

**The War on Terrorism and Homeland Security:
Presidential and Congressional Challenges**

Richard S. Conley
Assistant Professor
Department of Political Science
University of Florida
234 Anderson Hall
P.O. Box 117325
Gainesville, FL 32611
(352) 392-0262 x 297
rconley@polisci.ufl.edu
<http://www.clas.ufl.edu/users/rconley>

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INTRODUCTION

Modern presidents have typically chosen to centralize policymaking functions in the White House as a means of gaining control and influence over the bureaucracy. Although centralization may create significant management problems,¹ presidents' preference for centralization is understandable. In the American system of separated institutions the president shares responsibility with Congress for management and oversight of the federal bureaucracy. Congress poses a major constraint on presidents' ability to use reorganization as a tool of influence:

departmental and agency reorganization requires legislative approval. Presidents' options for independent reorganization are therefore limited to staff in the White House and Executive Office of the President (EOP) directly under his control and funded as part of White House operations. Presidents may take independent actions that bypass Congress, including executive orders that direct White House staff, agencies and/or departments or create advisory posts in the EOP.

Just a week after the tragic terrorist attacks of September 11, 2001, President George W. Bush used an executive order—the only tool available for swift action—to create a new Office of Homeland Security (OHS). Massive governmental reorganization not only would have required congressional assent but also might have detracted from White House efforts to coordinate federal anti-terrorism programs, particularly given the complexities in reorganization and historical ambivalence toward such executive initiatives on Capitol Hill.² Housed in the EOP, the OHS provided for a director who serves as an assistant to the president.³ The same directive also created a Homeland Security Council (HSC).⁴ The primary function of the OHS and HSC was to be coordination. Former Pennsylvania Governor Tom Ridge, Bush's choice for OHS Director, initiated a top-to-bottom review of government counterterrorism programs and worked to promote interagency cooperation.

Initial calls for a reorganization of federal responsibilities came from Congress—not the White House. Many legislators, including Senator Joseph Lieberman, critiqued the position of the Homeland Security Director for having no statutory authority.⁵ The lack of a congressional mandate, they argued, left Ridge without an independent budget necessary to carry out his duties—and placed him beyond congressional accountability.

Proposals for a major governmental reorganization took shape on Capitol Hill in late 2001 and early 2002. By June President Bush signed on to the idea of creating a Cabinet-level Department of Homeland Security.⁶ Congress and the president then moved in the direction of placing nearly 170,000 federal employees under an umbrella Department of Homeland Security.⁷ However, by the time members of Congress recessed in Fall to return home to campaign for the November 2002 mid-term elections, legislative efforts had stalled. Executive-legislative conflict raged about labor issues and presidential authority over employees of the new department, drawing veto threats from the White House.⁸ The president and members of Congress also struggled to determine which functions to transfer from the myriad of agencies with responsibilities for counterterrorism at an estimated cost of \$38 billion.⁹ Only after Republicans' stunning victories in the mid-term elections did the lame-duck 107th Congress move decisively to pass the reorganization bill in late November 2002.

Why did Bush reverse course and favor a new Department of Homeland Security rather than pursue other organizational options? Simply put, the White House recognized widespread congressional support for a significant reorganization and sought to gain as much leverage as possible over the structure of the new entity. Yet the slow pace of congressional action on reorganization should give observers pause to reconsider organizational options for securing the home front. A central question for debate is whether a massive reorganization and consolidation

of federal programs is the most appropriate response to terrorist threats. It remains an open question whether programmatic *consolidation* within a single entity, in lieu of centralized policy *coordination* by the White House, will yield greater chances for success.

This article briefly assesses organizational options for homeland security with which Congress and the president grappled. The objective is to outline the advantages and disadvantages of several available organizational models and, where appropriate, draw from historical examples of coordination and consolidation efforts. The analysis suggests that Bush and Congress “leapfrogged” from one end of the continuum—a non-statutory, presidential advisory system—to the other end with plans for a full-fledged reorganization. A model that garnered significant support on Capitol Hill—a terrorism “czar” with coordination responsibilities—might have proven a suitable alternative, at least in the short-term. Particularly given the delays in passing Bush’s proposal, questions linger about the viability of agency reorganization to secure the home front.

