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Lindsey Lupo

Point Loma Nazarene University, lindseylupo@pointloma.edu

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What Happened to the 9/11 Commission? What a Century of Riot Commissions Teaches us about America's Dependence on Independent Commissions

Lindsey Lupo
Point Loma Nazarene University

In August of 2004, the bipartisan 9/11 Commission released its report to much media buzz. However, when all ten commissioners reconvened in late 2005 to issue a report card on progress made on the recommendations of the Commission, they issued five Fs, twelve Ds, nine Cs, and one A minus. This article looks at independent commissions in the United States and the role they play as flak-catchers—stopgaps that assuage public fears while giving the appearance of decisive government action. It uses historical and comparative case-study analysis to portray how the 9/11 Commission operated in a manner similar to U.S. race riot commissions, despite differences in inception, focus, and jurisdiction. The result for both riot commissions and the 9/11 Commission is a “management” of the crisis rather than an understanding, followed by little in the way of actual policy change. One should expect similar outcomes whenever an independent commission is appointed.

Over a decade ago, the United States government charged a ten-member independent, bipartisan commission to study the 9/11 attacks in order to more fully understand the circumstances surrounding the events, as well as to provide recommendations to prevent future attacks. In August of 2004, the 9/11 Commission released its report to much media buzz and fanfare. Almost immediately, the White House resisted the report; indeed, President Bush initially opposed even the creation of the Commission (Kean and Hamilton 2006) and upon release of its report, guardedly referred to it as “constructive” (King and Quijano 2004). Four years after its release, the chairman and vice chairman of the Commission, Thomas H. Kean and Lee H. Hamilton respectively, publicly criticized the lack of governmental response to their recommendations. Further, all ten commissioners reconvened in late 2005 to issue a “report card” on the recommendations made by the Commission. They issued five Fs, twelve Ds, nine Cs, and one A-minus (Kean and Hamilton 2006).

In addressing politically or socially important problems or events, the United States has frequently turned to independent, blue-ribbon commissions. Americans are typically

familiar with a few of them, recalling perhaps the Warren Commission, the Kerner Commission, the Packard Commission, the Tower Commission, or the 9/11 Commission. But the history of the independent commission reaches even further back – President George Washington instituted a presidential commission in 1794 in an effort to quell the rising Whiskey Rebellion. The U.S. government’s heavy reliance on independent commissions is indeed a long-standing tradition.

But, what is the efficacy of these independent commissions? Herein lies the puzzle - they are at once incredibly ineffective *and* effective. As problem-solving entities that affect real change in the political system, they are ineffective, as evidenced by the 9/11 Commission’s own self-issued failing report card on progress. One woman widowed by the 9/11 attacks expressed her disappointment: “If you were to tell me that two years after the murder of my husband on live television that we wouldn’t have one question answered, I wouldn’t believe it” (Breitweiser 2003). However, as mechanisms of evasion that allow the government to delay action or elude responsibility altogether, they are incredibly effective. Both sides of this paradox are harmful to the basic function of democracy, a system of government reliant on government responsiveness. Indeed, the U.S. government continues to depend on independent commissions to provide answers and presumably affect change, but neither is the typical outcome of these commissions. Even if some clarity does emerge, it is often ignored. It has been over two hundred years since Washington’s commission on the Whiskey Rebellion and during that time, policy change through independent commissions has been rare or non-existent. Why then does the American public continue to be comforted and satiated when the government appoints a commission?

This article looks at independent commissions in the United States and the role they play as “flak-catchers” – stopgaps for uncertain or unfavorable judgments cast onto the political system. Because they work as effective mechanisms of evasion, giving the appearance of government action while at the same time dodging responsibility, government bodies, particularly executives, have frequently and readily turned to independent commissions. However, independent commissions are typically riddled with inefficiencies that inevitably hinder their work. This article will look at the obstacles faced by these commissions as they deal with some of the most complex social and political issues of our time. Some of the obstacles are a product of the bureaucratic nature of the commission process, while others are created by the commission itself, in order to preserve the status quo. Still others are the creation of the instituting body who finds little incentive in implementing the recommendations of a temporary, nonelected body that lacks any real power. Thus, the central issue discussed here is the way in which independent commissions are utilized as equivocal tools that both ease public anxiety and allow public officials to claim credit for decisive action. Independent commissions are an easy and effective go-to for U.S. public officials because they act as deflectors, giving the appearance of action and serving to satiate the public’s demand for explanation and answers, while at the same time evading actual policy response. Government officials have therefore developed a dependence on these commissions. This article specifically focuses on the barriers commissions face, comparing the commissions that have often followed U.S. urban race riots to the 9/11 Commission. The riots that have occurred over the last century in America have typically been followed by an investigative, blue-ribbon commission, and therefore provide us with a catalog of comparative cases for the 9/11 Commission.

U.S. Race Riot Commissions

There is one political phenomenon where the use of independent commissions is particularly constant in the United States—urban race riots. Riot commissions are the institutional bodies appointed by an executive, a legislature, or law enforcement body in the aftermath of a race riot to determine a riot timeline, investigate causes, study the dynamics, and offer prescriptions for change. Over the last century, most racial uprisings in America’s urban cities have been followed by a government-initiated commission, charged with studying the causes of the riot and issuing recommendations for societal and political changes that might prevent reoccurrence. Yet, these commissions fail to produce any significant changes, leading to what Michael Lipsky and David Olson have referred to as “commission politics” (Lipsky and Olson 1977).

