Commissioning the Truth: Evaluating Commissions of Inquiry as a Policy Response to Crisis Events

Emily Pechar*

WORKING PAPER RR #13
NOVEMBER 2014

*Doctoral Candidate in the Nicholas School of the Environment, Duke University. Member of the Rethinking Regulation@KIE Bass Connections project “Regulatory Disaster Scene Investigation.”
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Emily Pechar, Rethinking Regulation@KIE
Duke University
September 2014

Abstract: For centuries, governments have deployed commissions of Inquiry (COI) to investigate prominent policy issues and recommend policy changes. Over the past two-hundred years, COIs have become increasingly popular as government responses to national crisis events, ostensibly allowing the government to perform a thorough, independent investigation of the causes of these events and formulate policy recommendations to prevent their reoccurrence. Although much of the scholarly literature on COIs focuses on specific commissions or offers support or critiques for Commissions of Inquiry as a general policy tool, few authors have assessed how these commissions are used by governments to respond to crisis events. This essay provides a detailed overview of how Commissions of Inquiry are used in this capacity in five English-speaking countries. It evaluates the advantages and disadvantages of the use of commissions to investigate crises, and identifies several characteristics of Commissions of Inquiry that impact their effectiveness in influencing policy changes at the executive and legislative levels.¹

Introduction

In the aftermath of a crisis event that places significant political pressure on policymakers, political elites often respond by appointing ad hoc investigatory bodies commonly known as Commissions of Inquiry (COI), Royal Commissions, or Blue Ribbon Panels. Governments establish these ad hoc commissions to uncover facts and identify relevant broader contexts that help to make sense of a crisis event, to identify what went wrong, and to provide policy recommendations to address failings in the government or other organizations. Governments tend to create COIs when the normal investigatory procedures or judicial inquiries seem to be inadequate to the task at hand, either because of the need for technical expertise or because the likely course of investigation involves decision-making by governmental bodies (Cooray 1985). Scholarly assessments of COIs show that they can be a meaningful addition to policy making, especially by providing the valuable insight of experts outside of the government. COIs are especially prevalent in the aftermath of perceived major crises, when there is public pressure to respond meaningfully in some way, and the government sees advantages in convening an expert-led independent investigation (Tama 2014).

Commissions of Inquiry are just one type of policy tool that governments use to investigate crisis events and other contentious policy issues. Investigatory bodies at every level of government pride themselves in their ability to perform probing, incisive investigations that reveal pivotal evidence and offer relevant analysis for the formulation of policy recommendations. Normal channels of policy assessment such as

¹ This essay was completed as part of a Bass Connections Team at Duke University. Financial support was provided by a Bass Connections grant, as well as funding from the Smith Richardson Foundation to Rethinking Regulation@KIE for the interdisciplinary research inquiry, “Recalibrating Risk: Crises, Perceptions, and Regulatory Change.”
legislative hearings or executive task forces, however, have their own limitations. They sometimes lack expertise with regard to the issues at hand, and inevitably take place in a context of partisan politics. Due to their ad hoc nature and the independence granted to them through their mandates, Commissions of Inquiry theoretically can skirt these problems. Nonetheless, social scientists have frequently critiqued COIs because of their vulnerability to political manipulation (McGarity 2005; Tama 2011; Ashforth 1990; Centa and Macklem 2001).

Figure 1 below provides an overview of the different types of investigatory bodies used by the US government to evaluate policy issues, placed along a spectrum of independence from governmental influence. Congressional committees are considered the least independent, often falling victim to partisan political influences and conflicts between the Congressmen on the committee. As opposed to ad hoc Commissions of Inquiry, Congressional committees are made up of elected officials, not ostensible experts from the field of inquiry. Given this, only “the very best have managed to achieve a level of bipartisanship to maintain credibility,” (Senate 2014). Another notable form of government crisis investigation is a standing independent investigatory body. Examples of these bodies include the United States National Transportation Safety Board, the United States Chemical Safety Board, the New Zealand Transport Accident Investigation Committee, and the Dutch Safety Board, among others. As standing governmental bodies, these organizations run independent investigations on incidents in specific sectors (most frequently transportation), combining proven methodological experience with technical expertise to evaluate a crisis event with an independent eye. These organizations have, on the whole, developed a strong reputation for technical competence, professional independence, and commitment to improved safety. But the extension of this approach beyond discrete accidents or incidents to larger crisis events such as financial crises may pose additional challenges.

Some authors have also identified Inspector Generals as a potential alternative to Commissions of Inquiry. Inspector Generals are embedded within a government agency and are designed to identify fraud, waste, abuse or illegal behavior within specific governmental departments or agencies. Although they are technically part of the agency that they are investigating, they usually have secure budgets, receive long-term appointments, and do not report to agency heads. While this institutional features provide a great deal of independence, the purpose of these institutions is not usually to investigate crisis issues or policy problems. Instead, Inspector Generals generally focus on protecting fraud and preventing abuse in government departments (Centa and Macklem 2001). The success of these groups in effectively investigating government matters, however, could be used as a benchmark to develop independent crisis investigation bodies.

**Figure 1: Independence Spectrum of Policy Investigatory Bodies in the United States**

The existing literature on Commissions of Inquiry mostly focuses on reviewing specific commissions, evaluating their use in national security (Farson and Phythian 2010; Kitts 2006) or critiquing them as a
political tool for blame avoidance in the government (Sulitzeanu-Kenan 2010). Thus few authors have attempted to provide a broad description of these institutions. Even fewer have evaluated how effective these commissions are at addressing crisis events specifically. Drawing especially on English-language social science scholarship, this paper furnishes a descriptive analysis of Commissions of Inquiry in several countries as a policy mechanism for responding to crisis events. To this end, the first section below provides a brief history of Commissions of Inquiry, while the second section combines findings from several pieces of literature to define Commissions of Inquiry and compare different formats in several English-speaking countries. The remaining sections of the paper identify both strengths and weaknesses of this form of governance in developing workable policy recommendations after crisis situations. We find that commissions are especially influential when they are transparent and open through public hearings and broad stakeholder involvement, when recommendations are unanimous and favor reorganization over legislation, when there are short start-up times to take advantage of policy windows, and when the commissions are granted flexibility and autonomy from the government to maintain independence.

