent Conrad (D-ND) and Judd Gregg (R-NH), “A bipartisan solution to the nation’s fiscal crisis,” December 17, 2009, <https://thehill.com/opinion/op-ed/72849-a-bipartisan-solution-to-the-nations-fiscal-crisis>.

effort from then-chairman and ranking member of the Senate Budget Committee was a bill for an eighteen member bipartisan task force to confront the imbalance.<sup>36</sup>

The Commission was given the broad instruction to develop proposals to improve the fiscal situation in the medium and long-term. Its membership was bipartisan, with half of the members appointed by President Obama and the other half by Republican leadership. The co-chairs were respected veteran politicians and dealmakers in each party: former Republican Senator Alan Simpson (R-WY) and former Clinton Chief of Staff Erskine Bowles. In addition to twelve members of Congress, four individuals tasked with representing the general public were selected to serve on the committee.

After many months of deliberation, the Commission proposed a plan designed to reduce the deficit by \$4 trillion through 2020, bringing the debt down to 60 percent of GDP by 2023.<sup>37</sup> The plan encompassed a bipartisan mix of spending cuts and revenue increases that included strengthening of discretionary spending caps, reducing health spending, reducing tax expenditures, and other reforms. The package also proposed changes to the budgeting process, including switching to a chained consumer price index, establishing a debt-stabilization process, adding budgetary cap adjustments, and reviewing budget scoring practices.

Despite its bipartisan appeal and its classic approach to finding compromise, the Commission came up three votes shy of the fourteen member supermajority required in the President's directive in order to advance the recommendations to both chambers for consideration.<sup>38</sup> Although under no legal requirement to act, Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV) agreed to put the panel's recommendations to a vote before the end of the year.<sup>39</sup>

Notwithstanding the failure of the commission to agree on a budget package, some consider the Commission a partial success because some of its recommendations appeared in subsequent legislative action. For instance, the Commission did influence Congress's bipartisan decision to lower discretionary spending caps as part of the Budget Control Act of 2011.<sup>40</sup> That the recommendations influenced ensuing legislation suggests that success is not confined to the immediate outcome of a commission.

<sup>36</sup> Bipartisan Task Force for Responsible Fiscal Action Act of 2009, S. 2853, 111<sup>th</sup> Cong. (2009).

<sup>37</sup> National Commission on Fiscal Responsibility and Reform, "The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform," 2010.

<sup>38</sup> "In a 11-7 Tally, the Fiscal Commission Falls Short on Votes," *The New York Times*, December 3, 2010, <http://archive.nytimes.com/www.nytimes.com/interactive/2010/12/03/us/politics/deficit-commission-vote.html>.

<sup>39</sup> Lori Montgomery, "GOP leaders agree to panel on federal deficit," *Washington Post*, February 19, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/18/AR2010021805554.html?noredirect=on&noredirect=on>.

<sup>40</sup> D. Andrew Austin, "The Budget Control Act and Trends in Discretionary Spending," Congressional Research Service, RL34424, November 26, 2014, <https://fas.org/sgp/crs/misc/RL34424.pdf>.

Subsequent attempts were made by members of Congress and the Obama White House to enact debt reduction packages.<sup>41</sup> But none of these attracted the bipartisan attention and enthusiasm surrounding the Simpson-Bowles effort as a serious bipartisan approach to improving the long-term fiscal sustainability of the country.

Why did Simpson-Bowles fail? There are, of course, many theories, but a number of factors seemed to contribute to the failure to gain sufficient support to advance the package of recommendations for consideration in Congress.