The phrase “commission politics” refers to the way in which crises are subjected to bureaucratic processing, resulting in the management of the crisis rather than a broader understanding of what led to or caused the crisis. With regard to race riot commissions, the commission tends to focus on the restoration of law and order, rather than the deeper social problems penetrating America’s urban cities. It is thus an elite response to the racial violence – one that seeks to appear in accordance with democratic norms of accountability and responsiveness, but is typically little more than an evasion tactic, or worse, a vehicle for pushing through previously formulated elite policy preferences. We will likely never know the intention of officials who set up the commissions, whether the intent from the beginning is to obfuscate and placate or whether the evasion comes later, when recommendations are revealed and deemed unpalatable. This article does not explore intention so much as outcome. The riot commission process effectively appears responsive while also effectively depoliticizing the riot violence, framing it as an anomalous breakdown of order. Further, once the report is released, it is most often ignored, criticized, or downplayed by the instituting body, resulting in the maintenance of status quo politics. Thus, the riot commissions tend to be symbolic political bodies that appear responsive but are in fact mechanisms of evasion as they are typically short-staffed, under-funded, and generally ill-equipped. In short, they are “flak-catchers.”

Riot Commissions and the 9/11 Commission

The central assertion in this article is that the characteristics of race riot commissions are mirrored in the 9/11 Commission, as the latter operated, organizationally and symbolically, in a manner similar to race riot commissions. Thus, the obstacles faced by the 9/11 Commission throughout its eighteen month process parallel those that riot commissions have faced for the last century. It is therefore not surprising that the 9/11 Commission found itself hindered in its work and blocked in its efforts to promote change as we have witnessed similar outcomes from riot and other independent commissions. This paper seeks to unpack the details of these barriers and obstacles that make commissions little more than flak-catchers. Indeed, what I show is that the 9/11 Commission followed the flak-catching pattern as illustrated by riot commissions. This article argues that these two distinct types of independent commissions—riot commissions and the national security-focused 9/11 Commission—were shaped by similar processes and patterns, and thus had similar outcomes. We should expect similar outcomes whenever an independent commission is appointed.

Therefore, the U.S. government’s continued reliance on independent commissions, as well as the obstacles these commissions face, will be explored here primarily through an

examination of riot commissions during the twentieth century. From here, I will move on to an examination of the 9/11 Commission's process to show that these obstacles—and the subsequent flak-catching and lack of substantive outcome—are not unique to riot commissions. The way in which independent commissions manage and depoliticize the issue at hand is indeed a ubiquitous occurrence.

Why riot commissions? Race riots are an area in which the government has consistently and frequently appointed an independent commission to study the causes of the riot, understand the unfolding of riot events, and offer prescriptions for change. This frequency and consistency make them valuable comparative foundations, as patterns emerge that are useful in establishing a model for understanding independent commissions more generally. In other words, race riot commissions provide a lens through which to view the use of and efficacy of other types of commissions. What is interesting is that despite very different events that are studied, commissions consistently follow a similar pattern and have a similar outcome. For instance, riot commissions study race relations, domestic social policy, and law enforcement, while the 9/11 Commission studied the 9/11 attacks, national security, and American foreign policy. The focus of study was incredibly different, and yet, the process and outcome was incredibly similar. Specifically, this article argues that the problems that beset the riot commissions are similar to those faced by the 9/11 Commission, including low funding, staffing shortages, and ultimately, lack of implementation of policy recommendations. In analyzing the obstacles faced by riot commissions in the United States, this article offers insight into the commission process as it operates in other scenarios (both crisis-oriented like the 9/11 commission and non-crisis oriented)—how hopes and expectations are raised and subsequently dropped as it becomes apparent that the main goal of the commission, which is the appearance of action, is fulfilled and nothing more is needed.

Managing America's Riots: The Three Stages of a Riot Commission

When government manages rather than seeks to understand a race riot, the riot is depoliticized and framed as a criminal event, involving a handful of hoodlums rioting for “fun and profit,” rather than as a rebellion against a system that is perceived by the rioters as unjust and biased. It is interesting to note that the race riot does not trigger legislative hearings or decisive executive branch action. In taking the action outside of the traditional political system, the riot is further de-politicized. By naming an “independent” commission, the instituting body is also able to appear unbiased, thus further legitimating the commission. In addition, by delegating the investigation to a non-governing body, the appointing executive removes future accountability in terms of implementing recommendations. An independent commission may be bipartisan and non-aligned, but it also has no authority to actually ensure that action is taken on its final report.

Commissions bureaucratize events to the point of obfuscation is clear. However, if we deconstruct the commission process into stages, it helps to illuminate where and how exactly the commission acts as a flak-catcher. Therefore, I classify the commission process as a three-stage process involving commission formation, the issuing of a report with recommendations, and finally, implementation of those recommendations. I turn now to some examples of the ways in which specific race riot commissions have adhered to this three-stage process and thus acted as flak-catchers. Following the discussion of the riot commissions, I will then turn to the 9/11 Commission to show how it too adhered to the three stages.

One Hundred Years of Riot Commissions

Riot commissions operate to reduce the sense of urgency and divert attention is, again, not surprising. However, I argue here that riot commissions and the 9/11 Commission vary in terms of which particular stage of the commission process they were least effective. In other words, some commissions are particularly evasive during the initial commission formation stage, while others are more evasive later in the process, perhaps during the implementation stage. Some examples of riot commissions over the years will illustrate this point. What follows is a discussion of three race riots that have occurred in the last century in the United States, with each case study portraying how the three stages of commission politics unfolded and acted as barriers to commission success. For instance, in the commission stage, funding troubles are common while in the recommendation stage, elites pushing for status quo politics often emerge. As we will see, the 9/11 Commission followed a similar path.

The 1919 Chicago Riot

Less than a month after the 1919 race riot that left 38 people dead in Chicago, Governor Frank Lowden instituted a riot commission to study the violence. The commission process took over two years, but at almost seven hundred pages, *The Negro in Chicago* report is still considered by race relations scholars to be one of the best academic studies on race relations. However, aside from its academic role, it had little impact on actual race relations or racial policy in early twentieth century Chicago. The Chicago Commission faced a number of obstacles that ultimately prevented it from achieving little more than making a worthy contribution to the scholarly study of race relations. The commission was plagued by organizational problems throughout its two year process, causing it to be a rather fruitless endeavor in actually addressing the root causes of the violence. The inefficacies of the Chicago Commission occurred primarily in the commission stage and to a lesser extent, in the latter recommendation and implementation stages.