**History of Commissions of Inquiry**

Commissions of Inquiry have been an integral part of governance in many countries for centuries. The first known commission was set up by William the Conqueror in the 11th century to create the Domesday Book, a survey of the wealth, population, and cultivation of England just after the Norman Conquest. While COIs became less prevalent during the following centuries due to the tight centralization of power in monarchies, they experienced a resurgence in Britain in the 19th century as a way to investigate and address a variety of socio-economic challenges posed by industrialization (Ashforth 1990).

The tradition of Commissions of Inquiry quickly spread outside of the UK, first to other Anglo countries in the 19th century, and soon to other governments and even the United Nations in the 20th century. In several countries, legislatures have formalized the role of commissions as independent investigatory bodies that probe matters of public and political concern through a series of governmental statutes. Canada was the first country to formalize inquiries in the Inquiries Act of 1846, followed soon after by Australia’s Royal Commissions Act of 1902, New Zealand’s Commissions of Inquiry Act of 1908 and the UK’s Tribunal Act of 1921, which stipulated a procedural framework for independent commissions to investigate political issues (Sulitzeanu-Kenan 2010). During the 20th century, reliance on this form of investigation grew quickly; in America for example, the increasing use of commissions following the Great Depression and World War II eventually prompted the Federal Advisory Commissions Act of 1972 to inject order into Executive commissions and reduce the overall number of commissions. This act formally defined an advisory committee in the United States, restricting their formation to only those issues deemed essential (Kitts 2006).

The prevalence of this mode of government investigation varies from country to country, becoming more common recently in Canada and Australia, and less common in the United Kingdom. Recently, most countries have begun to shift away from the informally appointed Royal Commissions and have relied more heavily on statute-based independent Inquiries (discussed further in the following section). Nonetheless, COIs as a policy tool continue to be important institutional bodies to aid in governance and public policy making worldwide (Rowe and McAllister 2006).
Defining Commissions of Inquiry

Commissions of Inquiry serve several purposes in public life. Although their primary role is to uncover facts and investigate matters of public importance to inform relevant policy debates, COIs can also educate the public on important policy matters (Centa and Macklem 2001). In the modern political environment of partisan stalemates, policymakers increasingly turn to commissions as a form of “automatic governance,” generating policy recommendations outside of the traditional legislative and regulatory processes. COIs allow governments to investigate a specific political or policy issue, draw on expertise within and outside of the government, and propose policy changes backed by the credibility of an independent and usually transparent investigation (Hanlon 1991).

Social scientists deploy the term “Commission of Inquiry” to describe a wide array of policy tools. Thomas Berger, for example, defines two categories of COIs: commissions created to deal with broad questions of public policy (e.g. education, Medicare, the War on Drugs), and commissions that look into specific allegations of wrongdoing or blame, often as a response to a crisis event (Berger 1999). The Commissions of Inquiry considered in this essay all conform to this second category. They all were ad hoc institutions created in response to events that political elites deemed to constitute grave crises. They were also all appointed at the discretion of an executive or a legislative body, but as entities formally external to the government, with the main task of investigating past events and identifying policy recommendations to prevent the reoccurrence of crisis events (Sulitzeanu-Kenan 2010).

Every country that uses COIs as an investigatory policy tool structures them somewhat differently. This analysis focuses on COIs found in the English-speaking countries of the United States, the United Kingdom, Australia, Canada and New Zealand, where they tend to be most prevalent. These countries typically use COIs in roughly similar forms. Figure 2 displays the variety of COIs found in each of the five countries, including the statute giving the inquiries legitimacy, and the appointing body (signifying whether the commission is appointed by the executive or legislative branch).

Figure 2: Forms of National Commissions of Inquiry in the Five Case Countries
In the United States, ad hoc COIs at the national level have two forms -- an executive form (Presidential Advisory Commissions) and a legislative form (Congressional Commissions) (Hanlon 1991). Additionally, subnational governments can also appoint commissions to investigate crisis events, such as after the Columbine school shooting in 1999 or the Exxon-Valdez oil spill in 1989. As demonstrated by the sample of United States commissions in Table 1, American COIs that have addressed national crises over the past 50 years have most frequently been Presidential advisory commissions. These commissions receive a mandate to investigate policy issues or crisis events and prepare reports, through which they educate the President, lawmakers, and the public about an issue. Due to their advisory and investigative nature, Presidential advisory commissions often serve a symbolic role to reassure the public that the government is acting on a crisis issue (Hanlon 1991). President Obama’s quick effort to appoint a commission to look into the Deepwater Horizon Oil Spill perhaps serves as a case in point; he convened this COI while oil was still flowing into the Gulf of Mexico. Sometimes governments turn to commissions as a means of providing a cooling-down period in response to a crisis. This goal at least partly motivated the creation of the Kerner Commission created in 1967 to investigate the causes of American race riots. In at least some circumstances, a commission can allow the government to delay action if not prepared to address a crisis situation immediately, or give it time to develop policy in a more reflective way (Wolanin 1975).

Like Presidential advisory commissions, Congressional commissions in the United States are appointed by Congress to provide a highly visible forum for important issues and provide greater expertise than may be available in the legislature (Glassman and Straus 2013). Unlike Congressional committee investigations, these commissions are ad-hoc and short term, existing for a limited purpose with a limited budget and disbanding after completing their report. While Congressmen often participate on such commissions, their makeup usually includes key experts in the field, both as commissioners and staff. Congressional commissions can be more powerful than Presidential advisory commissions because their recommendations sometimes receive “fast track” status within the legislative process, therefore bypassing various procedural obstacles. In some cases, governments even stipulate policy recommendations be adopted automatically once the commission completes its investigation. By reducing congressional discretion, however, these commissions also risk reducing democratic accountability and undermining the traditional legislative role of Congress (Hanlon 1991).

