

SUGGESTIONS FOR STRUCTURAL REFORM OF THE BUDGET PROCESS

Presented to the Peterson-Pew Commission on Budget Reform
April 1, 2009

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I'd like to begin by thanking the commission for scheduling this meeting around our teaching schedules--though the unfortunate consequence of this is that we are discussing major reforms to the budget process on April Fools' Day. . .

Apparently not many people have tried to pull budget-related pranks for April Fools, based on the favorites listed on www.museumofhoaxes.com. But I did find one example, from 1972, when:

A Dutch radio program announced that the government planned to distribute its budget surplus equally among taxpayers. The announcement received an excited response from listeners. Unfortunately, it was not true.

Those were the days!

Now, of course, the government truly faces unsustainable deficits "as far as the eye can see." The majority party knows this, as it argues that major changes to energy, health, education, and tax policies will eventually reduce fiscal deficits while addressing long-standing problems in these sectors. The minority party rejects those claims, and may be returning to its heritage of a party pledged to fiscal conservatism, in hopes of regaining majority status.

In other words, both parties are actively searching for ways to promote budgetary

discipline while attaining their political goals. Consequently, the commission's report on budget reform should attract an interested audience.

Given the difficulty of enacting reforms in Washington, it could be tempting to restrict your report to changes that would merely seek to address a few obvious flaws in the process. Yet implicitly adopting the "if it ain't broke, don't fix it" approach would damage your credibility. (Note that this phrase is usually raised precisely when "it" is actually "broke.") True political realism recognizes that when conditions for needed changes are propitious, American government can respond if it has the right leadership. And after a decade of irresponsible budgeting and in the midst of an economic crisis, the conditions are ripe for reform.

You could provide that leadership by proposing major structural reforms to the budget process. Of course, with any proposed reform, the details matter a great deal. Since I don't have the time or space to cover all relevant details in this presentation, I will only discuss some major issues related to the major structural reforms you have asked me to address: a joint budget resolution, a joint budget committee, omnibus budget bills, biennial budgeting, and a simplified committee structure. I have not had the time to provide citations to a voluminous relevant literature by both academics and practitioners, nor to fully analyze some important complications. I would be very interested in continuing to provide analysis and advice on these and related alternatives should you accept the ambitious but appropriate mission of proposing major reforms.

One final introductory observation: it is common to evaluate proposed budget reforms on the sole criterion of whether they would produce more prudent budgetary totals. Yet there are other criteria that also deserve your consideration: a successful budget process is completed on time, enables intelligent priority-setting and successful policy design, and is consistent with our system of representative government. I am glad to see that the commission's revised principles for budget process reform recognize some of these desirable attributes. I have provided your staff director Jim Bates with an article I wrote which uses a similar approach. While in that

article I argued there are tradeoffs in the design of a budget process (just as there are tradeoffs in a budget), here I will argue that selected structural reforms process have the potential to jointly improve performance on timeliness, priority-setting, policy design, and representation.

A Joint Budget Resolution and a Joint Budget Committee

The Congressional Budget Act was enacted after President Nixon's attempted usurpation of the Congressional power of the purse. Nixon was unsuccessful because the constitution clearly prohibits a President from routinely impounding funds on policy grounds. The Impoundment Control portion of the act thus reinstated "regular order." But whether the Congress should have also taken up the task of developing its own budget plan is a different question. (President Nixon had been taunting Congress regarding its failure to budget responsibly.) Some theorists of legislatures argue that this aspiration is unrealistic. They believe that the hard decisions of budgeting can only be made by a hierarchical organization. And an institution like the Senate, where the leadership's job description is "herding cats" (or getting Presidential candidates to show up for votes. . .), is the opposite of a hierarchy.

I'm not convinced by this theoretical argument; at best it suggests that budgeting by legislatures will be difficult rather than impossible. In addition, history contradicts the theory, in two ways. First, strengthened parties, particularly in the House, have established effective quasi-hierarchies. Second, the Congress has periodically tried to be more fiscally responsible than the President. Unfortunately, it has had difficulty forcing the President to go along, often because the mechanism it chose was poorly designed, as was Gramm-Rudman-Hollings.