Time restraints, funding shortages, and lack of resources and infrastructure were all issues that afflicted the commission. For instance, with regard to timing, the Commission was initially supposed to complete its work by the fall of 1920. The Commission's executive secretary, Graham R. Taylor, urged the Commission to place thoroughness over speed (Graham R. Taylor to Francis Shepardson, October 30, 1920, Microfilm Role 30-78, Lowden correspondence). Indeed, the Commission took another two years in its process, releasing its report in September of 1922, a full three years after the riot. When the report was finally released, the newspapers virtually ignored it with only the prominent African American newspaper, the *Chicago Defender*, noting its release. But even the *Chicago Defender* relegated the story to page two, and in fact, the report never made it to the front page. Further, during the three year process, Governor Lowden seemingly never prodded the commissioners or urged them to finish; in fact, he essentially ignored the process.

The timing problems faced by the Chicago Commission are undoubtedly tied to its financial problems. The Illinois legislature provided no government funding to the Chicago Commission, despite the Commission being state-initiated. Initially, the reason given for the lack of funding was that the appointment of the Commission occurred after a regular session of the legislature; however, later correspondence indicates that the legislature did vote on Commission funding and actually failed to pass the measure that would have provided appropriation for Commission expenses (Francis Shepardson to William C. Graves,

September 15, 1919, Microfilm Role 30-78, Lowden correspondence). This failure to even minimally fund the Commission illustrates the low expectations typically held by the instituting body, and perhaps even the high hope that nothing substantive in terms of policy change will actually come from the commission process. The government gets credit for appearing decisive in a time of crisis, but in failing to provide the Commission with critical resources and infrastructure, actual policy change will remain unlikely.

Indeed, financial problems are one of the most common obstacles faced by independent commissions, including the 9/11 Commission, and financial problems plagued the Chicago Commission throughout its three year existence. By the spring of 1920, just a few months into the Chicago Commission's work, the budget was estimated at \$30,000, but only half that amount had been raised by the finance committee. Further, the Commission projected that by the summer, it would have only about \$1,000 remaining in its account. The financial situation turned out to be even direr than predicted—by August of 1920, only \$253 remained. Executive Secretary Graham Taylor's proposal was to speed up the research process so as to finish before funds ran out, cut staff positions, and possibly sell furniture and typewriters (Minutes, April 21, 1920, Microfilm Role 30-11, Lowden correspondence).

This commission illustrates the internal problems that can obstruct a commission's work before the report is even written or released. For the Chicago Commission, it was during the commission stage that the Commission experienced funding, timing, and resource problems. All of these aspects led to deep and irresolvable problems in the study of the Chicago riot. The result is that the riot was depoliticized as the urgency of the riot became tangled up in a mess of internal organizational problems.

The 1967 "USA" Riots

The Kerner Commission (formally the National Advisory Commission on Civil Disorders), one of the most well-known independent commissions in American politics, studied the summer of 1967 riots around the country. The Commission was established in July of 1967, with President Johnson directing the Commission to focus on three areas: circumstances, causes, and prevention. However, the Commission faced a number of hurdles throughout its tenure. Early in the process, Vice-Chairman John Lindsay wrote to his fellow commissioners that the Commission lacked a "sense of urgency" and was in jeopardy of becoming "just another Presidential Commission with another report for America" (Memo, John V. Lindsay to commission members, January 9, 1968, "Critical Comments on Drafts," National Advisory Commission on Civil Disorders Collection, Series 46, Box 3, LBJ Library). However, the most egregious of the management of the violence would come at the end—in the implementation stage—when, publicly, the president only minimally acknowledged the report and privately, seethed at its substance.

The administration's discomfort with the report stemmed primarily from the financial commitment that would necessarily follow its recommendations. The administration found itself in an unwinnable situation. If they asked for funding suggestions from the Commission, they feared that commissioners would point to the increasingly unpopular war in Vietnam. However, if they did not receive funding suggestions, the Commission was free to make sweeping recommendations with little regard for cost. Either way, the administration would appear recalcitrant. Thus, the Johnson administration began efforts to undermine and minimize the report's release.

President Johnson's aides recommended a "two-pronged approach" that involved leaking the report. Domestic policy aide Joseph Califano wrote the following note to the president the week before the report's scheduled release date:

1. Publicly, that you sign Thursday (For Sunday release) the attached statement or something similar in response to a transmittal from Governor Kerner praising your progress to date. (The report itself has very little good to say about anyone.)
2. Privately, that you give Christian and me approval to start leaking the report to diminish its overall impact, point up its enormous cost and the unrealistic nature of its recommendations (Note, Joe Califano to the President, February 28, 1968, "FG 690 NACCD 2/28-3/13/68," Central Files Collection, EX FG690, Box 387, LBJ Library).

It is not known whether President Johnson approved this approach but it appears that he did as the report was in fact leaked early to the press. The president felt betrayed by the Commission and his administration quietly worked to undermine it, resulting in a very low rate of implementation of Commission recommendations.