In other Anglo countries such as the UK, Australia, Canada and New Zealand, COIs mostly take the form of Royal Commissions or Public Inquiries. While there are nuanced differences between these two forms, most authors agree that the significance of terminology (Inquiries vs. Royal Commissions) is of little consequence (Salter 2003). As opposed to Royal Commissions which have Royal prerogative and are creatures of the executive government, Public Inquiries arise out of the civil bureaucracy or parliament (Gilligan 2002). Royal Commissions are appointed by the Government in power to inquire into a certain matter, and are generally led by a single Minister or Lord, often of a judge or lawyer (Prasser 2005). Tribunals (or Commissions) of Inquiry, alternatively, are mandated through statute and are appointed through Parliament or individual ministers.

In the United Kingdom and New Zealand, the use of Royal Commissions has been supplanted in the past 50 years by a growth of Public Inquiries. With only 11 Royal Commissions appointed in the UK since the

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2 The sample of commissions exhibited in Table 1 were selected based on the most prominent national crises over the past 50 years that resulted in investigatory commissions formed in the United States and select English-speaking countries with a tradition of Commissions of Inquiry. Each of the commissions was appointed in response to a crisis event involving either significant loss of life, major environmental threats or high-profile accidents with national ramifications.
1970s, this form of COI have become a “statistical speck amongst public inquiries held in Britain each year,” (Gilligan 2002, 291). The Inquiries Act of 2005 in the UK further emphasizes a shift towards Public Inquiries, providing a framework under which such investigations can be set up by Ministers to investigate events that have caused or have potential to cause public concern (Inquiries Act 2005).

In Canada and Australia, Royal Commissions of Inquiry have remained a popular investigatory tool throughout the 20th century, with the former appointing 74 Royal Commissions since 1970, and the latter appointing 89. Part of this divergence in frequency among different countries may have to do with the level of coercive power given to Royal Commissions by statutes in each nation. In Australia, the Royal Commissions Act of 1902 gives commissions inquisitorial and coercive powers3 without needing Parliamentary approval. In contrast, British law requires approval by both houses of Parliament for a Royal Commission to attain such coercive power, making Royal Commissions in the UK a less powerful investigatory tool (Gilligan 2002). Even in Australia, however, there has been a tendency to move from Royal Commissions to Public Inquiries. In 2009, an official Australian Inquiry of Royal Commissions advocated for the development of more flexible, less formal, and more cost-effective forms of inquiry. The Inquiry’s recommendation, still under consideration, was to establish two levels of ad hoc inquiries in Australia (see dotted line box in Figure 2). In the proposal, Royal Inquiries would remain the highest form of public inquiry established by the Governor-General of Australia to investigate matters of substantial public importance. Alternatively, official Inquiries would be established by ministers to look into less substantial matters of public importance (Australian Law Reform Commission 2010).

Characteristics of Commissions of Inquiry

One of the most attractive features of a COI is its flexibility in form and structure, allowing the commission adapt to the needs of distinct crises. As the UK Council on Tribunals concluded after an inquiry into potentially setting standard procedures for COIs:

“It is clear that the infinite variety of circumstances that may give rise to the need for a major public inquiry make it wholly impracticable to devise a single set of model rules or guidelines that will provide for the constitution, powers and procedure of every such inquiry.” (Bradley 2003, 36)

While each COI is unique in its structure, size and mandate, commissions appointed to respond to crisis events often have several common characteristics. Figure 3 below outlines the basic process that a COI undertakes when investigating a crisis event.

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3 Powers available to Royal Commissions include the capacity to compel the attendance of witnesses and the production of documents, to examine under oath or affirmation, impose penalties for recalcitrance, and give the same protection to commissioners and witnesses as they would enjoy respectively as judges and witnesses in civil proceedings before the courts (Gilligan 2002, 292).
First, the appointing body selects the commissioners and sets the mandate. This charge varies depending on the relevant statute and crisis circumstances, but generally identifies the focus of the investigation, sets a reporting deadline, and provides funding. The investigation itself is undertaken by the commissioners, supported by a staff of various sizes. Any hearings can be public, private, or a mix of both. Finally, the commission members typically submit a report of their findings and policy recommendations to the appointing body. Although most COIs make great efforts to reach unanimity, sometimes reports are published with dissenting opinions (such as in the case of the recent American Financial Crisis Inquiry Commission). In some cases, commission members also attempt, on their own initiative, to monitor the implementation of their policy recommendations. The 9/11 Commission, for example, recently published a Tenth Anniversary Report Card which documented that only nine of the 41 recommendations made by the commission remained unimplemented (National Security Preparedness Group 2011).

To evaluate the characteristics common among COIs, I assessed the workings of selected crisis-driven appointed COIs over the past 50 years in the United States, Australia, New Zealand, Canada and the United Kingdom. Table 1 presents a summary analysis. It should be noted that while Australia has been especially inclined to appoint Royal Commissions, it does not seem to frequently use them as a policy tool to address crisis situations. Of the 42 Australian commissions appointed since 1970, only four could be considered investigations into crisis events, none of which had widespread national impacts. In this section we will briefly discuss the key characteristics of these commissions, including appointment, length, mandate, size, subpoena power and unanimity.