- Ultimately, the Commission failed because elected members did not recognize the necessity of compromise on taxes and entitlements. Democrats could not bring themselves to support any entitlement cuts, and Republicans could not bring themselves to vote for any tax increases. Simpson-Bowles, unlike the Greenspan Commission, did not have the strong support of political leaders needed to push some Commission members to throw their weight behind the recommendations and vote in favor of the bipartisan compromise. For instance, in an August 2012 speech to the Republican National Convention, then House Budget Committee Chairman Paul Ryan (R-WI) criticized President Obama for his spiritless response to the Commission's report<sup>42</sup>, even though Ryan, as a member of the Commission, was one of six Commission members who voted against sending the Commission's proposal to Congress.<sup>43</sup>
- The supermajority requirement for a Commission report—fourteen out of eighteen members—was higher than the threshold for most other recent commissions (see Table 1), and therefore presented a dilemma. A high requirement was intended to elevate the validity of the Commission's report and was also necessary to gain initial support for its creation, given the sensitivity surrounding the programs and revenue sources it was expected to include. On the other hand, the high threshold support was difficult to achieve, leaving little room for disagreement. This same dilemma beset the Clinton Medicare commission discussed later.
- The reluctance of leadership to embrace the bipartisan nature of the commission was also reflected in the selection of the Commission's membership. While the co-chairs had a reputation of comfort with crossing party boundaries, the Hill leadership selected several Commission members who generally were not generally known for their ability to reach across

<sup>41</sup> Sarah Ferris, "Showdown scars: How the \$4 trillion 'grand bargain' collapsed," *The Hill*, February 10, 2016, <https://thehill.com/policy/finance/268857-showdown-scars-how-the-4-trillion-grand-bargain-collapsed>.

<sup>42</sup> Rep. Paul Ryan, Republican National Convention (Speech, Tampa, FL, August 29, 2012), NPR. <https://www.npr.org/2012/08/29/160282031/transcript-rep-paul-ryans-convention-speech>

<sup>43</sup> Jackie Calmes, "Obama's Deficit Dilemma," *The New York Times*, February 27, 2017, <https://www.nytimes.com/2012/02/27/us/politics/obamas-unacknowledged-debt-to-bowles-simpson-plan.html>

the aisle or for their moderate ideology. Thus, although some members, such as Democratic Senator Kent Conrad (D-ND) and Republican Senator Judd Gregg (R-NH), had previously worked together on bipartisan fiscal packages, there were not enough moderates on the Commission to achieve the necessary 14 votes for passage.<sup>44</sup> Of those voting “no,” three were Democrats: Representative Xavier Becerra (D-CA), Representative Jan Schakowsky (D-IL), and Andy Stern, former President of the Service Employees International Union. Another three were Republicans: Representative Dave Camp (R-MI), Representative Jeb Hensarling (R-TX), and Representative Paul Ryan (R-WI).<sup>45</sup> The steady erosion over many years of a centrist bloc of members also did not help.<sup>46</sup>

## Category 2: Government Bodies that Become Part of the Budget Process

### *The Defense Base Closure and Realignment Commission (BRAC) (1988-2006)*

After decades of stalemate over the need to close various military bases, in the late 1980s the White House and Congress agreed to create the Defense Base Closure and Realignment Commission (BRAC). The closure of military bases had been the quintessential parochial issue that generated fierce opposition from members of Congress, despite presidential support that had transcended partisanship from President Kennedy to President Reagan.<sup>47</sup>

The agreement to establish a powerful commission emanated from the combination of increasing annual deficits and the gradual slowdown of the Cold War. Motivated by their desire to identify sources of wasteful government spending and in tandem with a broad consensus that the financial burden of excess military bases was untenable,<sup>48</sup> President Reagan and Rep. Richard Arney (R-TX) provided the necessary leadership for the creation of BRAC, which developed five rounds of base closure recommendations—1988, 1991, 1993, 1995, and 2005—before being disbanded in 2006.<sup>49</sup>

During its existence, membership of the BRAC commission ranged from 7 to 12 members. All were unelected, independent experts appointed by the Secretary of Defense and subject to approval

<sup>44</sup> Bipartisan Task Force for Responsible Fiscal Action Act of 2009, S. 2853, 111<sup>th</sup> Cong. (2009).

<sup>45</sup> “In a 11-7 Tally, the Fiscal Commission Falls Short on Votes,” *The New York Times*, December 3, 2010, <http://archive.nytimes.com/www.nytimes.com/interactive/2010/12/03/us/politics/deficit-commission-vote.html>.