In the days before the executive summary of the report was leaked, presidential aides hurried to formulate a response that would look responsive and accountable, and yet that was vague enough to allow them to skirt responsibility. Three examples illustrate this evasion. First, aides recommended appointing a new commission to analyze the Kerner Commission's work. Second, they recommended referring to the Kerner Commission report as only a statement of problems, essentially ignoring the fact that the report contained a list of specific recommendations for social reform. In one memo to the president, aides suggested "accepting" and "praising" the report but assured him that he "need not embrace" the report (Memo, Ramsey Clark to the President, March 2, 1968, "FG 690 NACCD, 2/28--3/13/68," Central Files Collection, EX FG690, Box 387, LBJ Library). Finally, the White House publicly took the position that much responsibility for reform lay with the "state and local governments, as well as private citizens and institutions" (Memo, Joe Califano to the President, March 6, 1968, "Chron File 3/5-3/7/68," Aides-Califano Collection, Box 33, LBJ Library). Two days before the report leaked, Califano wrote the following in a confidential memo to the president:

All of this leads me to again recommend that you issue the statement I sent to you Thursday night. I believe it could be issued in the form of a wire from you to Kerner, and made public tonight or early tomorrow morning before the Sunday telecasts. The statement in no way commits you and leaves you free either to follow some sort of task force route or individual department route for review of the report. Actually we are at a point where the Budget Bureau, working with the departments, could have a thorough review and analysis of the recommendations that pertain to the federal government within a few days. We have a good story to tell about what we are doing and why we are not doing some of the things the commission recommends and we ought to get it out promptly. At the same time, by having Kerner send the report to mayors and governors, as well as Congressmen, we could place some of the heat on the local level and on the Congress, where it belongs (Memo, Joe Califano to the President, March 2, 1968, "National Advisory Commission on Civil Disorders," Central Files Collection, FG632, Box 39, LBJ Library).

The Thursday night statement to which he refers was one that had the president telling the country that he had "asked Governor Kerner to send it to members of the Senate and the House of Representatives and to the Nation's governors and mayors" (Memo, Joe Califano to the President, February 28, 1968, "Chron File 2/27-2/29/68," Aides-Califano Collection, Box 32, LBJ Library). In widely disseminating the report, the Johnson

administration was acting to diffuse responsibility. Yet, given that the other layers and branches of government had not instituted the Commission, they had no responsibility to undertake costly reforms. Not surprisingly, the governors, mayors, and members of Congress that were pinpointed by the White House also did not act, resulting in a commission report full of unimplemented and ignored policy recommendations.

The Los Angeles Riots of 1992

Following the 1992 Los Angeles riot, there was immediately some clamoring for an independent commission. However, President Bush decided against a centralized commission, fearing that the report would end up unread and dusty on a shelf. Instead, the riot of 1992 was studied by four separate and disconnected riot commissions: the Assembly Special Committee on the Los Angeles Crisis, the Senate Special Task Force on a New Los Angeles, the Presidential Task Force on Los Angeles Recovery, and the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles. Each played a distinct role in the overall study of the 1992 riot, but together, the four commissions primarily managed the riot in the second and third stages – recommendation and implementation.

Unlike previous riot commissions, these commissions were rather obscure, lacking in prominence, and unknown to the general public. Even commissioners who served on the commissions had a hard time remembering that they served. One wrote to me: “I was not very involved in the report because I never thought it meant anything” (Assembly Special Committee member, e-mail message to author, April 28, 2005). This commissioner also noted that the commission was formed for the benefit of the elected representatives of the riot area, but that there was never a “concrete initiative” for real reform. This comment illustrates the way in which commissions are created for the appearance of action and accountability but often with no genuine plans for change.

The four commissions created to study the 1992 Los Angeles riot each produced final reports that were virtually ignored by the media and thus the public. The reports tended to be very short and vague, calling on many groups outside of government—from philanthropic charities to small businesses—to invest their time and resources in the riot areas. However, it seems very unlikely that these groups would even be reading the reports since there was no effort to publicly distribute the reports.

In the end, the four commissions that were instituted in the aftermath of the 1992 riot did little more than advocate for economic reforms to try to increase economic growth in Los Angeles. For instance, urban enterprise zones, which would give tax credits to businesses that invest in and set up shop within the zones, were heavily promoted by the commissions. Race relations and racial inequality played a marginal, if any, role in all four reports. However, even with a more right-of-center commission report, little action was taken on the recommendations.

To an even greater extent than their predecessors, these 1992 commissions had almost no success in implementing any of their recommendations. The riots had erupted six months before the 1992 presidential election and both candidates quickly touted urban enterprise zones as a panacea for the region’s social problems. On May 8, 1992, Democratic candidate Bill Clinton appeared on CNN the week after the riot and was asked about President Bush’s recovery plans, to which he replied: “it sounded like what I’ve been advocating for years in terms of...getting back to grassroots empowerment and enterprise initiatives” (Box 3, OA/ID 41420, Cabinet Affairs Collection, George H.W. Bush Presidential Library). Two weeks after the riot, President Bush issued an “Urban Aid

Initiative” statement – a six point action plan that included a call for urban enterprise zones, as well as a “weed and seed” initiative that would “weed” out crime from the community and then “seed” it with expanded social services (President George H.W. Bush. 1992. “Statement on Urban Aid Initiatives”). However, the day after the 1992 presidential election, President Bush vetoed a long-term aid package for the riot-affected areas, despite the fact that the bill included enterprise zones and “weed and seed” initiatives that he had championed throughout the campaign and that were recommended by the riot commissions.

The three riots and their commissions discussed above illustrate the way in which independent commissions submit the riot to a bureaucratic process that de-politicizes the violence. However, the stage in which this “processing away” of the crisis occurs varies from commission to commission. For instance, the Kerner Commission was most evasive in the implementation stage, while the Chicago Commission had the most problems in the commission stage. I turn now to the 9/11 Commission to show the similarities between this very prominent national security commission and the riot commissions. Like the riot commissions, the 9/11 Commission faced a number of obstacles, such as funding shortages, time constraints, commissioner disagreements, a noncompliant executive, and hesitancy to implement reform.