4 The following Australian Royal Commissions appointed since the 1970s are considered reactions to crisis events: the Equine Influenza Inquiry of 2008, the HIH Insurance Group Failure Royal Commission of 2001, the Commission of Inquiry into the Relations Between the CAA and Seaview Air of 1994, and the Royal Commission into Aboriginal Deaths in Custody of 1991.
Appointing Body: Commissions in the United States at the national level can be appointed by both the President and the Congress, and a slim majority of our sample of crisis-response commissions were presidentially appointed. This trend seems to be shifting, however, with more congressional commissions than presidential commissions being appointed in the past twenty years. In other English-speaking countries in the sample, a united Government (supported by the prime minister) supports the appointment of a Royal Commission, led by a single minister in most cases, while Public Inquiries are generally launched by a single parliamentary minister. There is a common trend among most countries in the sample to shift away from Royal Commissions and increasingly use statutory Public Inquiries.

Duration: The COIs in the sample averaged approximately 15 months in duration, with the shortest lasting only three months (the Rogers Commission investigating the space shuttle Challenger crash), and the longest lasting four years (the Canadian commission to investigate the bombing of Air India flight 182). Commissions responding to crisis events tend to take less time to produce final reports than other types of commissions (such as advisory commissions looking into broader policy issues), perhaps reflecting the high public demand for a policy response and a short policy window available for implementing recommendations after a crisis.

Mandate: The mandates of these commissions almost all contain the same basic instructions from the appointing body: investigate what happened, identify causes, and develop policy recommendations to prevent the crisis from occurring again. The mandate of COIs is strictly independent from any judicial proceedings; most COIs cannot legally implicate any individual for wrongdoing. However, their findings can lead prosecutorial or judicial bodies to take up criminal investigations.

Size: Commission sizes vary dramatically. The UK and New Zealand tend to have smaller commissions, with inquiries in the UK being led primarily by one individual supported by a large staff. Several scholars have criticized the appointment of sole commissioners to conduct major inquiries, citing concerns about the potential death or incapacitation of a sole commissioner during the investigation, and arguing that “the agreement of competent minds is to be preferred to the view of a single person,” (Keith 2003, 169). In the US, the average size of a commission from the sample is 10.3 commissioners, with most made up of between 7-13 commissioners. Support staff varies widely as well in the sample, anywhere from a support staff of 4 people in the New Zealand Pike River Coal Mine Royal Commission to 172 staff and contributors on the Scranton Commission following the 1970 Kent State shootings. Generally support staff consists of legal advisors, research support and administrative assistants.

Methods: There are a number of different methods of investigation used by COIs, including research and review of documentation, briefs and transcripts, interviews, and witness testimonies. A major methodological differentiator among commissions is whether hearings are closed or open to the public. While some, such as the Warren Commission investigating the assassination of President John F. Kennedy, cover sensitive topics and choose to keep their hearings closed, the majority of commissions in the sample embraced the principle of transparency and keep at least some of their hearings and depositions open to the public. Since 1990, most COIs have opted for a mix of both public and private hearings in order to maintain some level of openness, while also protecting the testimonies of their witnesses on sensitive matters.

Subpoena Power: The ability to call upon individuals from within the government and industry to testify and provide insight into the crisis event is an important part of most commissions,
although it is not universal. The Deepwater Horizon Commission, appointed to investigate the oil spill in the Gulf of Mexico in 2010, was never given subpoena power despite several congressional attempts to provide it (Capps 2010). Internationally, commissions and inquiries established by statute generally can compel cooperation from corporations, government bodies, and individuals (Gilligan 2002). The major exception is Royal Commissions in the United Kingdom.

**Unanimity:** Unanimity among commissioners in supporting the recommendations from the investigation amplifies the influence that the recommendations have on policy, but it is not always obtained. The most prominent recent case of dissention among committee members occurred within the 2009 Financial Crisis Inquiry Commission in the United States. Even in the final report, four of the 10 commissioners formally dissented, submitting their own documentation of dissent from the conclusions of the commission as a whole. Other COIs, such as the Aspin-Brown Commission investigating the US Intelligence Agency in 1995, have also documented dissent among commissioners (Johnson 1995). Such dissent, even if not formally captured in the commission’s final report, can lower the ambition and reduce the credibility of the commission’s recommendations (Ashforth 1990).
Table 1: Major Commissions Appointed in Response to Crisis Events (1960-2010)

