

Emergency Management and Civil Liberties in the Post 9/11 era

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Table of Contents

ABSTRACT.....	5
EMERGENCY MANAGEMENT AND CIVIL LIBERTIES	6
CONCEPTUAL MODELS AND METHODOLOGY	9
THE CIVIL DEFENCE MODEL	19
CASE STUDY 1 – THE OCTOBER CRISIS.	19
EMERGENCIES ACT 1988 AND THE NEW ORDER	28
CASE STUDY 2 – THE OKA CRISIS.....	28
9/11 – A FOCUSING EVENT	37
CASE STUDY 3 - TORONTO G20 RIOTS	48
CASE STUDY COMPARATIVE ANALYSIS.....	55
CONCLUSION.....	58
REFERENCES	60
ANNEXES.....	64

Abstract

This paper argues that in the post 9/11 era, the emergency management field is shifting toward the civil defence model that existed in the Cold War Era. Since the 1970s the emergency management field has focused on natural and man made disasters outside of war, but a renewed focus on security since 2001 has resulted in the normalization of a “state of exception” where emergency powers undermine civil liberty protections. This thesis examines the topic from two perspectives. First, this paper will provide a historical analysis of how the Canadian emergency management field has evolved since the First World War. Second, a comparative case study analysis will be conducted focused on the operational methodology and the interaction between emergency management legislation and civil liberties that occurred during the October Crisis, the Oka Crisis and the G20 Riots in Toronto. The result of these two approaches will provide insight into the reemergence of the civil defence model in the 21st century and new norms regarding civil liberty protections.

Keywords: G20, October Crisis, Oka Crisis, civil liberties, emergency management, 9/11

Emergency Management and Civil Liberties in the Post 9/11 Era

A burning police car and scenes of a city under siege by hooded protesters are memorable images from the 2010 Toronto G8/G20 Summit. These images and the riots that surrounded them represent the climax of months of security planning and an unprecedented concentration of Canada's security apparatus. If the perceived collapse of order on 26 and 27 June 2010 appeared swift, the police response was equally rapid. Within 24 hours, using an obscure statute called the *Public Works Protection Act*, (Yang, 2010) the police arrested more than 900 protesters and bystanders. One journalist described the city as being "scarier than a Bosnian war zone" and an arrested protester proclaimed his detention to be "tantamount to torture" (MacLean's, 2010).

The events of 2010 do not sit in isolation but represent the next chapter in the evolving relationship between the emergency management field and civil liberty protections – a relationship that has existed since Confederation. The opening words of s.91 of the *British North America Act (BNA)* provides that: "It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada [POGG]" (*BNA, 1867*). In other words, one of the core responsibilities of the federal government and the basis for the Canadian emergency power is to maintain peace and stability. The expression of this responsibility has taken different forms since Confederation but was codified with the creation of the *War Measures Act 1914 (WMA)* and then through the civil defence regulations that emerged during the World Wars. The use of the *WMA* throughout the 20th Century provides clear examples of how emergency management legislation can impact civil liberties. For instance, during WWII the *WMA* enabled "the executive to legally intern enemy aliens, censor speech, ban groups, confiscate property, and arrest and detain individuals without charge or trial. In justifying the extremity of those measures, the government and the

judiciary reasoned that curtailing the civil liberties of speech, thought, religion, and association was necessary to win the war and, ultimately, to preserve the very liberties constrained" (Adams, 2009, p. 77). The use of the *WMA* demonstrates a policy approach focussed on enforcing the POGG - even if this approach came at the expense of civil liberties. Consequently, the use of the *WMA* during WWII, the Cold War and subsequently during the 1970 October Crisis raised concerns into how Canada's emergency powers undermine civil liberty protections. As Alan Borovoy notes "few Canadians would deny the government some level of standby power in the event that a drastic emergency arose with such suddenness that there was no time for parliament to act. But, while some such level of power may arguably be accepted, the Canadian *War Measures Act* has contained virtually no fetters on what the government may do in any situation that it calls an emergency" (Borovoy, 1988, p.8). These concerns regarding emergency powers and civil liberties combined with a greater focus on natural disasters led to the creation of the *Emergencies Act 1988 (EM)* and a new chapter for the emergency management field.

The emergency management field was again drastically transformed after the 9/11 attacks. The post 9/11 era has been defined by a focus on anti-terror activities at the expense of natural disaster response (Henstra, 2011, p. 112). Since the attacks, Canada has faced a more complex emergency management environment shaped by public fear of a terrorist threat that exists outside traditional nation state borders. Fear of a foreign terrorist threat has translated into a normalized state of heightened security, reduced civil liberties and the centralization of Canada's emergency management apparatus through legislation like Bill C-36. According to Therese Murphy and Noel Whitty this new environment has led to the application of anti terror legislation outside of traditional security situations such as public health crises (Murphy and Whitty, 2009, p. 220). This suggests that, in the post 9/11 era, traditional emergency

management activities are increasingly being treated as security operations. Moreover, government officials are implementing new legislation or reimagining older ones to create policy directions that enhance the powers of the executive and security apparatus at the expense to traditional civil liberty protections.