<sup>46</sup> Jennifer Steinhauer, “Weighing the Effect of an Exit of Centrists,” *The New York Times*, October 8, 2012, <https://www.nytimes.com/2012/10/09/us/politics/pool-of-moderates-in-congress-is-shrinking.html?mcubz=1>.

<sup>47</sup> Charlotte Twight, “Institutional Underpinnings of Parochialism: The Case of Military Base Closures,” *Cato Journal* 9, No. 1 (1989), <https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/1989/5/cj9n1-4.pdf>.

<sup>48</sup> Jerry Brito, “Running for Cover: The BRAC Commission as a Model for Federal Spending Reform,” Mercatus Center, 2010, <https://www.mercatus.org/system/files/Brito-BRAC.pdf>.

<sup>49</sup> David S. Sorenson, *Military Base Closure: A Reference Book* (Westport: Praeger Security International, 2007).

by the Senate. To begin the BRAC process, the Department of Defense (DoD) formally presented specific base closures to the BRAC commissioners, based upon internal DoD criteria. The commission then conducted its own independent analysis of the recommended base closures and voted whether to advance them by a simple majority. As an added feature to the process, some of the BRAC commissions could add bases to the recommendation list if seven out of nine members voted in favor of the additions. After the commissions advanced its recommendations, the list was then forwarded to the president, who had to accept or reject the package without making any changes. Following this step, Congress had a final opportunity to reject the list, but this would require both chambers to pass a joint resolution.<sup>50</sup>

Congress initially limited the scope of the decision-making power of the Commission by requiring only facilities controlled by the DoD to come under the Commission's purview, though BRAC was eventually delegated increasing latitude regarding which bases to close or realign in subsequent rounds of base closure decisions.<sup>51</sup> After five rounds of recommendations (1988–2006), over a hundred major bases were closed and hundreds of smaller bases were realigned or closed,<sup>52</sup> totaling approximately \$12 billion in savings each fiscal year through 2013,<sup>53</sup> after a period of initial cost increases in which expenditures grew due to relocation, closure, and cleanup.<sup>54</sup>

BRAC has been widely portrayed as highly successful at achieving its mission of closing unnecessary military bases and reducing federal expenditures, despite the opposition of lawmakers representing districts containing the bases. It is seen as a model for other budgetary commissions.

A number of factors help to explain the success of BRAC in facilitating a resolution on a seemingly intractable issue.

- The “silent approval” mechanism, by which the recommendations were enacted into law was perhaps most important.<sup>55</sup> The mechanism was critical in ensuring that individual members were unable to hold up efforts to close bases. By forcing Congress to pass a joint resolution of disapproval to overturn the recommendations, maintaining the closures became the default

<sup>50</sup> Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, as amended in 2005.

<sup>51</sup> Kenneth R. Mayer, *The Base Realignment and Closure Process: Is It Possible to Make Rational Policy?* (New York: NYU Wagner, 2007), p. 3.

<sup>52</sup> Government Accountability Office, “Military Base Closures: Observations on Prior and Current BRAC Rounds,” May 3, 2005, <https://www.gao.gov/products/GAO-05-614>.

<sup>53</sup> Cheryl Pellerin, “Hale: Sequestration Devastates U.S. Military Readiness,” Department of Defense, May 10, 2013, <http://archive.defense.gov/news/newsarticle.aspx?id=119998>.

<sup>54</sup> Government Accountability Office, “Military Base Closures: Observations on Prior and Current BRAC Rounds.”

<sup>55</sup> Brito, “Running for Cover: The BRAC Commission as a Model for Federal Spending Reform.”

position. This enabled individual members symbolically to fight for their constituents without actually having the formal power to hold up the base closures.