The better argument is that the concurrent resolution process established in the Act ignores constitutional reality. If the Congress plans different budget totals from what the President requests, it still has to pass legislation, which the President may then veto. But absent the kind of partisan majorities that occur rarely in American history, overrides are very difficult to pull off.

The resulting dynamic is a two-stage process. The first emphasizes position-taking. The President proposes, then the Congress proposes. Disposing comes much later. Each side claims a smaller deficit and a better mix of spending and taxing policies. And when the President uses gimmicks in hopes of making his budget look better, Congress follows with the same. Van Ooms once labeled this process “Gresham’s law of budgeting,” in which bad numbers drive out good ones.

The second stage is when both branches face reality. They negotiate over authorizations, appropriations, and (sometimes) reconciliation bills. Often these negotiations last beyond the beginning of the fiscal year, necessitating multiple continuing resolutions and forcing agencies to spend inefficiently. Each of the last two fiscal years have seen extended disputes over roughly \$20 billion in nondefense discretionary spending, a rather small amount in comparison to total spending (especially when counting the stimulus bill).

The basic argument for a joint budget resolution is that it could enable more timely action than is currently the case, while simultaneously promoting fiscal discipline. For this to work, both branches would have to negotiate in good faith over budget aggregates in the spring, committing themselves by law to these totals through the remainder of the legislative process. Because it might be difficult to reach agreement on the totals without getting into some of the details, the process would have to be flexible from year to year. Most likely the totals would be broken into major categories or identify top priorities, like past practice with “firewalls.” Budget resolution “reserve funds” and the Obama budget’s “reserve fund” for health are related procedures for priority-setting, though with less import to date.

With agreement by spring on the totals and major priorities, the branches would then be able to focus their attention on all the remaining details. They would have settled the question—for that year--of what should be the maximum deficit. Evidence from other countries which use the two-step process I am advocating suggests that starting the process with a focus on the totals increases the chances that these totals will be prudent. I would hope that as the U.S.

process evolves the choice of totals would be informed by evidence about fiscal sustainability, rather than targets such as “cut in half by the next election.” This is another topic well worthy of study by your commission.

The history of budgeting under the Congressional Budget Act makes it is easy to be skeptical about this approach. Our separated institutions may share powers, but often they do so uneasily. Whether a joint budget resolution process would work is entirely dependent on whether it would help strengthen a norm of cooperation between the branches. Such norms are not created overnight. They are born when conditions enable actors to take first steps, and if the results of these behaviors are positive, expectations grow that additional steps will be beneficial.

The evolution of norms can be accelerated when people think about how to create incentives that would strengthen norms. An example of this approach is my recent proposal that the President and the Congress cut a deal in the budget resolution to allow a specified but small amount of earmarks without threat of veto, as long as the Congress presents the President with regular appropriations bills by the beginning of the fiscal year. The kicker is that if bills aren’t passed on time, all earmarks would be cancelled for the year. This novel bargain could create an incentive for Senators with earmarks in appropriations bills to support cloture.

The current situation is optimal for experimenting with the joint budget resolution approach. Under unified government, a relatively quick compromise between the branches helps create the public perception that the governing party has its act together. This may be happening now, though informally. So I would suggest that the commission consider recommending that next year Congress and the President formalize this approach.

One of the main concerns about a joint budget resolution has been that requiring a Presidential signature would shift power to the President. This argument makes little sense regarding formal powers: establishing a joint budget resolution would only match the veto power already held by the President over appropriations bills. And it is revealing that those who raise

this concern have not advocated revoking the Budget and Accounting Act's requirement that the President propose a budget, for the practical necessity of this delegation is widely recognized.