This paper argues that in the post 9/11 era, the emergency management field is shifting toward the civil defence model that existed in the Cold War Era. Since the 1970s the emergency management field has focused on natural and man made disasters outside of war, but a renewed focus on security since 2001 has resulted in the normalization of a “state of exception” where emergency powers undermine civil liberty protections. This thesis examines the topic from two perspectives. First, this paper will provide a historical analysis of how the Canadian emergency management field has evolved since the First World War. Second, a comparative case study analysis will be conducted focused on the operational methodology and the interaction between emergency management legislation and civil liberties that occurred during the October Crisis, the Oka Crisis and the G20 Riots in Toronto. The result of these two approaches will provide insight into the reemergence of the civil defence model in the 21st century and new norms regarding civil liberty protections.

Conceptual Models and Methodology

Case Study Methodology

This thesis will be qualitative in nature and utilize a case study approach. Gretchen Marshall and Catherine Rossman note that “the strengths of the case study approach is its methodological eclecticism, a variety of methods may be used, including those that generate data” (Marshall and Rossman, 2016, p. 762). John Creswell in “Research Design,” further adds to Marshall and Rossman’s definition by pointing out that case studies allow for flexibility and are “bounded by time and activity” (Creswell, 2014, p. 925). Case studies can help increase understanding and identify trends within subject areas. Specific to this thesis and the emergency management field in general, measuring civil liberties requires a contextualized comparison which “self consciously seeks to address the issue of equivalence by searching for analytically equivalent phenomena – even if expressed in substantively different terms – across different contexts” (George and Bennett, 2004, p. 19). For the purposes of this thesis the phenomena explored are the 1970 October Crisis, the 1990 Oka Crisis and the 2010 G20 Toronto riots. These case studies were selected for two reasons. First, they were public security events requiring a major deployment of the emergency management apparatus. Second, I argue that the emergency management field has returned to a civil defence model which existed in Canada predominately during the 20th Century. The October Crisis occurred during the civil defence era while the Oka Crisis occurred during the civil protection period. By comparing the impact emergency management policies on civil liberties during these two emergencies to the G20 in Toronto, this analysis can offer new insights regarding civil liberties and emergency management legislation in the post 9/11 period.

The analysis of these case studies is based on Russell Dynes' Triple C operational model for civil defence and civil protection. Dynes describes the civil defence model as being focused on a foreign enemy attack and based on three principles "command, control and chaos" (Dynes, 1990, p. 2) while civil protection is focused on community emergency responses based on "continuity, coordination and cooperation" (Dynes, 1990, p. 14). These two frameworks will be used to compare the civil defence and civil protection models and to demonstrate the reemergence of the civil defence model in the post 9/11 era.

This thesis is divided into four distinct sections. Section one will focus on the civil defence model as it was practiced from WWI to the early 1970s. This section provides a history of civil defence, introduces the Dynes' civil defence model and documents the legislation that governed the emergency management field. I use the October Crisis as a case study to demonstrate how the civil defence model strictly limited civil liberties during periods of emergency. Section two explains the civil protection model and Dynes' operational method for civil protection. I use the Oka Crisis as a case study for the civil protection model, and compare both models by contrasting the October Crisis and the Oka Crisis. These two sections document the operational and legislative norms in the emergency management field and their impact on civil liberties. Section three focusses on the emergency management environment that emerged in the post 9/11 era. Using the G20 Toronto Riots as a case study, this section demonstrates how the emergency management field has returned to a civil defence model. I finish with an analysis which compares all three case studies. The comparison suggests that since 9/11 the Canadian emergency management field has shifted toward a civil defence model that places greater restrictions on civil liberties.

Individual case study analysis will be broken down into three distinct phases. Phase one will be focused on a historical introduction of the event and the importance it plays within the Canadian emergency management field. Using one of Dynes' two models, phase two will examine the operational methodology used during the emergency. Having established the characteristics and the operational model, phase three will focus on the how the emergency management legislation used during the emergency affected civil liberty protections. The goal of each case study is to both firmly establish the operational model and demonstrate how this model impacts civil liberties.