- The political and economic conditions in the late-1980s opened the door for the initial effort in the combination of a deteriorating fiscal outlook and the gradual winding down of the Cold War.<sup>56</sup> The combination of these factors made it more difficult for lawmakers to oppose the closure of costly and unnecessary bases.
- The limited scope of the decision-making power in the earlier rounds of BRAC (only dealing with military bases identified by DoD), coupled with the requirement that the decisions must be politically neutral, alleviated most congressional concerns about unaccountable bureaucrats making policy decisions.<sup>57</sup>
- The timing of the votes in Congress provided adequate political cover for incumbent lawmakers up for reelection.<sup>58</sup> Congress passed the decision to create BRAC just after the 1988 election, and the information on the specific bases subject to closure was released at the very end of the year. This timing provided members who were up for reelection with sufficient time to publicly fight the decision to close bases in their districts, yet acquiesce to the package of budget reductions containing the closures.

### *The National Bipartisan Commission on the Future of Medicare (1997)*

The National Bipartisan Commission on the Future of Medicare was created legislatively as part of the Bipartisan Balanced Budget Act of 1997 and was tasked with developing proposals to improve the solvency of Medicare.<sup>59</sup> The Commission's seventeen bipartisan members included members of Congress and experts in the healthcare sector and were selected by President Bill Clinton and Congressional leadership.

In order for their recommendations to receive fast-track status in Congress, only eleven of the seventeen members were required to approve the package in its entirety. Although there was disagreement on specific proposals, the members generally agreed with the premise that reforms were necessary in order to bolster the program's long-term sustainability. The Commission was chaired by a Clinton ally, Senator John Breaux (D-LA), a moderate Senator known for working across the aisle. It also had an administrative veteran in Bill Thomas (R-CA), Chairman of the

<sup>56</sup> Ibid.

<sup>57</sup> Kenneth R. Mayer, "The Limits of Delegation: The Rise and Fall of BRAC," Cato Institute, 1999, <https://object.cato.org/sites/cato.org/files/serials/files/regulation/1999/10/limitsofdelegation.pdf>.

<sup>58</sup> David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 2004).

<sup>59</sup> Federal Register, "National Bipartisan Commission on Future of Medicare."

powerful House Ways and Means Committee, who was appointed by Speaker Newt Gingrich. Despite differences, Breaux managed to build support for a set of recommendations.<sup>60</sup> However, the deal fell just one vote shy of the eleven needed to fast track the package to Congress for approval.

Two influences help to explain the commission's failure to assemble the necessary eleven votes.

- Economic and budgetary conditions were improving significantly, making long-term debt reduction less of a priority than it was during Clinton's first term.<sup>61</sup> The improving outlook gradually undercut the premise for the commission. Indeed, 1998 was the first of four consecutive years of fiscal surpluses under President Clinton, making the idea of Medicare benefit changes politically more difficult to sell to voters.
- Leadership backing for the commission eroded. Just before Clinton was set to make the plan public at the 1998 State of the Union address, he was accused of urging Monica Lewinsky to lie about their affair. The revelation undercut leadership support for the commission by severely tainting the good will that had developed between Clinton and Gingrich. Combined with the embattled President's need to bolster the support of his party, the prospects of reaching a bipartisan compromise on Medicare reform quickly dissipated. So, rather than acquiescing on more conservative reform ideas, such as premium support, many of the Democratic members rejected the whole package of proposals because of reductions in recipient benefits.<sup>62</sup>

### *The Independent Payment Advisory Board (IPAB) (2010)*

The Independent Payment Advisory Board (IPAB) was created in 2010 as part of the Affordable Care Act (ACA).<sup>63</sup> It was established to develop recommendations to reduce the cost of Medicare if spending growth breached specified levels.<sup>64</sup> Therefore, unlike the Clinton Medicare Commission, its role was to design a package of changes to enforce a law and not to develop a set

<sup>60</sup> Stuart Altman, Karen Davis, Charles N. Kahn III, Jan Blustein, Jo Ivey Boufford, Katherine E. Garrett, "After the Bipartisan Commission: What Next for Medicare?," The Commonwealth Fund, October 1999, [https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_1999\\_oct\\_after\\_the\\_bipartisan\\_commission\\_\\_what\\_next\\_for\\_medicare\\_altman\\_bipartisan\\_353.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_1999_oct_after_the_bipartisan_commission__what_next_for_medicare_altman_bipartisan_353.pdf).