<table>
<thead>
<tr>
<th>Commission</th>
<th>Country</th>
<th>Date</th>
<th>Duration</th>
<th>Appointment</th>
<th>Size</th>
<th>Subpoena</th>
<th>Unanimous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Commission (The President's Commission on the Assassination of President Kennedy)</td>
<td>US</td>
<td>November 29, 1963</td>
<td>10 months</td>
<td>Presidential</td>
<td>7 Commissioners; 12 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Kerner Commission (National Advisory Commission on Civil Disorders)</td>
<td>US</td>
<td>July 28, 1967</td>
<td>7 months</td>
<td>Presidential</td>
<td>11 Commissioners; 115 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Scranton Commission (President's Commission on Campus Unrest)</td>
<td>US</td>
<td>June 13, 1970</td>
<td>3 months</td>
<td>Presidential</td>
<td>9 Commissioners; 172 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Kemeny Commission (The President's Commission on the Accident at Three Mile Island)</td>
<td>US</td>
<td>April 1, 1979</td>
<td>5 months</td>
<td>Presidential</td>
<td>12 Commissioners; 16 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>The Mahon Royal Commission (Royal Commission to Inquire into and Report upon the Crash on Mount Erebus, Antarctica, Of A DC10 Aircraft Operated by Air New Zealand Limited)</td>
<td>NZ</td>
<td>April 21, 1980</td>
<td>11 months</td>
<td>Government/Prime Minister</td>
<td>1 Commissioner; 3 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Rogers Commission (Presidential Commission on the Space Shuttle Challenger Accident)</td>
<td>US</td>
<td>February 6, 1986</td>
<td>3 months</td>
<td>Presidential</td>
<td>13 Commissioners</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>The Piper Alpha Cullen Inquiry (Public Inquiry into the Piper Alpha Disaster)</td>
<td>UK</td>
<td>January 19, 1988</td>
<td>1 year, 1 month</td>
<td>Government/Prime Minister</td>
<td>1 Commissioner</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Alaska Oil Commission (In response to the Exxon-Valdez oil spill)</td>
<td>US</td>
<td>May 1, 1989</td>
<td>8 months</td>
<td>Gubernatorial</td>
<td>7 Commissioners; 11 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Commission</td>
<td>Country</td>
<td>Date</td>
<td>Duration</td>
<td>Appointment</td>
<td>Size</td>
<td>Subpoena</td>
<td>Unanimous</td>
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<tr>
<td><strong>Seaview Commission</strong> (Commission of Inquiry into the Relations between Civil Aviation Authority and Seaview Air)</td>
<td>AUS</td>
<td>October 25, 1994</td>
<td>2 years</td>
<td>Government/Prime Minister</td>
<td>1 Commissioner</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Aspin-Brown Commission</strong> (Commission on the Roles and Capabilities of the US Intelligence Community)</td>
<td>US</td>
<td>March 1, 1995</td>
<td>1 year</td>
<td>Joint (Presidential/Congressional)</td>
<td>17 Commissioners*; 23 staff</td>
<td>Yes</td>
<td></td>
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<tr>
<td><em>Loss of one commissioner during commission process. Final report produced by 17 commissioners.</em></td>
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<tr>
<td><strong>Ladbroke Grove/ Southhall Rail Cullen Inquiry</strong> (Ladbroke Grove and Southall Rail Joint Inquiry)</td>
<td>UK</td>
<td>October 8, 1999</td>
<td>1 year, 2 months</td>
<td>Government/Prime Minister</td>
<td>1 Commissioner; 24 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>9/11 Commission</strong> (National Commission on Terrorist Attacks Upon the United States)</td>
<td>US</td>
<td>November 27, 2002</td>
<td>1 year, 8 months</td>
<td>Congressional</td>
<td>10 Commissioners; 80 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Major Commission</strong> (Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182)</td>
<td>CA</td>
<td>June 21, 2006</td>
<td>4 years</td>
<td>Government/Prime Minister</td>
<td>14 Commissioners; 35 staff</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Financial Crisis Inquiry Commission</strong> (The National Commission on the Causes of the Financial and Economic Crisis in the US)</td>
<td>US</td>
<td>May 9, 2009</td>
<td>1 year, 9 months</td>
<td>Congressional</td>
<td>10 Commissioners; 87 staff</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Deepwater Horizon Commission</strong> (The National Commission on the Deepwater Horizon Oil Spill and Offshore Drilling)</td>
<td>US</td>
<td>May 21, 2010</td>
<td>7 months 22 days</td>
<td>Presidential</td>
<td>7 Commissioners; 80 staff</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Royal Commission on the Pike River Coal Mine Tragedy</strong></td>
<td>NZ</td>
<td>November 29, 2010</td>
<td>1 year, 11 months</td>
<td>Government/Prime Minister</td>
<td>3 Commissioners; 4 staff</td>
<td>Yes</td>
<td>Yes</td>
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</tbody>
</table>
The Policy Influence of COIs

The record concerning the translation of COI recommendations into policymaking is decidedly mixed, and few scholars have performed detailed analyses to identify which commissions were more influential in prompting policy changes. In 1975, a study by Thomas Wolanin determined that half of all commissions have an important policy proposal adopted by the President or Congress (Tama 2014). Other recent scholars have found that most commissions, at a minimum, successfully inform the public and the government about an important policy issue (Pfiffner 2009). Because of the open policy window after major crisis events and the public demand for government action, the recommendations of COIs appointed in these circumstances are generally at least partially adopted into policy. In the sample of commissions responding to crisis events presented in Table 1, every commission prompted some kind of new legislation or bureaucratic reorganization based on its recommendations. Prominent recent examples of influential COIs include the 9/11 Commission, which brought landmark intelligence reorganization and spurred a doubling of the intelligence budget, new airline security mandates and the formation of the Department of Homeland Security (National Security Preparedness Group 2011). The 1986 Rodgers Commission, which prompted an overhaul of the Space Shuttle program, similarly prompted far-reaching reorganization and procedural changes within NASA. In the year following the publication of the recommendations of the commission, NASA had already implemented changes in technical engineering, procedures, safeguards and personnel organization, including lengthening the preparation time for future shuttle launches to allow these more stringent policies to be implemented (NASA 1987).

Findings in the literature (see Tama 2014) and the sample COIs evaluated in this essay pinpoint several characteristics that, when present, render COIs more influential at generating policy change. Despite the global trend towards appointing more COIs from legislative bodies (as seen in the growth of congressional commissions in the US and the introduction of proposals in the UK and Australia to increase the prevalence of legislative commissions of inquiry), COIs have been found to generate significant policy change most frequently when they are appointed by executive branches. Usually, executive-appointed commissions complete their work more quickly, allowing their recommendations to feed into post-crisis policy deliberations before attention shifts elsewhere. Legislative commissions in the United States, on the other hand, are often slowed down by a lengthy Congressional appointment process and reflect stronger partisan divides in the composition of membership. The Aspin-Brown Commission and the Financial Crisis Inquiry Commission, two recent Congressional commissions in the United States, took between two to three months between creation and commissioner appointment. Also, because Congressional commission members are appointed by legislators from both political parties, these commissions often reflect stronger partisan divides among their members. These partisan divisions generate more contention within the commission and less agreement with regard to policy recommendations (Johnson 1995).