A more plausible concern is that the President would have a bargaining advantage over the totals, for two reasons. First, it is easier for the executive to negotiate against a multimember legislative leadership; second, the President has the bully pulpit. Regarding the latter, Presidents vary in their ability to convince the public. In the case of budgets, though, Presidents face a significant constraint: even simplistic presentations of budget issues are tremendously difficult to communicate in hopes that the public will then pressure the Congress. For example, it appears that the recent Obama "Organizing For America" attempt to convert campaign contributors into budget activists was a failure. But even in cases when a President would be more successful mobilizing the public, the Congress could cope with this by insisting that negotiations over the contents of the joint resolution be held in private. Yes, in this age when more transparency is proposed as the solution to nearly every problem, private negotiations could be characterized as producing "backroom deals." However, some of the most responsible legislation of recent decades resulted from bargaining that took place in private, such as the Andrews summit of 1990 and the Tax Reform Act of 1986.

The main attraction of a joint budget committee of the Congress is that it could be the best agent for bargaining on behalf of the Congress. My assumption is that this committee would constitute the chairs and ranking members of the leading fiscal committees in both House and Senate, as well as party leaders. In fact, my state of Maryland has two such committees—the Fiscal Leaders Committee and the Spending Affordability Committee. These joint committees are especially desirable from the legislative perspective because the Governor has extraordinary budget powers—the legislature generally cannot add items to his operating budget request. Given this constraint, the joint committees have been an efficient method for communicating with the Governor about budgetary priorities.

The Maryland legislature is bicameral, as is the Congress. In many bicameral

legislatures, each house is often upset less by the actions of the chief executive than by those of its counterpart. This is one explanation for the failure to pass concurrent budget resolutions four times in the past decade. Similarly, during periods of divided government, a joint budget resolution would require greater compromise than might be politically attractive over the short-run. The reality of centrifugal political pressures could thus necessitate a backup to the joint budget resolution process, much as “deemers” are used now when the concurrent process breaks down. The new backup could be that a concurrent resolution, unsigned by the President, would be the deemer. The availability of such a backup, though, could also encourage intransigence. (For fear of a similar effect, I would oppose the related proposal for an automatic continuing resolution.)

Nothing can guarantee that a joint resolution process will survive periods when political differences are large between the Senate and House and/or between the branches. What could make survival more likely, though, is a good head start. That is, implementing a joint budget resolution process successfully under unified government could strengthen the norm that members of the divided government should, to be blunt, do their jobs.

An Omnibus Bill and a Biennial Process

The failure to pass budget resolutions, and to pass appropriations bills on time, have led to numerous omnibus appropriations bills in recent years. I believe this is a problem, but not on the basis of the argument that the Congress uses such bills to present the President with last-minute demands that are impractical to veto. The magnitude of this problem seems small once you closely observe how the President can effectively negotiate over the course of the appropriations process.

A potential argument for omnibus bills is that they could enable comprehensive consideration of all relevant budgetary issues, much like the unified budget is supposed to measure all of the government’s financial transactions. Returning to the comparison with state governments, some have constitutional provisions which supposedly require that all budgetary

issues be included in one bill. One justification for this is that state legislatures meet for relatively short sessions and are relatively weak compared to their governors. In contrast, no one expects the Congress to return to the schedule it used before the advent of air conditioning.

In addition, it appears to me that states with omnibus bill requirements do not necessarily meet them in practice. Unlike the unified federal budget, state budgets are balkanized into the general fund, a variety of special and fiduciary funds, and usually a separate capital budget or budgets. In Maryland, the latter is considered separately from the “budget bill,” and contains the equivalent of Congressional earmarks. In addition, when enacting the “budget,” the legislature actually considers two bills—one for what we would call discretionary programs, and the latter for revisions to mandatory spending (the bill is even called the “budget reconciliation and financing act”). Much of the mandatory spending was created in previous bills that were not in the supposedly omnibus budget bill. (The perverse result of the constitution prohibiting the legislature from adding to the governor’s discretionary budget request has been legislative creation of spending mandates for future years.)

The critical assumption behind an omnibus bill is that it is possible to separate budgetary legislation from policy design and management directives. This is also the case with biennial budgeting, in which the attention of the Congress would be focused on developing a two-year budget during the first year, and on oversight and program development (and the upcoming election. . .) during the second year. And the long-standing distinction between the authorizations and appropriations committees also is justified by the idea that budgeting is somehow separate from other important activities.