<sup>61</sup> Thomas R. Oliver, Philip R. Lee and Helene L. Lipton, "A Political History of Medicare and Prescription Drug Coverage," *The Milbank Quarterly* 82, 2 (2004): p. 283-354.

<sup>62</sup> Alice M. Rivlin and Willem Daniel, "Could improving choice and competition in Medicare Advantage be the future of Medicare?," Brookings Economic Studies, December 1, 2015, <https://www.brookings.edu/articles/could-improving-choice-and-competition-in-medicare-advantage-be-the-future-of-medicare/>.

<sup>63</sup> Centers for Medicare and Medicaid Services, "IPAB Determination," retrieved October 2, 2018, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/IPAB-Determination.html>.

<sup>64</sup> Timothy Stoltzfus Jost, "The Independent Payment Advisory Board," *New England Journal of Medicine* 363:2 (July 8, 2010): 103-105, <https://www.nejm.org/doi/10.1056/NEJMp1005402>.

of reform proposals expected to be enacted into law. If activated because of spending patterns, all fifteen of its members were to be non-political experts in the healthcare sector, appointed by the president and approved by Congress. Although the commission's package of proposals would go into effect unless explicitly blocked by Congress, lawmakers could design and approve an alternative set of proposals, provided these achieved the same cost savings, subject to the approval of the president. Thus, similar to BRAC, the recommendations would become the automatic default legislation. The House did, however, adopt resolutions in the 113<sup>th</sup> through 115<sup>th</sup> Congress taking away the fast-track parliamentary procedures governing consideration of an IPAB proposal.<sup>65</sup>

The IPAB had not been activated under the 2010 legislation because the Medicare spending levels remained below the specified threshold. However, the commission will not have the opportunity to carry out its responsibility because it was eliminated by the Bipartisan Budget Act of 2018.<sup>66</sup>

The demise of the IPAB appears to be due to two related factors.

- Legislative support was hesitant and public opposition was broad and strong. Although the IPAB had some support as a budget control device, it was irretrievably entangled in the bitter politics of the ACA. It became one of the particularly contentious provisions of the statute, with some opponents characterizing it as a “death panel.” Moreover, there was always a dilemma associated with using a commission to restrain Medicare spending. On the one hand, the idea was to distance members from having to make specific changes in a very popular program. On the other hand, because Medicare is broad in its constituency and personal to Americans—far more so than any commitment to defense bases, for instance—there was strong resistance to allowing “bureaucrats” to make such decisions. Using an unelected commission to make changes to the Medicare program ultimately proved highly controversial. Therefore, unlike BRAC, creating the IPAB could not achieve the political objective of insulating lawmakers from the politics of a difficult decision.
- The improving fiscal condition of Medicare and concerns about the design and membership of the commission undercut the premise for using this tool and dissipated the enthusiasm of its early supporters. Because of concerns about a commission making changes to such a sensitive program, Democrats designing the ACA had severely constrained the scope of IPAB.<sup>67</sup> For instance, the IPAB members were prohibited from recommending increases in beneficiary premiums or cost sharing, and they could not reduce benefits in any way. Moreover, they were

<sup>65</sup> Jim Hahn, Christopher M. Davis, and Edward C. Liu, “The Independent Payment Advisory Board (IPAB): Frequently Asked Questions,” October 31, 2017, <https://fas.org/sgp/crs/misc/R44075.pdf>.

<sup>66</sup> Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (2018).

<sup>67</sup> Jost, “The Independent Payment Advisory Board.”



barred from suggesting tax increases to add revenues for the program. Essentially, they could only propose savings by adjusting the amounts Medicare pays for medical services from providers, rendering IPAB a very blunt instrument and further reducing support.