CENTRALIZED COORDINATION, REORGANIZATION, AND HOMELAND SECURITY: ISSUES FOR THE ADMINISTRATIVE PRESIDENCY

Modern presidents have created specialized policymaking structures in the EOP and turned more to institutionalized staff than their Cabinet members for advice on their policy priorities, preferring to circumvent departments and agencies.¹⁰ Presidents suspect that Cabinet appointees are susceptible to influences from Congress and the bureaucracy that may run counter to their interests and agenda.¹¹ As a response, Congress has sometimes mandated sources of advice for presidents by statute—such as the National Security Council (NSC) and Council of Economic Advisors (CEA), with mixed results. The president may or may not choose to utilize such advisory structures as Congress intends.¹²

Presidents have occasionally promoted reorganization of executive departments or the creation of a new department to reassert authority over the bureaucracy and/or signal their resolve to address urgent policy issues. But as James P. Pfiffner notes:

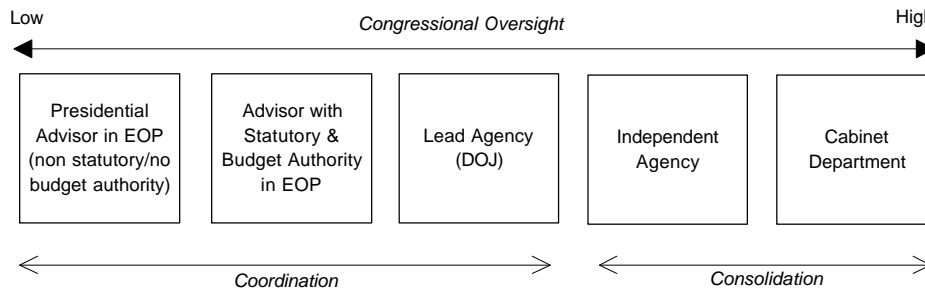
...the problems associated with large-scale reorganization exact a high cost in terms of presidential energy, political capital and good-will. They take up valuable time and must be traded off against other policy priorities. Turf battles must be fought with Congress, the bureaucracy, and interests groups who are all jealous of whatever power they have and will not give it up without a fight.¹³

Presidents have often been unsuccessful at large-scale reorganizations aimed at uniting similar functions under a single entity. Abortive efforts include Nixon’s “superagencies” approach to domestic programs, Johnson’s attempt to create a Department of Economic Affairs, and Carter’s call for a Department of Natural Resources.¹⁴

Homeland Security and the Coordination-Consolidation Continuum

The debate over the best organizational model for homeland security cuts across these issues. As Figure 1 shows, there is a range of organizational possibilities for homeland security. The choices may be arrayed along a continuum that emphasizes either policy coordination or consolidation of functions through reorganization, with implications for congressional oversight and executive independence.

Figure 1
Homeland Security and Organizational Possibilities



The first three boxes in the figure emphasize coordination from the White House with broader executive latitude. On the left hand side of the figure is a non-statutory presidential advisor who is “assistant to the president” (Ridge’s original charter). The advisory position is not permanent, has no formal budget authority, and does not require congressional approval. Moving one box to the right is a statutory alternative: Congress would institutionalize the OHS in the EOP, provide the director a budget independent of the White House operations budget, and require Senate confirmation of the president’s choice for the position. Finally, Congress and the president might instead agree to place one Cabinet-level department in charge of homeland security—effectively giving it “lead agency” status to coordinate efforts across the federal government. The Department of Justice (DOJ) assumed such a role in the Clinton administration. Such an approach does not preclude a role for a non-statutory or statutory OHS. Given the numerous law enforcement programs housed in Justice, OHS Director Ridge had to coordinate efforts in a constructive way with Attorney General John Ashcroft, whose support was imperative.¹⁵ Confirmed by the Senate, however, the attorney general is accountable to Congress in a way that Ridge was not.

The two right-hand side boxes in Figure 1 give Congress more oversight over homeland security, at least theoretically, by consolidating federal programs and making appointments to the a new agency or department subject to Senate confirmation. Congress can legislate the reorganization of federal counterterrorism and law enforcement programs into an independent federal agency (e.g., Environmental Protection Agency, National Security Administration, etc.) and give the head of the new organization Cabinet-level status. Alternatively, Congress may consolidate programs into a fifteenth department of the executive branch—as it did on November 19, 2002.