I am sympathetic to the concern that the Congress spends too much time budgeting. However, I find it hard to believe that the Congress could restrain itself from “committing a budgetary act” in the would-be off year. Plus we don’t need any better example of the unpredictability of events to which the Congress should respond than the economy over the past year--though September 11, 2001 may provide one. Therefore, I don’t consider biennial

budgeting to be practical, but I do believe that the Congress should try to come up with a substitute for it. I will address my nominee--collapsing the authorizations and appropriations committees--in the last section.

One final comment on omnibus bills, though. Whether you prefer a joint or a concurrent budget resolution, the target-setting approach requires some centralization of power in the Congress. Those who oppose omnibus bills (and relatedly, closed rules in the House and reconciliation in the Senate for anything other than deficit reduction) argue that the “regular order” of committee and floor consideration has been short-circuited. They maintain that this forecloses full discussion of important issues and prevents the minority from having its legitimate say. On the other hand, some legislators have overused the procedures that would protect their rights, with the result of making it extraordinarily difficult for the Congress to get anything done. For example, Sarah Binder and Steven Smith have shown convincingly that the filibuster has been stretched far beyond its original use. A more balanced legislative process would find ways to guarantee votes on important issues while allowing significant issues to be debated.

Committee Jurisdictions and Functions

No doubt that many in Washington believe that April Fools Day is the perfect day to discuss combining authorization and appropriations committees.

Structural reform, by definition, makes significant changes to the status quo. It is usually difficult to carry off, because even when the status quo isn't very good, at least it's predictable. That's an very important consideration for the many interest groups in this town that have ties to existing committees. Within the Congress, strong support for the committee status quo is partially based on informally-vested seniority rights, especially for the many legislators who aspire to become committee chairs. Substantial investments in service on specific committees can also give legislators valuable personal connections with affected interests, and build much knowledge of legislative history, agency operations, and policy issues.

Woodrow Wilson became famous as a political scientist for describing how the Congress did its most important work in its committees. Committees are the method Congress uses to specialize. In our model of legislative democracy, we hope that five hundred and thirty five elected representatives from a very diverse country will draw on a wealth of insights gained by listening to their constituents. The committee system should enable transmission of this information to Washington and the efficient interaction of legislators so that they can make necessary decisions.

I don't believe that the current committee system meets this latter goal, particularly regarding budgets. I suggest that the commission should especially focus on this issue, with the goal of proposing alternatives for modernizing the committee system. Of course, if the Congress were to take these suggestions seriously and decide to attempt reorganization, political negotiations would ensue. Your contribution could be to convince legislators that such negotiations could enable the Congress to better address the budgetary challenges we face.

For the reality is that the "regular order" of the existing committee structure is neither well-ordered nor orderly. Basic committee jurisdictions and related procedures are the result of compromises made during the Civil War, the 1880s, and 1921. Since then, numerous small changes have been made, sometimes to mirror executive reorganizations in which the Congress played a major role (most recently, with homeland security). Even the Appropriations Committees, long viewed as the most traditional committees in the Congress, recently revised their subcommittee jurisdictions (though the process that led to this was not pretty).

These minor changes, however, did not dramatically reduce the unnecessary duplication that plagues the legislative process. The authorizations and appropriations committees address the same topics in separate bills, and sometimes each year, as is the case with defense. Other authorizations struggle to make it to the floor. Despite House Rule XXI and Senate Rule XVI, appropriators regularly provide funds for unauthorized programs and legislate in appropriations bills. In return, authorizers create and protect mandatory spending

Nor is the Congress well-organized to confront major challenges such as health care costs and access--jurisdiction over this sector is widely distributed with insufficient coordination between committees. But perhaps the best example of the lack of policy coordination involves the tax committees, which have a jurisdictional license to spend through the tax code in all areas of government activity. The result is a tax code that looks even worse than what faced the reformers of the 1980s. Tax preferences are rarely compared to regular spending programs that address similar purposes. Unfortunately, not even in the executive branch has there been much progress dealing with this problem.