**Table 1- Summary of Experiences with Some Independent Commissions<sup>68</sup>**

Commission	Executive Order or Congressional	Membership	Consensus over purpose	Internal threshold for decision-making	Expedited consideration in Congress*	Leadership support	Outcome
Budget Concepts Commission (1967)	Executive order	16 members: 7 elected and appointed officials and 9 citizens representing the public	Yes	No specified internal threshold	No	Yes	Generally regarded as success; led to the adoption of the unified budget
Greenspan (1981)	Executive order	15 members: 9 former/current members of Congress – selected by Speaker, Senate Leader, and President	Yes; genuine solvency crisis	No specified internal threshold	Yes; alternative plan required if opposed	Yes	Supported by 12 of 15 members; generally regarded as a success
BRAC (1988-2006)	Congressional	7-12 members: all independent experts appointed by Sec. of Defense and approved by the Senate	Yes; but not over which bases to close	Unanimous	Yes; with silent approval mechanism.	Yes	Generally regarded as success; closed 100+ bases, saving ~\$35 billion through 2007
Future of Medicare (1997)	Congressional	17 members: current members of Congress and private sector	Not really; lack of agreement over solutions; budget surpluses made benefits reduction less popular	11/17 votes (64.7%)	Yes	No; Clinton opposed, as did his appointees	Received 10 votes; recommendations never made it to the floor for a vote
IPAB (2010)	Congressional	15 members: all independent experts appointed by the president, confirmed by Senate, and in consultation with leadership	Not really; agreed on need to bend cost curve of healthcare but disagreed over how to respond	Majority of appointed members present to vote	Yes and No. Silent approval if no alternative agreement was reached in the Senate, but not the House in the 113 <sup>th</sup> -115 <sup>th</sup> Congress	Yes and No; Obama supported; Bowles-Simpson strengthened; GOP support waned at end	Unknown; eliminated in Bipartisan Budget Act of 2018
Simpson-Bowles (2010)	Executive order	18 members: 12 from Congress and 6 citizens representing the public	No; disagreed both on urgency and specifics of solution	14/18 votes (77.8%)	No	No; polarized politics hindered success, especially over spending cuts and revenue increases	Received 11 votes, 3 shy of the requirement to advance the recommendations to Congress

\* If a commission is submitting legislation, fast-track procedures ensure that a commission's recommendations are given special consideration, such as an up-or-down vote basis, voting without the opportunity to make substantial changes, or even disallowing legislative amendments. Specific fast-track parliamentary procedures varied throughout commissions, but are generally the same in essence.

<sup>68</sup> This table is compiled from multiple sources and discussions with members and staff of the various commissions.

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## Could a Future Commission Help Achieve Budget Reform? Recapping the Lessons

Independent commissions are not a panacea for resolving ideological polarization or parochialism. Nor should they take the place of the regular process of legislation. That said, there are examples where a commission has facilitated consensus in Congress by helping to address or defuse potential political roadblocks to action.

*There needs to be broad public and political agreement on the reason for a commission and its goals and the urgency or importance of the matter.*

For a commission to succeed there has to be a broad agreement that a problem needs to be addressed, often with a sense of urgency. In some cases (BRAC is an example) the agreement is less about urgency than that a different procedure is needed to break a political logjam in Congress. If the sense of urgency to address a serious problem is lacking, it is extremely difficult for a commission to overcome the political fault lines in Congress. In the case of the Greenspan Social Security Commission and BRAC, those conditions were met, and politicians saw the commission as the body to iron out an agreement on how to achieve a solution to the pressing and classically parochial problem.

However, this was not the case for the Commission on the Future of Medicare and not sufficiently true for the Simpson-Bowles Commission. Nor was it true of the Gwirtzman Commission in 1977—the financial problems facing Social Security did not have the urgency and traction that they had by 1981. Similarly, with IPAB, there was deep partisan disagreement over the Affordable Care Act and, even among supporters, a strong measure of disagreement with the idea of enforcing a long-term spending cap on Medicare. For these reasons, the IPAB never acquired a political consensus for its goals, nor did it attain the urgency or importance of a Medicare budget control.