As the following sections elucidate, each of these options entails significant trade-offs. Many of the options find analogies in past attempts to rationalize policymaking, and it is possible to draw from those experiences to highlight advantages and disadvantages of each of the approaches—both in terms of formal structure and informal operation. Let us examine each of the options in turn, beginning with the advisory position into which Tom Ridge was thrust via executive order.

PRESIDENTIAL ADVISOR?

President Bush’s executive order creating the OHS and HSC provided for what amounted to a policy coordinating committee in the EOP without any permanent status. The Director of the OHS, Tom Ridge, assumed a position as “assistant to the president” like other counselors who handle various domestic policy matters, liaison with Congress, and such. And like other White House staff who are employed at the president’s discretion and do not occupy a statutory advisory position, Ridge’s appointment did not require Senate confirmation.

This configuration has several advantages and disadvantages. While Ridge’s status gave him a privileged advisory role to President Bush, it shielded the him from Congress and limited the OHS budget to discretionary funds from the White House Office budget.¹⁶ Although the National Security Council (NSC) was the explicit model for the OHS and HSC, another weakness was Ridge’s lack of formal authority over other Cabinet departments and agencies, including budgetary review and control. Also absent was an informal pattern of cooperation among entities responsible for homeland security. These concerns came to the fore shortly after Ridge took up his position in October 2001.

Ridge was given the charge, as President Bush stated, to “lead, oversee, and coordinate a comprehensive national strategy to safeguard our country against terrorism and respond to any

attacks that may come.”¹⁷ On the positive side, as an “executive order coordinator,” as Charles Wise puts it, Ridge had the advantage of acting as a neutral broker who is not beholden to the particular interests of any one agency.¹⁸ Furthermore, reporting directly to the president theoretically gave Ridge a lot of clout. Just a few weeks after his appointment Ridge emphasized that President Bush had mandated that Cabinet members “defer to his oversight role” in the OHS. Ridge also accentuated his direct access to the president—just “10, 15 paces away”—noting that he could talk to the president whenever he wished.¹⁹ The perception of Ridge’s status vis-à-vis the president can be as, if not more important than the formal (if ambiguous) functions outlined in E.O. 13288.²⁰

Ridge’s position is the focal point for harmonizing homeland security efforts scattered across innumerable agencies (until reorganization takes place). The HSC is the OHS Director’s primary vehicle for policy coordination. Yet critics are correct to point out that Ridge’s success depends on the willingness of others to collaborate and follow his lead. Without any statutory authority, Ridge’s “primary power for getting things done is the power of persuasion.”²¹ As Daalder and Destler explain:

By chairing all interagency committees, Ridge and his office have the power to set the agenda, convene meetings, and forge consensus. But wielding that power effectively requires subtlety on Ridge’s part. He needs to gain the cooperation of the many cabinet secretaries and agency directors...Neither Ridge nor anyone on his staff has the authority to tell others what to do—that must come from the acquiescence, if not support, of Ridge’s peers themselves.²²

Although modeled on the NSC, the HSC does not have a similar “culture of cooperation” that has taken the former organization (which is statutory) nearly fifty years to achieve.²³ The ambiguity of the OHS charter, which seemingly comprises both advisory and operational functions but has no formal enforcement authority, is reminiscent of the now-defunct National Security Resources Board (NSRB) that was created as a coordinating committee in the National

Security Act of 1947. Like the OHS, the NSRB was also completely reliant on departmental cooperation—and the latter structure ultimately proved unworkable.²⁴ The OHS faces an even more daunting task, as Director Ridge must focus on coordination “at the bottom of the Federal government’s organizational pyramid”—the agencies at the front lines of law enforcement and tasked with implementing homeland security, including state and local governments.²⁵