The 9/11 Commission

The 9/11 Commission (formally, the National Commission on Terrorist Attacks upon the United States) was born out of the intense and unrelenting lobbying of the families of the 9/11 victims. Its mandate—“to investigate the facts and circumstances relating to the terrorist attacks of September 11, 2001” (9/11 Commission Report 2004, xv)—was sweeping. According to Chairman Kean and Vice Chairman Hamilton, the mandate was perhaps too broad, asking them to investigate the entire U.S. government in an effort to understand an unprecedented event (Kean and Hamilton 2006, 14). The wide-ranging nature of the Commission was likely a result of the hesitance of both the White House and Congress to institute the Commission at all.¹ The Bush administration made clear from the beginning that the Commission not be a “runaway commission” used as an institutionalized stage for public Bush-bashing. In those same early meetings in which top White House officials expressed runaway commission concerns, they also emphasized the limitations of time and money awarded to the Commission – and warned not to ask for more of either. It is therefore not surprising that two years after the 9/11 Commission report was released, Kean and Hamilton declared: “We were set up to fail” (Kean and Hamilton 2006, 14).

The chief obstacle to the formation of the 9/11 Commission was the most likely target of such an investigation—the White House. House Republicans were almost as wary of the Commission and according to Kean and Hamilton, “not inclined to help the Commission succeed [and] holding the budget at \$3 million was one way to ensure that [it] did not” (Kean and Hamilton 2006, 43). The Commission was indeed given just \$3 million to work with, far below what is normal for an independent commission, particularly one with such an expansive mandate. In comparison, the commission set up twenty years earlier to investigate the *Challenger* space shuttle disaster was given a budget of \$40 million. Even early estimates of the 9/11 Commission projected it would run out of money a full year before its scheduled reporting date. In early 2003, the Commission pushed both Congress and the White House for more money but faced resistance from both. The White House initially denied requests while House Republicans continued to stonewall. In the end, both branches provided enough money to comfortably sustain the Commission for its duration.

Thus, despite dire concerns at the outset, funding would prove to be the least of the problems for the 9/11 Commission. Even more troublesome issues would arise to hinder the Commission from the beginning: lack of infrastructure, timing, and subpoena power. Each is discussed below.

From the beginning, the Commission lacked the infrastructure required to run a proper investigation of such a huge crisis. Two months after its inception, the commissioners still had no office, no schedule for work, no security clearance, and only one employee. Staff interviews took place in executive director Philip Zelikow's hotel room in Washington, DC. Lacking a commission telephone, the cell phone of Zelikow's assistant became the main commission telephone number. Four months into the commission process, the commissioners finally held their first public hearing, but found themselves with no gavel.

As with the riot commissions above, timing for the 9/11 Commission was also an obstacle. It was given just a year and a half to conduct research, hold hearings, and write the final report. Again, such timing restrictions illustrate that appointing bodies often do not want commissions to delve too deeply into the issues, preferring that they instead engage in a surface-level investigation. Ultimately, the 9/11 Commission asked for only a two month extension, pushing its report release from May 2004 to July 2004. This did not please anyone, as it meant that the report would be released at the height of the presidential election cycle and amidst the Republican and Democratic National Conventions. With the help of Senators McCain and Lieberman, the extension was granted by Congress but not without a fight from politicians from both parties.

Finally, the issue of subpoena power was a contentious one from the beginning, both within the Commission and for the 9/11 families. The Commission was granted the power when it was created, but it required the vote of 6 out of 10 commissioners to issue a subpoena. Partisanship crept in, with Democratic commissioners generally favoring the wide use of subpoenas and Republican commissioners favoring a more limited, if any, use of subpoena power. Vice Chairman Hamilton broke from his Democratic colleagues on this issue and sided with Kean, thus ending debate on the possibility of the aggressive use of the subpoena. Those who favored reserving the subpoenas for non-compliance felt that blanket subpoenas would be unnecessarily antagonistic toward the White House; something they feared would backfire and cause more non-compliance. The argument was that the Commission should make the administration see the Commission as on its side, as part of the same team looking for answers. In the end, the subpoenas were used infrequently and only against non-compliant agencies like the FAA and the Pentagon. Two things seemed to work more effectively in gaining compliance: threat of subpoena and public shaming. The latter was achieved through such mechanisms as interim reports that mentioned "slow starts" and "delays" and through media interviews that hinted at some executive branch recalcitrance. All of the tactics worked to some extent, with the Commission eventually gaining access to the coveted Presidential Daily Briefings (PDBs), but the 9/11 Commission process can generally be categorized as involving high levels of non-cooperation from government agencies. It is the nature of the independent commission – the appointing body has little incentive to cooperate beyond the creation of the Commission, which lacks any true authority in holding the appointing body accountable.

Thus, these issues of funding, infrastructure, timing, and subpoena power were overshadowed by the biggest obstacle of all—government resistance in cooperating with the Commission. Many government officials showed disdain for the Commission from the beginning, which seemed to only foreshadow the eventual dismissal of the final

Commission report. Thus, while the commissioners publicly stated that they eventually got what they needed from government officials, their frustration with regard to lack of government compliance during the process was widely recognized as media outlets continued to report on the stonewalling of many government agencies and branches. The result was what many, particularly the 9/11 families, viewed as a watered-down final report with weak recommendations that would likely never be enacted.

I turn now to the second stage of the commission process—the recommendation stage. The report was written for the layperson and policymaker alike so it seems to offer the symbolic sense of accountability for the American people, while also offering insight to government officials on how certain warnings were completely missed despite the fact that “the system was blinking red” (9/11 Commission Report 2004, 254). The Commission points out failures of imagination, policy, capabilities, and management, suggesting that those within the security community did not have the imagination to understand the gravity of the threat, nor the institutions and capabilities to deal with a new kind of terrorist threat. Instead, it found an outdated security system stuck in the last stages of the Cold War and a gaping hole in security communications between those studying foreign threats and those studying domestic threats. There was also a general confusion about the sharing and use of information gathered in the various intelligence channels. The recommendations of the 9/11 Commission focus generally on the antiquated security capabilities, as well as the detached relationships between the various entities involved in threat information, collection, and dissemination.