COIs that recommend a reorganization of the government instead of legislative changes seem especially likely to have their recommendations adopted. Indeed, among the major commissions responding to crises in our sample, the recommendations most frequently embraced by the government involve organizational changes or institutional reorganization. For example, the output of the Rogers Commission, many of whose recommendations were adopted by NASA within the first year, involved mainly organizational changes within the agency. Alternatively, the Deepwater Horizon Commission is still struggling to see its legislative recommendations implemented, more than three years later (Graham and Reilly 2014). Reorganization has several benefits, including placing attention on questions of institutional structure, rather than assessment of mistakes by individuals, and overcoming partisan gridlock over more substantive issues. (Tama 2014).
Lastly, COIs have particularly great success in having their recommendations followed by governments if the investigation gains a reputation for inclusiveness and transparency. Adherence to these values enhances the confidence that the government and the public has in an investigation, whether carried out by a COI or a permanent government investigatory body, and can greatly bolster its policy recommendations (Terry and Nantel 2014). COIs with public hearings that involve the interests of all sides of an issue are more likely to be taken seriously by the public, industry, NGOs, and the government, and are better able to recommend effective policy changes. The Major Commission’s investigation into the bombing of Air India Flight 182, for example, prided itself on holding no private or secret hearings. When its report was published, the government took immediate policy action based on its recommendations, and legislative progress has already been achieved on each of the six broad areas of national security. The Warren Commission of 1963, on the other hand, held mostly private hearings, and its report was met with controversy and failed to silence conspiracy theories surrounding the event. Although private hearings are sometimes necessary in order to protect the testimonies of witnesses and families, commissions with public hearings more frequently achieve public standings as truly deliberative proceedings that incorporate different points of view on key issues (Resodihardjo 2006).

Box 1 offers brief discussions of two British COIs that significantly influenced post-crisis policy formulation. In response to two major disasters in the late 20th century, the British government turned to respected judge Lord Cullen to investigate not only the incident, but the surrounding institutions and infrastructure to identify influential policy recommendations. In both cases, Lord Cullen’s investigations revealed important evidence about the disasters and framed government reforms resulting in significant reorganizations and a tighter focus on safety.

**Box 1: UK’s Commissions of Inquiry on Alpha Piper and Ladbroke Groves**

Piper Alpha was a North Sea oil production platform operated by Occidental Petroleum Ltd, accounting for approximately ten percent of North Sea oil and gas production in the 1980s. An explosion and the resulting fire destroyed it on 6 July 1988, killing 167 men. At the time, the incident was the worst offshore oil disaster in terms of lives lost and industry impact. In November 1988, the UK government set up the Cullen Inquiry, chaired by the Scottish Judge William Cullen, to establish the cause of the disaster. After a 13 month investigation, Lord Cullen prepared a report concluding that Occidental’s maintenance and safety procedures were inadequate, and made safety improvement recommendations to the regulator, operators, and the industry. In particular, the recommendations resulted in new regulations and the transfer of North Sea safety responsibility out of the Department of Energy so as to remove the conflict between production and safety goals.

The Ladbroke Grove rail accident occurred on 5 October 1999 at Ladbroke Grove, London, resulting in the deaths of 31 persons and injuries to more than 520. Again the UK government turned to Lord Cullen to head a public inquiry into the crash. The inquiry was carried out in two parts, with the first part investigating with the accident, and the second focusing on the state of railway safety in the UK. The inquiry’s findings led to major changes in the responsibilities for management and regulation of rail safety. It noted that the Railways Inspectorate was responsible for both safety inspection and investigation into accidents, and recommended that rail accident investigation be the responsibility of a separate body. This resulted in the creation of the Rail Accident Investigation Branch in 2005.

**Advantages of COIs**

The flexible nature of COIs means that their form and power will vary from crisis to crisis. Appointing a COI can also be risky for a government; by giving control of suggesting policy improvements to an
independent commission, a government puts itself at risk of having its own policies sharply criticized. Despite this political risk, there are a number of advantages of COIs as a policy tool that drive governments to appoint them in response to crisis events, including a desire to transcend narrow electoral politics, a need to incorporate neutral experts, and a need to quickly address issues that are in the public spotlight.

Independent commissions have the considerable advantage over traditional government investigations of sidestepping partisan politics, allowing for the evaluation of policy issues through less biased eyes. While politics can sometimes generate controversy in the appointment of a commission (such as the tension between the executive and legislative branches over the appointment of the Aspin-Brown commission), COIs are designed to be independent in their deliberations, allowing their members to investigate and deliberate outside of the partisan pressures that confront government bureaucracies or legislative jostling for advantage. Independent COIs can also avoid legislative stalemates on divisive issues that demand immediate attention, while avoiding tensions between bureaucracy and legislative policymaking. As Virginia Representative Frank Wolf stated in an interview for a 2011 article, “Overall, Congress is dysfunctional, partisan, and polarized, and it isn’t getting anything done. We need commissions to break out of divisive partisanship,” (Tama 2011, 32).

A second major advantage of COIs concerns their inclusion of ostensibly neutral experts to provide critical information and analysis of a specific issue. Governments often face limitations of resources when confronting important political issues, especially when relevant expertise is not present in the bureaucracy or is spread across several agencies. The mandate of commissions allows them to draw on expertise from multiple agencies within and outside of the government for short term appointments, reaching beyond the limits of knowledge contained within the government. Commissions can also incorporate a variety of voices from different industries, labor unions, NGOs, and other interested parties in a neutral atmosphere frequently not present in the legislative realm (Inwood and Johns 2014). In this manner, COIs are able to bring a fresh perspective to policy and expand the realm of potential solutions beyond the prevailing intellectual approaches within the government bureaucracy. This feature is especially valuable in many crisis situations when the government is charged with investigating highly technical issues, such as in the Three Mile Island nuclear disaster or a major plane crash such as the Air India bombing over Irish waters in 1985. The involvement of experts also allows COIs to incorporate viewpoints of multiple stakeholders (Ashforth 1990).