The first evidence of the severe limits Ridge faced in persuading other agencies and departments to follow his lead came in early 2002. He proposed merging elements of the Border Patrol, Coast Guard, and Customs Service, which would have drawn core entities away from the Departments of Justice, Treasury, Transportation, and Treasury, respectively, and integrated them into a “Federal Border Administration.”²⁶ After the proposal was leaked the debate predictably descended into the realm of turf warfare. Notwithstanding Ridge’s entreaties and arguments that he had the president’s backing, the proposal was dismissed rather summarily by the relevant Cabinet heads.²⁷

Many critiques of the structure of the OHS are traceable to the absence of a statutory mandate. Ridge, as director of the OHS, lacked substantive budgetary authority in two key ways. First, E.O. 13288 did not empower Ridge to develop a budget for OHS. Second, the presidential directive did not enable Ridge to formally certify the budget proposals of other entities with homeland security responsibilities that he was to coordinate.²⁸ As Lindsay and Daalder note, “budgetary control is key to influencing policy, and centralization of responsibility is essential to improving policy.”²⁹ Well-respected Washington insiders, including former Office of Management and Budget Director Leon Panetta, contended that Ridge required explicit budget authority to compel agencies to cooperate with one another and with him.³⁰

Finally, Ridge's lack of accountability to Congress spurred calls from members that the OHS be institutionalized in the EOP through a legislative mandate. Relations between the White House, Ridge, and Capitol Hill became unnecessarily enmeshed in squabbles with partisan overtones in Spring 2002 over the question of whether Ridge should (or could be compelled to) testify before congressional panels investigating homeland security issues. The Bush White House cast the issue as one of executive privilege between the president and his advisors, whereas frustrated Democrats contended Ridge's refusal to testify was another example of the president's penchant for secrecy.³¹ Although Ridge eventually worked out compromises with House and Senate panels and briefed members without giving formal testimony, members on both sides of the aisle remained agitated, and none more than the Dean of the Senate, Appropriations Chair Robert Byrd of West Virginia.³²

STATUORY COORDINATOR?

By late Spring 2002 Ridge's position grew increasingly untenable. *New York Times* reporter Elizabeth Becker captured the essence of the dilemma:

...instead of becoming the pre-eminent leader of domestic security, Tom Ridge has become a White House adviser with a shrinking mandate, forbidden by the president to testify before Congress to explain his strategy, overruled in White House councils and overshadowed by powerful cabinet members reluctant to cede their turf or their share of the limelight. When the Pentagon moved to suspend air patrols over New York, Mr. Ridge was not consulted. "We don't tell the Office of Homeland Security about recommendations, only about decisions," said Peter F. Verga, special assistant to the secretary of defense for domestic security.³³

Many observers and scholars believed that Ridge's authority and accountability issues could be resolved through congressional action. By giving OHS permanent status in the EOP with a statutory charter, Ridge and future directors would be able to avoid constitutional struggles over testimony, exercise meaningful control over agency budgets concerned with homeland security, and bolster their coordination role.

It is worth noting that nearly a year before the terrorist attacks on New York and Washington in September 2001, the Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction—dubbed the “Gilmore Commission” for its chair, former Virginia Governor Jim Gilmore—called for the establishment of a national “terrorism czar” to be lodged in the White House.³⁴ The initial report, which received little media attention, recommended budget authority for a statutory advisory slot to insure that agencies’ counterterrorism programs were integrated into a national strategy.³⁵

Such a statutory line—a White House “czar” for counterterrorism—could have remedied several of the problems of Ridge’s position. First, congressional legislation creating a permanent position for Ridge in the EOP would have brought the OHS into conformity with other important White House advisory positions, including the national security advisor and the national economic advisor.³⁶ A statutory charter would also have solved the problem of congressional accountability by making the directorship of the OHS subject to Senate confirmation. Finally, a congressional mandate that included the authority for Ridge to certify agency budget submissions would have enabled him to better coordinate counterterrorism programs. Working in concert with the Director of the Office of Management and Budget (OMB), Ridge’s role would have been pivotal in “central clearance” of legislation. Agencies are likely “sell” programmatic increases under the rubric of homeland security in a restrictive fiscal environment in which surpluses have evaporated.³⁷ As Jeffrey Birnbaum contends, “the war on terrorism is being used as a ruse to justify all sorts of spending.”³⁸ Substantive budget authority would have enabled the Director of the OHS to prioritize and integrate agency proposals with lesser dependence on his personal reputation, skill, and persuasion—though these latter factors would have certainly remained important.