Civil liberties and human rights in a Canadian context

In a Canadian context, civil liberties are “rights that date back to the early stages of state formation and that are necessary to the functioning of a liberal capitalist democratic state: due process, voting, speech, religion, association, assembly and a free press” (Clément, 2016, p. 12). Legal protections for civil liberties have existed in Canada, to some degree, since the *British North America Act (BNA)*, which included “certain constitutional guarantees of freedom implicit and incapable of abridgement by either the provincial or federal government” (Keyes, 1959, p. 27). These protections were later formalized in the *Canadian Bill of Rights* (1960) and the *Canadian Charter of Rights and Freedoms* (1982). Although the Canadian tradition of civil liberties stems from British common-law, there is a long history of suspending civil liberties in Canadian history, particularly during emergencies. During WWI and WWII for instance, the federal government passed regulations which enabled the executive wide ranging powers to include interning enemy aliens, banning groups, confiscating property and widespread censorship (Adams, 2009, p. 77). Restrictions implemented during WWII led to a greater push toward codifying civil liberty protections. Gary Murray Keyes in discussing the creation of the

Bill for the Recognition and Protection of Human Rights and Fundamental Freedoms, notes that the Bill codifies long standing protections which already existed through the British legal tradition and the *BNA*. He also suggests that these civil liberties could be grouped into three broad categories: freedom of the press and speech, freedom of religion and freedom of the person from interference or security of the person and freedom of association (Keyes, 1959, p. 24).

During the 1970s the rights discourse in Canada expanded to include the emerging idea of human rights. The human rights concept “is a more expansive conception of rights: it refers to civil liberties as well as to a host of economic, social and cultural rights that have been popularized in the twentieth century,” (Clément, 2016, p. 12). For the purpose of this paper, however, the focus will be on the civil liberties described by Keyes. These civil liberties, which include due process, voting, speech, religion, association, assembly and a free press, are those rights most commonly restricted during periods of emergency.

The Civil Defence Model, the October Crisis and civil liberties

Dynes' civil defence operational model

The civil defence model played a substantial part in shaping the emergency management field both operationally and legislatively during the 20th Century. The core statutes underlying the civil defence doctrine stem from three primary sources - the “emergencies doctrine,” the “dimensions doctrine,” and the codification of these doctrines with the creation of the *WMA and the National Defence Act (NDA)*. The first source, the “emergencies doctrine” originates from s. 91 of the *BNA*, which provides that “it shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government (POGG) of Canada (*BNA*, 1867). As Hebert Marx notes s. 91 of the *BNA* is “the basis for federal emergency power legislation” in Canada (Marx, 1970, p. 56). The POGG and the “emergencies doctrine” is foundational to the civil defence model in two key ways. First it allows Parliament to exercise powers beyond the defence power included in s. 91(7) of the *BNA* and, second, it provides the legislative basis for the federal government to “override fields reserved to the provinces in the *BNA*” (Marx, 1970, p. 40). These two aspects of the “emergencies doctrine,” provide the legislative and legal underpinnings allowing “Parliament to legislate in all emergencies that affect the peace order and good government of Canada,” (Holthuis, 1991, p. 39). The second source of the civil defence model is the “dimensions doctrine.” The “dimensions doctrine” justified federal intervention in local and provincial jurisdictions when that matter attained “such dimensions as to effect the body politic of the Dominion” (Marx, 1970, p. 57). The *WMA* formalized the federal government’s powers to react to large scale emergencies, codifying both the “emergencies” and “dimensions” doctrines. During WWI, the *WMA* increased the power of the federal cabinet “which effectively ruled the

entire country by decree for four years” suspending civil liberties to include habeas corpus and freedom of speech. (Clément, 2016, p. 51). Specifically, the *WMA* provided the legislative authority for the Governor in Council in times of “real or apprehended war, invasion or insurrection” to intervene and unilaterally act in areas ranging from suspending civil liberties to dictating trade and manufacturing policy (*WMA*, 1914). In essence the *WMA* allowed the federal government to intervene unfettered in areas both inside and outside its sovereign jurisdiction. Although the *WMA*, the “emergencies” and “dimensions” doctrines formed key aspects of the civil defence model, it was not until the mid 1940s that civil defence became institutionalized as a response methodology in turn shaping the emergency management field’s focus toward responding to a foreign attack. The *NDA*’s “Aid to Civil Power” clause although not directly giving the federal government power outside of its jurisdiction, does allow provincial authorities to utilize the Canadian Forces. Specifically, this clause provides a provincial Attorney General the ability to request military assistance due to “a riot or disturbance of the peace beyond the powers of the civil authorities to suppress (or to prevent or to deal with) requiring the aid of the Canadian Forces,” (*NDA*, 1985). Although provincial authorities can request military aid, it is solely up to the Chief of Defence Staff to determine the scope and size of the military response (*NDA*, 1985). The *NDA* then supports the civil defence model, in that it provides the legal terms and parameters to allow military intervention in an emergency situation as well as transferring the command and control of the response effort away from civilian authorities to military commanders.