The flexibility of COIs allows their members to respond quickly to mounting public and media attention in the wake of a crisis, while stile undertaking a thorough investigation. While most commissions have a reporting deadline set in their mandate, they still have more flexibility to take a long-term view of an issue compared to typical bureaucracies. Unlike legislative or bureaucratic bodies that have competing priorities, commission members are more singularly focused on investigating and addressing one particular issue or related set of issues, and are better able to devote specific time to a full and complete investigation (Centa and Macklem 2001). A traditional government entity, for example, would not have been able to take four years to investigate the cause of the Air India crash and the overall state of antiterrorism efforts in Canada. The Major Commission, however, was able to take the time to do a detailed review of the specific crisis event and its related issues of the country’s overall antiterrorism capabilities. By having a single mandate that allows the commission to focus on one topic, COIs are able to focus their attention and craft the most effective policy recommendations (Tama 2014).
Critiques of COIs as Policy Tools

Despite these advantages, scholars and policy practitioners have raised a number of criticisms of COIs as policy tools. Several of the cases highlighted in Table 1 have been criticized for the lack of influence of their policy recommendations (such as the legislative recommendations of the Deepwater Horizon Commission, many of which have yet to be adopted) or the influential role that narrow political calculations played in the appointment of commission members, commission deliberations, and the reception of the commissions’ reports. Significant critiques of this form of governance include its vulnerability to political bias within and outside of commissions, its frequent use as a blame avoidance tool for politicians, a lack of continuity, and a criticism of high costs.

Despite the design of COIs as independent bodies of investigation, politics can hamper the effectiveness of COIs by generating several types of biases among the commission members. First, commissions are often biased towards “easy”, politically feasible but potentially less ambitious, policy recommendations. Commissioners want their recommendations to be adopted, both to further the public interest and their own personal reputations, and a commission report is far more likely to be influential if the report is unanimous. Martha Derthick, a political scientist who served on the Scranton Commission on Campus Unrest, suggested that a main objective of the commissioners was to be seen as successful and influential, and that unanimity of recommendations is a key feature of this influence. Commission members accordingly have significant incentives to avoid making controversial policy recommendations in order to improve their chances of being seen as successful at policy implementation. This objective often leads to negotiations and compromise, a process through which, she explains, “objective inquiry” can suffer: “In the politics of the commission itself, the commission as an organization, striving to realize its organizational aims, lie the most important obstacles to objective inquiry,” (Ashforth 1990, 14).

Political bias can also manifest itself in the commission’s interaction with the appointing organization. Because the appointing agency has full control over setting the mandate and budget of the COI, it can limit the thoroughness of an investigation or cut it short if the agency sees the COI as a threat (Gilligan 2002). A recent example of this controversial power is that governing agent has over a purportedly independent commission is the premature shutdown of Governor Cuomo of New York’s Moreland Commission to Investigate Public Corruption. Although the commission was not set to complete its final report until 2015, Governor Cuomo shut down the work of the commission in April, 2014, leaving several critics to question whether there remained unfinished work of the commission, and to accuse the Governor of interfering in the commission’s investigation (Lovett 2014). Another example of the government intervening in the work of a COI was the decision of the Canadian government to end the work of a commission inquiring into the deployment of Canadian forces to Somalia 1997, much earlier than originally mandated. This decision occurred just as the commissioners began to investigate a possible cover-up by high ranking government (Centa and Macklem 2001).

COIs can also serve as a political tool that one branch of government wields against another. This dynamic was most evident in the work of the Aspin-Brown Commission in 1995, which sought to investigate needed reforms in the intelligence community. A presidential commission led by former Secretary of Defense Les Aspin, this body was launched by President Clinton in 1994 to investigate events surrounding the killing of 18 US Special Forces soldiers in Somalia. Members of Congress, however, quickly voiced concerns about the appointment of Aspin to lead the commission, as he had a reputation of poor relations with the CIA and had also lost his position as Secretary of Defense after receiving the brunt of the blame for the Somalia attack. To counter this appointment, Senator John W. Warner of Virginia pushed Congress to set up its own investigatory commission to run concurrently to Aspin’s Presidentially-appointed commission. While political compromises eventually combined the two
commissions into a joint commission, the Aspin-Brown commission continued to struggle in its early stages from political divisions and the countering influence of both branches of government (Johnson 1995).

Another major criticism of COIs is that elected officials often also use them as a political tool of blame avoidance, turning to them in times of crisis as a way to shift public criticism and deflect pressures for immediate action. In at least some contexts, COIs facilitate non-direct engagement with an issue and provide an exercise in venue alteration, allowing elected officials to replace one volatile, critical audience (the media and the public) with a slower-moving and more predictable policy audience (the commission) (Sulitzeanu-Kenan 2010). This tendency towards appointing commissions for blame avoidance is especially high in the lead up to an election. Some authors have suggested that the Krever Commission, a Canadian commission set up to investigate the crisis of a tainted blood supply, was set up to deflect criticism in the midst of a general election (Centa and Macklem 2001). The 2005 Lyons Commissions investigating local government finance in the United Kingdom conveniently spanned the 2005 elections, allowing candidates to avoid addressing the issue during the campaign by promising to take the matter up once the report was completed (Rowe and McAllister 2006). As an Eisenhower White House aide said in an interview with author Thomas Wolanin, “[Commissions] could be used to put a problem on a shelf...If you were rid of something for a year or two it might go away or administrations might change and it would be somebody else’s problem.” (Wolanin 1975, 23).