The executive branch has, in contrast, made significant performance management improvements on the spending side of the budget, due to GPRA and PART. That progress has not been matched by Congressional committees. One reason is that the committee structure in theory illogically bifurcates the two sides of performance. According to the rules, appropriators are supposed to defer to the authorizers regarding program design, instead concentrating on what is affordable this year. This reinforces the appropriators' tradition of controlling budgetary inputs rather than taking a broader view of performance. Authorizers, in turn, when considering discretionary programs, have a political incentive to authorize appropriations that exceed what is likely affordable--leading to disputes such as the "underfunding" of No Child Left Behind.

The committee structure also makes it impossible to fulfill the priority-setting purpose of the budget resolution. This is because committee jurisdictions do not match the budget functions used by the resolution to allocate funds, and because enforcement procedures do not require committees to match those functional allocations. So yet again, this week we will hear in both the Senate and the House debates about the supposed effects of the budget resolution, when those effects are often illusory.

If, on the other hand, committees were organized by sectors of government activity, in a way that would attempt to minimize overlaps (elimination, of course, would be impossible), then not only could priorities could be set in the resolution, but enforcement procedures could also be

streamlined. Enforcement procedures now are based on distinctions between “discretionary” spending (appropriations committee jurisdiction) and “mandatory” spending and tax provisions (authorizing committee jurisdictions). But as we all know, like with “reconciliation,” these terms have different meanings in the budget process than they do in common English usage. Much discretionary spending, such as in defense, is not at all discretionary in the political sense, and much mandatory spending, such as by Medicare, is in fact reviewed quite frequently.

One cost of basing enforcement on these concepts is the distraction from what should be the real goal of budgeting at this level—determining whether expenditures and tax preferences deliver value for money. Instead of focusing on this question, budget analysts obsess over how the baseline is conceived and measured, comparing rates of growth to determine which programs might be advantaged.

Gene Steuerle has been a forceful advocate for leveling this playing field by eliminating all spending increases from the baseline. The Obama administration’s embrace of what is in effect a current policy baseline would also level that field, though at a higher deficit level. While I understand why people oppose this as an abandonment of PAYGO principles, my first response is: so what else is new? Second, it would be smarter to think about how combining the authorizing and appropriations committees would simplify budget enforcement. One committee would then be forced to make tradeoffs between what are now discretionaries and what are now mandatories. (This assumes that budget concepts are improved, which I understand is also on your agenda.) For example, the Agriculture Committee would now have jurisdiction over administrative expenses, research grants, and commodity payments. If it wanted to move funding from one category to another, it could do so, subject to its spending ceiling. And if it was concerned about fraud, the committee could deal with it without having the budget resolution cluttered up with “program integrity fund” language. The resolution instead could set spending ceilings in response to evidence on trends in food security or some other higher level goals, based on reporting of national indicators.

I have only started to scratch the surface of issues regarding committee jurisdictions, enforcement, and related issues. For example, if the committees were to be combined, how would existing jurisdictions be modified? How would the new committees organize themselves into subcommittees? How would spending bills from each committee be sequenced on the floor? Would the budget committees retain their current compositions, or would they be comprised of the leaders of other committees? Should House Ways and Means and Senate Finance become committees with jurisdiction only over taxes? If so, should they also be merged with the budget committees in order to concentrate authority over spending, taxing, and borrowing totals? Should the tax committees, when they propose tax legislation that has programmatic goals, be required to gain the approval of the “subject matter expert” committees through a sequential referral process? Should separate oversight committees be retained?

In 1987, Senator Kassenbaum tried to answer these questions by introducing Senate Resolution 260, which would have combined the authorizing and appropriations committees and renamed the Senate Budget Committee as the Committee on National Priorities. When I pulled this bill out of my files last week, I was pleased to be reminded that her co-sponsor was Senator Inouye. Perhaps he would have a different view now. But what struck me by going through that file, though, was how thick it was and how many respected legislators and budget experts have suggested reorganizing committees. Rep. Obey and Alice Rivlin are two of those notables. Their proposals didn’t succeed then, but I believe that conditions have changed enough by now to make this topic worthy of extended analysis by your commission.

I appreciate your attention, and I look forward to our discussion.