In some respects, the recommendations of the 9/11 Commission are assertive. The recommendations speak to the fact that, prior to the 9/11 attacks, national security was stuck in a “system designed generations ago for a world that no longer exists” (9/11 Commission Report 2004, 399). As such, the commissioners recommended significant restructuring of the government, including the institution of a National Counterterrorism Center to unify strategic intelligence and operational planning, the appointment of a National Intelligence Director, installation of a network-based information-sharing system, strengthening congressional oversight of national security and the intelligence community, and strengthening the FBI and homeland defenders. The restructuring calls for a shifting of lines of authority, and an integration of intelligence information, as well as clear delineations of responsibility, (for instance, between the Departments of Defense and Homeland Security) so as to make the government more efficient while still responsive. The commissioners were concerned about the “balkanization” of the intelligence and security community and in writing the recommendations, were driven by the notion of quarterbacking – namely, “who is in charge?” The commissioners consistently questioned who exactly was directing the budget, personnel, and priorities of the fifteen intelligence agencies that were spread throughout the government. Kean and Hamilton write, “Nobody had a satisfactory answer” (Kean and Hamilton 2006, 282).

These more tangible recommendations follow its more symbolic recommendations regarding foreign policy, including identifying and prioritizing terrorist sanctuaries, reaching out, listening to, and working with other countries, offering an “example of moral leadership in the world,” defining the United States in the Muslim world, and developing a “common coalition approach toward the detention and humane treatment of captured terrorists” (9/11 Commission Report 2004, 380). The Commission calls such recommendations “a global strategy,” and they reflect the Commission’s overall diplomatic stance on foreign policy. The multilateral foreign policy orientation of the Commission’s

recommendations is in sharp contrast to the Bush administration's preference for unilateral action. It is therefore not surprising that the White House resisted the recommendations and that implementation was only marginally attempted or achieved.¹¹ I turn now to the third stage of the commission process as it is in this last stage that the 9/11 Commission faced its biggest challenges and had the highest levels of commission politics.

As mentioned above, in late 2005, the commissioners re-convened and issued mostly failing grades for progress made on implementing the recommendations. They noted that they had seen "positive steps toward carrying out the recommendations of the 9/11 Commission, but still found much to be done" (Kean and Hamilton 2006, 341). A year later in the 2006 midterm elections, the Democrats campaigned on 9/11 reform and implementation of the recommendations. When they were swept into power in Congress, they quickly passed a bundle of reform laws aimed at implementing some of the 9/11 Commission's recommendations. However, implementation still falls far short of what the 9/11 Commission had proposed in what some—particularly the 9/11 families—saw as an already watered-down report.

A year before the issuance of the failing grade report card, President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. Getting the bill passed was a difficult task, with most intelligence reform resistance coming from ardent supporters of the Department of Defense who did not want to see reapportionment of power away from the Pentagon. After a conference committee bill was hobbled together in the fall of 2004, enough votes were lined up to pass the bill. But lacking the majority of Republican caucus votes, Speaker Dennis Hastert failed to bring the bill up for a vote. However, opposition came from outside Congress as well. Senator Pat Roberts (R-KS) told Fox News after the unraveling of the compromise bill: "I don't think it was only House Republicans...There's been a lot of opposition to this from the first. Some of it is turf...some of it is from the Pentagon. Some of it, quite frankly, is from the White House, despite what the president has said" (Stolberg 2004). Senator Roberts' concerns echoed what many feared; namely, that the recommendations of the 9/11 Commission did not have the full, or even partial, backing of the executive branch. Nonetheless, a compromise bill was reached with President Bush sending Congress a letter urging its passage.

The act did contain some tangible reforms that were recommended by the 9/11 Commission, such as the establishment of a Director of National Intelligence and a National Counterterrorism Center. However, it also centered on less substantive issues, for instance, stating: "the United States should encourage reform, freedom, democracy, and opportunity for Muslims; and the United States should work to defeat extremism in all its form, especially in nations with predominantly Muslim populations by providing assistance to governments, governmental organizations, and individuals who promote modernization" (Intelligence Reform and Terrorism Prevention Act 2004). The means for achieving such goals are imprecise and it is clear that later, the Bush administration took a more forceful approach in trying to achieve these aims, whereas the 9/11 Commission report had emphasized more of a soft-power diplomatic approach.

In the end, the 9/11 commissioners were pleased at the passage and signing of the Intelligence Reform and Terrorism Prevention Act. Kean and Hamilton write: "With the Intelligence Reform and Terrorism Prevention Act of 2004, some of [the] defects were addressed—notably, the structure of our national security agencies. Yet no law is self-executing...It will take years to see if our recommendations are implemented effectively to correct the defects they were intended to address" (Kean and Hamilton 2006, 318).

In fact, Kean and Hamilton waited only one year before they took action and

publicly condemned the government for not being more proactive in its pace of recommendation implementation. At the press conference on December 4, 2005 in which they issued the report card, Chairman Kean gave opening remarks and openly expressed his frustration:

Many obvious steps that the American people assume have been completed, have not been. Our leadership is distracted. Some of these failures are shocking. Four years after 9/11: It is scandalous that police and firefighters in large cities still cannot communicate reliably in a major crisis. It is scandalous that airline passengers are still not screened against names on the terrorist watch list. It is scandalous that we still allocate scarce homeland security dollars on the basis of pork barrel spending, not risk... We believe that the terrorists will strike again. If they do, and these reforms have not been implemented, what will our excuses be? While the terrorists are learning and adapting, our government is still moving at a crawl (Kean and Hamilton 2006, 341-342).