Proponents of a statutory coordinator model can point to similar organizational arrangements—some of which appear more successful than others. The situation of wartime mobilization and reconversion during and after World War II is a precedent that closely matches today’s homeland security challenges from an organizational perspective. In 1943 President Roosevelt created the Office of War Mobilization (OWM) by executive order; Congress later enacted the War Mobilization and Reconversion Act of 1944 that created a statutory Office of War Mobilization and Reconversion (OWMR) with the director subject to Senate confirmation. The OWMR did not have operational responsibilities, maintained a small staff tasked with coordinating a general policy framework, and was widely hailed as effective.³⁹

The Office of National Drug Control Policy (ONDCP) is another analogous organizational model in terms of a statutory policy coordinator in the EOP. The ONDCP was created in the Anti-Drug Abuse Act of 1988 and was first staffed under President George Herbert Walker Bush. The “drug czar” is a Cabinet-level position subject to Senate confirmation.

The ONDCP’s thirteen-year history has received surprisingly little academic attention. The “drug czar’s” experiences nevertheless raised several warning signs for a statutory coordinator of homeland security. Congressional legislation creating the office sought to facilitate the ONDCP Director’s coordinative role across agencies for drug prevention and law enforcement and circumvent “turf wars” by according him budgetary authority over more than thirty agencies.⁴⁰ But much of the ONDCP’s mission has involved a tug-of-war between Congress and the Director about the Office’s mission—whether the emphasis should be on law enforcement or drug abuse prevention.⁴¹ Several of the ONDCP Directors under both Republican and Democratic administrations antagonized members of Congress, supported failed policy initiatives, and were unable to gain control over agency budgets.⁴² The combined effect has

arguably diminished the drug czar's influence, compounded by the dramatic variation in staffing levels across the Bush and Clinton administrations as the "war on drugs" has received greater or lesser presidential attention.⁴³ The lesson is that formal budget authority vested in a White House czar cannot stamp out "turf wars" and accountability to Congress does not guarantee smooth relations. Diplomatic skills remain a pivotal variable for relations with Congress and other Cabinet heads.

Finally, a terrorism czar would likely face many of the same dilemmas as the ONDCP in terms of budgetary fragmentation on Capitol Hill. Success in coordinating agency budgets may rest largely in congressional resolve to rationalize the appropriations process. The Gilmore Commission noted a combined total of twenty-five committees responsible for counterterrorism budgets in the House and Senate and recommended integrating efforts into a single committee or several centralized committees to work directly with the OHS. However, as Charles R. Wise observes:

Convincing many of the standing authorization and appropriation committees and subcommittees to relinquish jurisdiction to a new standing committee...is a very difficult proposition. Not only is this asking committees that have long exercised jurisdiction to relinquish it in the face of a top national priority at the height of its prominence, it portends a disconnect between programs that are termed 'terrorism programs' and others in the departments and agencies for which the committees are responsible.⁴⁴

Notwithstanding congressional reform of the appropriations/authorization process, a terrorism czar in OHS, like the Director of the ONDCP, would likely face formidable constraints in coordinating programmatic budgets across agencies despite formal certification authority in concert with OMB.

LEAD AGENCY?

Another way to structure the coordination of homeland security efforts would have been to place a "lead agency" in charge—either an existing one or a new one that comprises a

reorganization of federal programs (discussed below). Since the mid-1970s DOJ, because of its role in law enforcement programs, assumed “lead agency” status in combating domestic terrorism.⁴⁵ The Federal Bureau of Investigation (FBI) is the chief responsible agency on this front. In 1998 President Clinton issued a directive creating a position for national coordinator for security, infrastructure protection, and counterterrorism within the National Security Council (NSC) to assist DOJ with the task of interagency coordination and implementation of counterterrorism measures.⁴⁶ The idea is that a Department such as Justice can provide a “single focal point in a diffuse landscape of interests and capabilities, thereby enhancing accountability.”⁴⁷