In contemplating a commission on budget process reform, it remains to be seen whether there is sufficient agreement about the scale and urgency of needed changes in the budget process. It seems unlikely at the moment that there is sufficient public concern about structural imbalances in federal budgets, and future deficits and debt, to support a commission that would propose sweeping changes in budget procedures. However, there might be enough support for tackling some specific problems—such as shutdowns resulting from failures to enact timely budgets on appropriations—enabling a commission to have the public backing to make a small number of changes to address those issues. Indeed, the Select Committee might even gain enough support for such changes. In

addition, the view of the public and lawmakers on the problem to be solved, and its urgency, is not static. Views can change over time. Indeed, under the auspices of the Convergence Center for Policy Resolution (a non-partisan organization designed to build consensus), a wide range of stakeholder organizations has agreed to a set of proposals that envisions steps to inform the public about the fiscal condition of the nation and the continued viability of major programs such as Social Security. The stakeholder group sees this information as a crucial step to build public support for significant budget process reform.

### *Membership selection and voting rules matter for success.*

As the experience of several commissions indicates, decisions about membership and voting requirements for recommendations are crucial. The composition of the membership is also important. Populating a commission primarily with members of Congress risks simply replicating the disagreements and gridlock in Congress itself. The Simpson-Bowles commission and the Medicare commission encountered this problem and failed to reach the necessary target for the endorsement of recommendations. Including a significant number of outside experts has the benefit of introducing new ideas and perspectives as well as expertise. On the other hand, a commission with a large number of experts runs the danger of being dismissed by lawmakers, and even the public, as a group of unelected individuals making decisions that are more properly made directly by Congress (a charge leveled constantly against the IPAB). Interestingly, the BRAC Commission managed to navigate this issue, despite not having serving congressional lawmakers among its membership. In fact, its success may well have been due to its distance from serving congressional leaders and backbenchers, combined with the broad support for its overall goals among those same lawmakers.

The selection of a commission's chairs is similarly important for the prospects of success. The leaders of a commission set the tone for deliberations and are thus highly influential in determining how ideas are presented and the scope and acceptability of proposals, as well as in building the necessary degree of trust among the members. They are in charge of managing the negotiations and, hopefully, avoiding unforeseen developments derailing the commission. Alan Greenspan is often credited for his fair handling of the chairmanship that set the proper tone for civilized discussions during Social Security reforms. Greenspan and other political actors involved in the negotiations were determined to come out of the commission with a set of recommendations that could pass in both the House and Senate, and even when it was looking dire, they did not give up on this goal.<sup>69</sup>

<sup>69</sup> Ball, *The Greenspan Commission: What Really Happened*.

One might think that, after the experience of Simpson-Bowles and the Medicare Commission, that it was a mistake to set a high requirement for the proportion of commission members needed to endorse final report. But for potentially controversial agreements—such as those on sensitive issues involving programs such as Social Security—a solid majority of members endorsing a plan is necessary if a commission is to be an effective device to break through a legislative stalemate and provide lawmakers with political protection to vote in Congress. In general, the more controversial the issue, the more important it is to have a high level of endorsement. Perhaps scheduling a vote on commission-endorsed recommendations would benefit from the relative cover in a lame duck session.

The Select Committee is not an independent commission and is made up entirely of members of Congress. It is a step short of a commission. As such, it runs the risk of simply replicating the sharp political divide already existing in Congress. But given its focus on addressing broadly agreed deficiencies in process, rather than trying to reach agreement on major budget decisions, it could succeed in its narrow goal. If, however, it gains support for a change in the budget process to create a commission designed to develop budget agreements with a procedure to turn those agreements into legislation, the question of membership of that commission and the procedures will become an important and contentious matter.

*Procedures for turning commission recommendations into law require enormous care.*

Even if a commission manages to achieve an agreement that surpasses voting requirement, that does not of course mean its proposals will be adopted into law. Many commission reports merely collect dust, while others lead to significant change. The 9/11 commission, for instance, had a major impact on subsequent legislation<sup>70</sup>. Others, such as the 1967 President’s Commission on the Budget Concepts, did not have such a direct impact, but influenced later decisions on budget rules and procedures.