Hamilton pointedly accused the FBI of “inertia” and “complacency” and Republican commissioner John F. Lehman declared that “none of it is rocket science” (Williams 2005). At the press conference, the Commission spoke vaguely about who was responsible for lack of implementation and did not mention the Bush administration in particular. They recognized that some steps had been taken but they noted that what’s missing is “effectiveness” of implementation – in other words, the reforms lacked teeth.

Two years after the press conference, they again spoke of lack of real implementation. For instance, they noted that as of 2007, a Director of National Intelligence had been installed but that he lacked full control over all the various intelligence agencies, a role that was central and crucial to their reasoning for recommendation of the position. They also noted that the FBI had reformed itself slightly but serious problems remained: “inadequate information technology, deficiencies in analytical capabilities, too much turnover in the workforce and leadership, and insufficient investment in human capital and training” (Kean and Hamilton 2006, 341-342). In other words, six years after the 9/11 attacks, three years after the release of its report, and two years after issuing a failing report card on progress, the 9/11 Commission members remained disappointed at the evasion tactics of a government in which all of them had served.

There was one area of lack of implementation that particularly irked Chairman Kean and Vice-Chairman Hamilton – the Privacy and Civil Liberties Oversight Board. In the section labeled “A layered security system,” the 9/11 Commission calls for an executive branch board to “oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties” (9/11 Commission Report 2004, 395). They offer the following rationale for the recommendation: “We must find ways of reconciling security with liberty, since the success of one helps protect the other. The choice between security and liberty is a false choice...if our liberties are curtailed we lose the values that we are struggling to defend.” Previous recommendations had hinted at increased government authority in maintaining U.S. security, and recommendations such as these seemed to be the Commission’s attempt to warn against too much consolidation of governmental power. In *Without Precedent*, Kean and Hamilton note that the Commission did recommend some strong powers to protect us, but recommendations such as the Privacy and Civil Liberties Oversight Board were meant to provide a “strong voice on behalf of individual and civil liberties” (Kean and Hamilton 2006, 325-326). However, by recommending that the civil liberties board be within the executive branch, they were

asking the branch to oversee itself; lack of implementation should have been anticipated.

And yet Congress did create the Privacy and Civil Liberties Oversight Board in the Intelligence Reform and Terrorism Prevention Act signed by President Bush in December 2004. Section 1061 of the Act notes that “in conducting the war on terrorism, the Federal Government may need additional powers and may need to enhance the use of its existing powers [and] this potential shift of power and authority to the Federal Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.” The erection of the civil liberties board was meant to be this check. However, there were three immediate problems (Isikoff 2006). First, the White House and congressional leaders had denied the Board basic oversight tools, such as subpoena power. Second, President Bush did not nominate members of the board for another six months after it was created and they were not confirmed for another eight months. Finally, a year and a half after the Board was created, it had not hired any staff members, had not held a meeting, and was not listed in the 2006-07 federal budget. Critics also pointed out that the chair of the Board was Carol Dinkins, then-Attorney General Alberto Gonzales’ former law partner. Another Board member’s wife was killed in the 9/11 attacks, causing critics to question his impartiality in the war on terrorism.

The concerns raised by many with regard to the Board were addressed by the newly elected Democratic majority in Congress in 2006. House Speaker Nancy Pelosi made the 9/11 Commission recommendations the first order of business and introduced H.R. 1 on January 5, 2007. It passed the House four days later, with final passage occurring six months later after a conference committee. In the end, only 40 House members and 8 Senators voted against the bill and President Bush signed it into law in August of 2007. The legislation fixed some of the issues with the Privacy and Civil Liberties Oversight Board. Specifically, it moved the Board out of the Executive Office, making it an independent agency within the executive branch. It also gave the Board subpoena power, required that Board members be appointed expeditiously, required that they be confirmed by the Senate, mandated semiannual reports to the appropriate congressional committee (including a minority report if one existed), and implemented the role of Privacy and Civil Liberty Officers to assist, advise, oversee, and investigate matters of civil liberties and privacy within various executive agencies (Implementing Recommendations of the 9/11 Commission Act 2007, Section 1, Sec. 801-804). These revisions were a step closer to the 9/11 Commission’s vision of a post-9/11 secure democracy and along with the other provisions in the bill, made the recommendations more of a reality. House Democrats even prepared a side-by-side comparison report, showing the 9/11 Commission’s recommendations alongside the provisions in the 2007 legislation (U.S. House Committee on Homeland Security 2007).

In May of 2007, just before the final legislation passed the conference committee, Kean and Hamilton gave an interview in which they noted many successes in the implementation of the Commission’s recommendations. When questioned about implementation at that point, Hamilton noted that if H.R. 1 passed—which it did—about 80 percent of the recommendations would be implemented. Hamilton also noted that the White House had been generally supportive of the provisions. However, he also argued that many “common-sense” recommendations, such as communication methods between fire, police, and health officials and distribution of homeland security funds, had not been implemented. Kean concurred and noted: “What we’re really asking for now is that some of this stuff be speeded up. Because what we believe is while America is safer thanks to these recommendations that are being implemented, we’re not safe enough yet. We’re really not

safe” (Kean and Hamilton, Interview, 2007). Kean’s distinction between “safer” and “safe” would provide the foundation for an editorial authored by both of them a few months later.

The editorial first appeared in the *Sacramento Bee* on the sixth anniversary of the 9/11 attacks. It was titled, “Six Years After 9/11, We’re Not Safe Enough” (Kean and Hamilton 2007). The piece began with a simple question and followed it with a straightforward answer:

Are we safer today? Two years ago, we and our colleagues issued a report card to assess the U.S. government's progress on the bipartisan recommendations in the 9/11 commission report. We concluded that the nation was not safe enough. Our judgment remains the same today: We still lack a sense of urgency in the face of grave danger.