Critics charged that DOJ (or any other existing department) was poorly positioned to oversee interagency coordination and provide a coherent framework for homeland security. In many ways, problems similar to those for an “assistant to the president” surfaced. As Thomas Cmar explains, the DOJ was not

wholly responsible for all major areas of policy that a fully empowered ‘focal point’ for counterterrorism policy would include in its domain. The DOJ was expected to monitor fellow agencies, which created bureaucratic ‘turf wars,’ made even more intractable because the DOJ had no formal authority by which to hold other agencies accountable. Placing the DOJ in a broadly defined leadership role in counterterrorism policy also created internal conflict between its institutional focus and the additional policy areas with which it became involved as counterterrorism coordinator...[and] the department lacked the budgetary authority to compel other departments and agencies to adopt that strategy’s priorities.⁴⁸

Moreover, in the wake of the 9/11 terrorist attacks, Attorney General John Ashcroft focused much of his attention on an internal reorganization of DOJ.⁴⁹ He spent much time fending off public and congressional criticism that the FBI had not done enough to foresee and thwart the attacks.⁵⁰ These circumstances obviously detract from the DOJ’s ability to act as the chief coordinative agency for homeland security. Finally, some duplication developed between Ridge and Ashcroft over the color-coded alert system for terrorism threats. Ridge prioritized instituting the system, yet Ashcroft was tasked with making public announcements about the threat level.⁵¹

REORGANIZATION?

There were several options for reorganizing federal counterterrorism programs so they are housed in a single entity. The first was to create an independent agency. The second was to create a fifteenth Cabinet-level department. Both options have the same objective: to build a more coherent approach to homeland security. Congress and the president have agreed to unite the multiplicity of anti-terrorism programs that are currently diffused over the federal bureaucratic landscape in the new Department of Homeland Security (DHS). The DHS will be constructed by removing the components of agencies and departments with similar counterterrorism functions—twenty-two in all—and consolidating them.

Eight months before the September 11, 2001 terrorist attacks on New York and Washington, the congressionally-mandated U.S. Commission on National Security, referred to as the “Hart-Rudman Commission” for its co-chairs, former Senators Gary Hart and Warren Rudman, released a report calling for a massive overhaul of government foreign policy and security institutions. In the premonitory words of the report, the authors speculated that “A direct attack against American citizens on American soil is likely over the next quarter century.”⁵² The Hart-Rudman Commission report made several important organizational recommendations. Among them was the creation of a National Homeland Security Agency “with responsibility for planning, coordinating, and integrating various U.S. agencies involved in homeland security,” and in which the Federal Emergency Management Agency (FEMA) would play a key role.⁵³ A second recommendation concerned the transfer of the Customs Service, Border Patrol, and the Coast Guard to the new agency, while “preserving them as distinct entities.”⁵⁴ A third was to transfer the National Domestic Preparedness Office from the FBI to FEMA. Finally, the report

emphasized the need for homeland security to be integrated into the larger structure of national security intelligence.

The Commission's recommendation of the consolidation of the Customs Service, Border Patrol, and Coast Guard was not lost on the Bush administration after 9/11. In January 2002 OHS Director Tom Ridge made just such a proposal, backed by several lawmakers, which was subsequently blocked by turf politics between Cabinet heads.⁵⁵ Growing congressional frustration and critiques of Ridge's lack of authority over the course of early 2002 were clearly a factor in President Bush's gravitation toward the idea of creating a Cabinet-level department.⁵⁶

By acquiescing to the idea of agency consolidation Bush sought to preempt legislative proposals by Senator Joseph Lieberman and other lawmakers to gain vital leverage over the specifics of any reorganization.⁵⁷ In early June 2002, the president proposed amalgamating twenty-two different agencies into a new DHS, with four principle divisions: 1) border and transportation security; 2) emergency preparedness and response, 3) chemical, biological, radiological, nuclear countermeasures; and, 4) information analysis and infrastructure protection. The proposal left the Central Intelligence Agency (CIA) and FBI outside of the new entity's scope.⁵⁸ Bush dubbed it "the most extensive reorganization of the federal government since the 1940's."⁵⁹

There are many advantages to the new department. The department will be tasked with both coordinative and operational responsibilities, have legal authority lacking in the current OHS directorship in the White House, and as a permanent institution of the executive branch, will insure that homeland security is a continuing governmental priority regardless of future presidents' attention to the subject.⁶⁰ As Michael O'Hanlon et al. summarize:

Assigning clear responsibility for homeland security to a single agency provides clarity in an otherwise diffuse landscape of interests and capabilities. Accountability should thereby be

enhanced. Merging critical functions dealing with frontier security, infrastructure protection, and emergency response into distinctive directorates should ease communications and enhance effective implementation of agreed policy both within and probably among the directorates. And empowering the new entity by providing it with direct budgetary authority and political responsibility should make the agency a major player in the overall homeland security effort.⁶¹

However, there is no shortage of critiques about reorganization of homeland security functions. Many emphasize problems of coordination with state and local entities,⁶² which the president's proposal may or may not surmount. Moreover, "many institutions and functions that are critical to the task cannot, by their very nature, be included in a consolidated agency,"⁶³ including such entities as the FBI, the CIA, and agencies in the Defense Department. The DHS will need to coordinate with intelligence authorities with an international scope, including the NSC—and lawmakers have not concluded how best to go about this task.⁶⁴

Shuffling offices and agencies may not lead to greater competence. Reorganizations, by their very nature, are disruptive and costly—both in terms of financial and human resources. The development of internal structures and procedures in the new DHS will require time.⁶⁵ An ethos of cooperation and a new organizational culture will not take root immediately. Turf wars may continue to overshadow not only internal structures but also inter-agency coordination efforts for which the new Department will be responsible.⁶⁶ Critics accentuate the complexity of the undertaking, carefully pointing out, for example, that the Truman-era reforms to which Bush alluded in his proposal produced a variety of unintended consequences and interagency conflicts that took years to overcome.⁶⁷ One unintended consequence for the new Department may be attrition caused by the uncertainties surrounding reorganization. Key agencies slated for consolidation, including the Coast Guard, FEMA, and the Immigration and Naturalization Service (INS), could lose anywhere from a quarter to nearly half of their workforce as employees become eligible for retirement.⁶⁸

In his proposal, President Bush contended that consolidation of homeland security functions would end duplication. However, many critics and lawmakers worry that reorganization may only exacerbate redundancy. They can point to past reorganizations, such as the creation of the Department of Defense, to argue that the dysfunctions produced by consolidation—the increased size and new layers of bureaucracy and coordination problems—outweighed the benefits.⁶⁹ There is also the question of duplication between the White House and the new department. Tom Ridge is the presumptive nominee to head the DHS. Yet President Bush has suggested that the OHS would be retained in the White House after the creation of the Department. The exact role of the advisor remains unclear.⁷⁰

Finally, the success of the new Department of Homeland Security is contingent upon dynamics on Capitol Hill. As the Hart-Rudman report emphasized, the reorganization of federal agencies will require a significant revamping of committee processes in Congress to streamline appropriations, authorizations, and oversight.⁷¹ The situation of agencies in the new Department of Homeland Security necessarily interferes with traditional lines of committee jurisdiction in Congress, promoting internecine conflicts. Established committees will not cede authority easily. Thus, “turf wars” are therefore not solely limited to the new bureaucracy. Calls for the establishment of select committees or a wholesale reform of the committee system, which has not been attempted since the mid-1970s, have bogged down in jurisdictional battles.⁷² One danger is that jurisdictional disputes, including the diffusion of appropriations responsibility across thirteen congressional committees with responsibility for anti-terrorism programs, threaten to hamstring the new department’s operations.

Another danger is that Congress may forfeit the ability to exercise meaningful and authoritative oversight over the DHS and tilt the balance of institutional power toward the White

House. In a rush to complete work on the reorganization bill in November 2002, Congress accorded the president extensive latitude to craft the structure of the new DHS. Bush won provisions that afford him broad discretion over hiring and firing decisions, as well as exemptions from public disclosure of the new agency's activities.⁷³ Civil libertarians' concerns about the new agency's domestic activities can only be addressed through adequate congressional oversight and control.

CONCLUSION

By Spring 2002 consensus had begun to develop that the "presidential advisor" model was insufficient for the daunting task of coordinating governmental homeland security functions. Similarly, a "lead agency" approach with DOJ at the forefront in coordination with the OHS did not seem workable. Congress and the president thus had two options: the creation of a statutory advisor with a coordinative function, or a large-scale reorganization. The choice of the latter may have come at a price.