Over many years, the prevailing view of the role of the commission in the budget process has been not just as a short-term body for recommending rule changes, but as a more permanent body designed to address delays and break deadlocks by developing budget proposals and, in some way, help ensure their adoption by Congress. For proponents of this view, BRAC is seen as an exemplar of a commission comprised of non-lawmakers who were able to design a successful reform package and alter budget procedures to give that package a fast-track process to become law.

<sup>70</sup> Mark Fenster, *Designing Transparency: The 9/11 Commission and Institutional Form* (Gainesville, FL: University of Florida Levin College of Law, 2008), pg. 1268.

Unfortunately for adherents of this view, efforts to include BRAC-style procedures in a broader budget commission model have not been very successful. There is considerable resistance to allowing non-lawmakers to make major decisions over the budget, particularly over politically sensitive programs like Medicare and Social Security. One approach to address this concern is to narrow the scope of a commission. BRAC was initially limited to considering only DoD-controlled bases for closure, a provision that was eventually relaxed in subsequent rounds of the Commission as lawmakers and the public became more comfortable. The IPAB was similarly restricted in the spending control tools it could use, nevertheless Medicare ultimately proved to be too sensitive for lawmakers from either party to allow IPAB to remain. Alternatively, the BRAC Commission provided cover for members of both parties on tough votes by packaging all the base closures together in one bill and not allowing amendments.<sup>71</sup> This gave members of Congress the opportunity to speak out publicly against their base closure, while still voting to reduce the defense footprint. While that cover worked for BRAC decisions, the IPAB could not provide lawmakers with similar distance in dealing with Medicare.

Consequently, designing a commission strategy to achieve broader budget agreements would be very challenging. In a paper arguing for the creation of a long-term budget for entitlements and required revenues, Stuart Butler and Maya MacGuineas propose an “inside-outside” approach as a potential solution.<sup>72</sup> In their approach, an independent commission would initiate the process, and the commission’s recommendations would be the default mechanism to set the long-term budget for entitlements. But they envision also a super committee of congressional leaders that could rewrite the commission’s package and whose proposals would be eligible for an expedited vote if they achieved the same long-term budget totals. In this way, the commission would, in effect, force the issue but the congressional leadership would not in practice concede the details to the commission.

### *Strong leadership support is needed.*

The experience with commissions indicates that they need strong political support to succeed, in addition to the other requirements. Had President Obama or Paul Ryan enthusiastically supported the recommendations of the Simpson-Bowles Commission, for instance, it would have been far more likely that the commission’s proposals would have received the fourteen votes necessary for fast-track status to Congress. Presidential support for The Medicare Commission ebbed when Bill Clinton was forced to shore up his progressive base. In addition, IPAB never had much leadership

<sup>71</sup> David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 2004).

<sup>72</sup> Stuart M. Butler and Maya MacGuineas, “A long-term budget for entitlements and required revenues,” *Brookings Economic Studies, Re-Imagining the Federal Budget Process Discussion Paper Series*, No. 5, January 2017, <https://www.brookings.edu/research/a-long-term-budget-for-entitlements-and-required-revenues/>.

support, even during the Obama Administration. The BRAC and Greenspan Commissions stand out as positive examples of the impact of leadership support.

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## Conclusion

A survey of the history of independent commissions since the 1960s confirms that Congress has often turned to commissions to find agreement, particularly on issues of great political sensitivity. Commissions have served as a safe policy space for negotiation, providing lawmakers the ability to fight on specific issues, but still accept a broader reform package—as was the case with BRAC. The commission process and dynamic also allowed leaders to support such sweeping reforms, as were achieved in the Greenspan Commission, despite the political fault lines. Perhaps an independent, bipartisan budget commission could play an important role in reaching agreement on needed budget process reforms in the consequential years ahead.

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