What is most striking about this editorial and its warning against lack of implementation of the Commission’s recommendations is that a major piece of legislation was signed by President Bush less than one month before. Indeed, the legislation was passed and signed into law in between the May 2007 interview and this editorial. Yet, Kean and Hamilton remained unconvinced that implementation levels were sufficient. They called progress at home “slow” but “real” and they largely blamed the tenets of American foreign policy for fueling the desire and perseverance of Islamic radicals. They also pointed to the reforms that had occurred, including the appointment of the Director of National Intelligence and the erection of the National Counterterrorism Center, but noted that these reforms have not been as “bold” as they had imagined. For instance, they illustrate how information sharing was still a problem within the security community, transportation security remained mired in antiquated technology, and Congressional oversight of homeland security was neither “effective” nor “robust.” Indeed, Kean and Hamilton generally pointed out that while implementation efforts worked to some extent, they lacked teeth. Appointments were made, offices opened, and boards appointed, but lacking any real power, proper channels for communication, and technological updates, the reforms remained hollow.

Four years after the editorial, on the tenth anniversary of 9/11 in 2011, Kean and Hamilton released another report assessing the progress made on recommendations. They note the many successes (including improved information sharing within the intelligence community and airline passenger screening), but again highlight the notable failings. In particular, they review nine policy recommendations, with the Privacy and Civil Liberties Board being one area that they investigate. Kean and Hamilton do not mince words: “If we were issuing grades, the implementation of this recommendation would receive a failing mark” (National Security Preparedness Group 2011, 16). Indeed, the Board had been dormant for the previous three years. In the end, this ten year anniversary report notes that, despite “considerable progress,” these “unfulfilled” and “major” policy recommendations continue to put the security of the United States at risk (National Security Preparedness Group 2011, 6).

The 9/11 Commission thus saw its highest levels of commission politics in the first (commission) and third (implementation) stages, though the second (recommendation) stage was not without problems either. In the initial, commission stage, there was much foot-dragging and resistance to the very idea of a 9/11 Commission. This was followed by the familiar commission tactics of underfunding and understaffing. Eventually, the members pushed through the commission process and issued a fairly hard-hitting report. However, in the final, implementation stage, the commissioners were again met with resistance and egregious defiance of their recommendations. In a move that was upsetting and yet expected

by this point, the White House told the 9/11 families that they would set up its own “working group” to study the 9/11 Commission’s final report and make their own recommendations to the president (Breitweiser 2006, 205). The idea of setting up a new commission to report on a previous commission is not a new one – riot commissions have long employed such tactics. Two decades after the 1965 McCone Commission that studied the Watts riot, it was suggested that another commission be instituted to study the first commission and in 1967 President Johnson appointed mini-commissions within government agencies to review Kerner Commission recommendations and essentially give their own recommendations. Thus, the 9/11 Commission’s processing of the 2001 attacks is similar to that of the riot commissions of years past. Indeed, America has a dependence on independent commissions.

Conclusion

The tactics and trends of riot commissions are thus mirrored in the 9/11 Commission. Kean and Hamilton’s exposé of the commission process, *Without Precedent*, has a misleading title, given the long history of commission politics in the United States. There is indeed precedent – independent commissions in the United States have been bureaucratizing and “processing away” major events, such as riots and the 9/11 attacks, for at least a century. Observers of political commissions could thus expect similar results with other independent commissions.

The de-politicization of events such as riots, natural disasters, and wars that occurs when commissions are appointed portrays the way in which the government effectively minimizes any responsibility while also appearing to be responsive and accountable. The issue, of course, is that any potential lessons are ignored as failure to invoke change results in “a disturbing echo of failed practices,” as Kean and Hamilton (2007) stated. Given the center-right nature of the American political system, it is perhaps easier to understand why the status quo would be desired by political elites as a result of the riot commissions, but it is less clear why it would be of any good with a national security crisis.

This study began with a puzzle—how is that independent commissions are simultaneously effective and ineffective? And what are the effects of this paradox on the status of democracy in America? Substantive policy shifts are a rare outcome of independent commissions, making them rather ineffective. However, they are very effective mechanisms of evasion that allow government officials to claim responsibility and accountability, while also satiating public demand for answers. It is a troubling combination for American democracy as the government receives high marks from the American public for being responsive but an actual—or real—response is absent.

This article has also shown the ways in which government in America, through the use of independent commissions, evades responsibility at many different stages in the commission process. Some are more elusive in the initial, commission-formation stages, such as the Chicago Commission, while others, like the 1992 Los Angeles commissions, are also vague, and thus lacking in substance, in the middle, recommendation stage. Still others are more evasive in the latter stages, such as the Kerner Commission and the 9/11 Commission, when they are making recommendations or seeking implementation. This model helps us to understand where and at what stage in the process the de-politicization is most severe. Knowing this, public officials can begin to institute more effective commissions.

Are commissions inherently ineffective? In fact, they are not. Adequate resources (timing and funding), a body set up to oversee implementation (such as the 9/11

Commission's Public Discourse Project), inclusion of costs of recommendations as part of the final report, and an actual balance of representation on the commission in terms of membership, are all aspects that would help to make the independent commission process effective, accountable, and an agent for positive political and social change.

ⁱ A small, bipartisan group of Senators and Members of Congress was primarily responsible for the creation of the 9/11 Commission. Coupled with the intense and compelling advocacy of 9/11 families, opposition to the commission's formation was overcome.

ⁱⁱ It should be noted that the 9/11 families were not satisfied with recommendations, finding them to be distilled and watered-down. They would end up being even more disappointed with the rate of implementation.

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Author Biography

Lindsey Lupo, PhD, is a Professor of Political science at Point Loma Nazarene University and the Director of the Institute of Politics and Public Service. Her fields of research include urban politics, social movements, democratization, and political violence. She can be reached at lindseylupo@pointloma.edu.