In comparison to standing bodies of investigation (such as the National Transportation Safety Board (NTSB) or the Dutch Safety Board), the policy influence of ad hoc COIs can also be limited by their lack of agency relationships, varied experience conducting investigations, and a common lack of expertise to deal with a chaotic accident. Joseph Sedor, the NTSB’s Chief of Major Aviation Investigations, commented on this point in a 2014 interview. In his interactions with COIs appointed to investigate plane crashes in other countries, he noticed that the commission’s lack of relationships in the government and a clear investigatory structure to follow made these commissions “struggle to deal with the chaos of an accident investigation,” (Sedor 2014). Additionally, ad hoc COIs do not have a built-in format of longevity for policy follow-up. In an interview with Dr. Joseph Kolly, Director of the NTSB’s Office of Research and Engineering, he commented that:

> They (COIs) do not have the staying power to do the necessary follow-up that would need to occur for years and years beyond. You can identify the problem, you can make the recommendations, but it is not going to get solved at the end of that, so there needs to be a lot of follow up, and you need to have that knowledge base still hanging together to take it all the way through and even beyond. (Kolly 2014)

Lastly, some critics of COIs recoil from their cost. Expenses associated with COIs vary dramatically. Nonetheless all COIs face the burden of setting up workspaces from scratch, as well as hiring staff and paying for travel and investigation costs for the commissioners. For Congressional commissions in the United States, costs range from several hundred thousand dollars to over $10 million (Glassman and Straus 2013). While it is often argued that standing investigatory bodies are able to run investigations more cost-effectively by eliminating many of the start-up costs facing COIs, the actual investigatory costs end up being roughly equivalent. The NTSB, for example, runs on an average budget of $100 million, and in 2013 ran 13 major investigations (NTSB 2014). While this budget is also applied to continuing research and development efforts for safety regulations, the budget-to-investigation ratio is similar to that of many COIs. COIs appointed to respond to crisis events may also be more cost-effective than those appointed to investigate broad policy issues. In Canada specifically, the costs of a representative sample of commissions from 1960-1997 found that investigatory commissions averaged less than CA$10 million
(adjusted to 1996 dollars), whereas policy commissions often reached in the CA$20 million to CA$50 million range (D’Ombrian 1997). A shorter average duration of these commissions responding to crisis is a main reason for their relative cost efficiency.

Conclusion

Governments around the world frequently convene Commissions of Inquiry in the wake of a crisis. Their nature as independent investigatory bodies able to draw on experts from industry, academia, labor unions, and NGOs, expertise makes them valuable mechanisms to fashion explanations of how crises occurred and recommendations for how to prevent their recurrence. Although some forms of inquiry, such as executive-led commissions and Royal Commissions, are declining in frequency in many Western countries, statutory and legislative-led commissions continue to grow in prevalence. They are especially useful in countries that do not have a high enough frequency of crisis events to support a standing investigatory body. Commissions of Inquiry offer distinct advantages over other forms of policy inquiries due to their relative political independence, their ability to do thorough investigations without the time or resource constraints of other government entities, and the flexibility of their form which allows them to adapt to the needs of each unique crisis situation.

Despite these advantages, relying on COIs to investigate important national crisis events can have drawbacks. First, the supposed independence of COIs can be undermined, as the influence of the appointing body can cut short investigations or mandate that they only focus on a specific facet of a crisis. COIs can also be used as a political tool by the appointing agency to attempt to place blame on another branch of government, or avoid blame being placed on themselves. COIs also sometimes draw on comparatively limited expertise and stunted policy networks, and lack the formal capacity to follow up on recommendations. Lastly, COIs have been critiqued for their high startup costs and lack of methodological continuity, something that independent standing investigatory bodies may be better positioned to overcome.

The record of COIs in post-crisis policymaking, then, is mixed. The policy influence of COIs has proved highly variable, with somewhat greater influence in those cases where commissions carried out their work in a transparent manner with public hearings, put forward unanimous recommendations, and acted sufficiently quickly to capitalize on heightened concern by media, elites, and wider publics. Commission recommendations that focus on government reorganization seem to receive especially warm legislative receptions, largely because they produce less controversy and spread blame more among institutions instead of highlighting the actions of specific groups or individuals.

From a practical policy standpoint, COIs continue to provide a valuable option for governments to perform thorough investigations of crises. This survey of major COIs in English-speaking countries has identified several best-practices to optimize the policy influence of COIs and their effectiveness at investigating major crisis situations.

- **Thoroughness and transparency in investigation**: The possession of subpoena power allows COIs to gain access to all relevant facts. The holding of public hearings that allow the public and other decision makers to feel involved in the investigation and deliberation process increase confidence in the commission’s work. This effect is strengthened when the commission makes an effort to include all stakeholders of the crisis in the investigation.

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5 See the charts displayed on p. 97 & 98, N. D’Ombrian, “Public Inquiries in Canada” (1997)
• **Quick start-up:** Following crisis events, the policy window for implementing the recommendations of a COI is generally very short. Efforts should be made to minimize the start-up time of commissions by quickly appointing commissioners and staff, setting a specific mandate and quickly providing the funding needed to set up a reasonable staff to begin the investigation.

• **Avoidance of political divisions where possible:** Because of their relative continuity in commissioner viewpoints, executive-appointed COIs tend to run into fewer partisan divisions that slow down the deliberation process and can hamper the influence of recommendations. However, keeping a political balance among commission members and, most importantly, setting an atmosphere of political independence within the commission, is vital to the effectiveness of the COI.

• **Provision of genuine autonomy:** The independence of a COI from the government is one of its most defining features, and successful government appointments of COIs will protect this autonomy. Appointing bodies should, when possible, give the COI a flexible mandate as to the form and extent of investigation. Governments should also avoid disbanding the commission before the investigation has been completed.

For many governments, especially those not faced with a high enough frequency of certain crisis events to warrant a standing investigatory body, ad hoc Commissions of Inquiry offer a useful way to investigate crises and make policy recommendations. And, when commission independence, flexibility, and freedom from political influence are guaranteed, they can be an extremely effective policy tool to take advantage of policy windows to improve the design of regulatory institutions and reform substantive regulatory strategies.
References


Terry, Jane, and Kelly Nantel. 2014. Interview with Jane Terry and Kelly Nantel of the National Transportation Safety Board. In-person.