As the president and Senate Democrats squared off over the structure of the bill in Summer and Fall 2002 the federal bureaucracy continued to expand to wage the war on terrorism at home and abroad.⁷⁴ In addition, a whole host of security measures were thrown into limbo in one or the other chambers. By the mid-term elections of November 2002 the House of Representatives had been able to pass fewer than half of the annual appropriations bills due to partisan wrangling. Leaders chose instead to agree on temporary measures and leave the fate of budgets for many anti-terrorism programs to the lame-duck session of the 107th Congress.⁷⁵

The need for skilled governmental coordination to combat terrorism remains paramount. Unfortunately, the bickering at both ends of Pennsylvania Avenue over the structure of the new DHS may have diverted attention away from this pressing need. There were clear-cut benefits to

transforming Ridge's position into a statutory coordinator or "czar" in the EOP, particularly in the short-term. Had Congress and the president agreed to shore up Ridge's position through a legislative mandate, the White House and Capitol Hill might have accorded themselves more time to reflect about reorganization and alternative structures—and could have done so under less pressure had Ridge's coordinative role been bolstered. As Karen M. Hult and Charles Walcott note, "agencies frequently find themselves pursuing policies with multiple, ill-defined, and sometimes conflicting goals; relying upon ambiguous or controversial policy technologies; and confronting numerous clients, constituents, and overseers as well as their own panoply of experts."⁷⁶ Agencies responsible for homeland security have had to operate without an authoritative, centralizing mechanism for cooperation, which has complicated their task.

Reorganization will not prove a panacea for the war on terrorism. Reconstituting major governmental functions in the new DHS will take time, patience, and a spirit of cooperation—between the White House and Capitol Hill, between leaders of both parties in Congress, and between the reshuffled agencies. Perhaps the greatest liability for the DHS is the high expectations that have been set for it in an environment fraught with uncertainty, potential war with Iraq, and continuing terrorist threats against the home front. The risk is that it will be far easier for policymakers, as well as the public, to judge the new agency's failures than its victories. Information on foiled attacks and successful intelligence operations may never see the light of day, and emergency preparedness becomes an issue of public and media attention when counterterrorism measures have already failed—rarely beforehand.

Notes

- ¹ See James P. Pfiffner, ed., *The Managerial Presidency* (Pacific Grove, CA: Brooks/Cole, 1991).
- ² See Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996*, second edition (Lawrence: University Press of Kansas, 1998).
- ³ Executive Order 13288.
- ⁴ Members include the President, Vice-President, the Secretaries of Treasury, Defense, Health and Human Services, and Transportation, the Attorney General, Director of the Federal Emergency Management Agency, Director of the Federal Bureau of Investigation, Director of the Central Intelligence Agency, and the Director of the Office of Homeland Security.
- ⁵ Elizabeth Becker, "A Nation Challenged: Domestic Security; Bush is Said to Consider a New Security Department," *New York Times*, April 12, 2002, p. A16.
- ⁶ Mike Allen, "Bush Campaigns for Creating Homeland Security Department," *Washington Post*, June 25, 2002, p. A3.
- ⁷ Kathryn Dunn Tenpas and Stephen Hess, "The Bush White House: First Appraisals," *Presidential Studies Quarterly* 32 (2002), p. 581.
- ⁸ Bill Miller and Juliet Eilperin, "Obscure Labor Issues Block Homeland Security Bill," *Washington Post*, September 23, 2002, p. A8.
- ⁹ "Restructuring for Security," *New York Times*, June 13, 2002, p. A39.
- ¹⁰ Shirley Anne Warshaw, *The Keys to Power: Managing the Presidency* (New York: Longman, 2000), pp. 214-15; Charles Walcott and Karen Hult, *Governing the White House: From Hoover Through LBJ* (Lawrence: University of Kansas Press, 1995), Chapter 9.
- ¹¹ See Shirley Anne Warshaw, *Powersharing: White House-Cabinet Relations in the Modern Presidency* (Albany: SUNY Press, 1996), Chapter 2.
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