The formalization and bureaucratization of the civil defence model began as part of a wider North American response to fears of a German attack during WWI. This process increased both in speed and scope during WWII. The civil defence approach used during the wars was

based, as Russell Dynes describes on the Triple C method. This model assumed that in times of disaster civilian organizations and societies fall into “chaos” and the only way to ensure a successful response requires imposing a military or paramilitary “command” and “control” structure (Dynes, 1990, p. 2). This model holds that civilian organizations are fragile and, when placed under the stress of an emergency, become paralyzed. As a result of this military centric view, emergency management under the civil defence model fell under the portfolio of the Minister of National Defence.

Civil Defence, the Cold War and Civil Protection

By the 1960s, the emergency management field while maintaining much of its military characteristics was essentially being “coopted for natural disaster purposes,” as operators were quickly realizing that natural disasters posed a much more immediate threat to the population than an enemy nuclear strike (Hagen, 1977, pp. 15-16). David Alexander describes this repurposing of the emergency management apparatus at local and regional levels to meet this operational reality as “civil protection” (Alexander, 2002, p. 209). Many observers suggest that a key impetus for change in the field came as a result of the 1950 Red River Flood – which is often considered “the greatest natural disaster” in Canadian history (Passfield, 2002, p. 3). The flood, that resulted in the evacuation of over 100,000 people – the greatest mass exodus in Canadian history - cost \$125 million in damage in 1950 dollars (Passfield, 2002, p. 3). Due to its sheer size of its impact, there were immediate calls for funding and policy changes to reflect the reality that natural disasters posed a more immediate threat to Canadians than a Russian nuclear attack. Large scale disasters such as the 1950 Red River Flood led to the creation at the federal level of the Emergency Measures Office in 1959. The new department replaced the older Civil Defence Organization (CDO) which was primarily focussed and structured to respond to a nuclear attack

from the Soviet Union. For instance, a primary task of the CDO was overseeing population response drills and bunkers for high ranking officials. The Emergency Measures Office absorbed all these functions but also “represented an integration of continuity of government and population protection functions” (Hagen, 1977, p. 47). Fundamentally the Emergency Management Office can be seen as an acceptance at the federal level that natural disaster response was becoming a priority.

At the federal level, the emergency management focus on civil defence did not truly shift until the massive power outage that occurred in the northeast of North American in 1965. Depending on the location, the lights went out around 530 pm on 9 November 1965 throughout the Eastern seaboard. The power outage left 30 million people in the United States and another six million in Ontario without power in sub-zero temperatures for the better part of five days (Rosenthal, 1965, p. 11). For emergency management officials the challenge of the blackout rested not in the lights going out but the realization on how quickly the interconnected system of a modern society could be brought to its knees by what was essentially a broken transistor in a small town outside Niagara Falls (Burke and Jackson, 1978). In major cities such as New York City “thousands were trapped in elevators like hamsters in their cages; 800,000 were in the inert subways, tens of thousands were in the train and bus stations and in the air overhead” (Montgomery, 1965, p. 24). At this point in time emergency management officials’ primary focus remained on countering a nuclear attack, but the wide ranging scale of the blackout combined with the fact that it was due to a failure in the system and not an enemy attack touched “on something even deeper in significance than the missiles 50 miles from the controlling button” and opened the door to a larger realization of the vulnerability of modern urban areas in particular to natural and man-made disaster situations outside of war (Rosenthal, 1965, p. 15). By

the early 1970s on the heels of the 1965 power outage and “high-profile disasters such as the 1964 Alaska earthquake and Hurricane Betsy in 1965” (Morris, 2014, p. 409) governments throughout North America prioritized planning for natural and man-made disasters.

In observing the transformation that occurred in the late 1960s and 1970s it should be noted legislation that existed during the civil defence era remained unchanged as the civil protection model emerged. The historical use of civil defence style emergency powers in Canada, demonstrates a clear trend toward “disregarding human rights” as part of a government emergency and disaster response (Clément, 2016, p. 115). The use of the *WMA* to create the environment of strict censorship that existed during WWI, the internment of Japanese citizens during World War II and the 1946 suspension of habeas corpus during the Igor Gyzenko trial stand as the rule during the civil defence era and not the exception. In the aftermath of the 1965 power outage the view of vulnerability shifted toward how quickly modern societies could change on the account of one transistor (James and Burke, 1978). Although perceptions toward vulnerability in particular were changing, legislation such as the *WMA* and the *NDA*, remained in place.

Civil defence and civil liberties

Because of the military command structure, a lack of faith in civilian organizations and a fixation on an enemy attack, emergency management policies in the civil defence era had the potential to “become an instrument of repression, subtle or otherwise in character. Plans to manage civilian populations had the potential to become strategies for ensuring protests were repressed and revolts subdued - even when stimulated by a desire to defend or restore democratic rights. (Alexander, 2002 p. 210). In preparation for an enemy attack, government planners created policies that allowed the government to act with few constraints. As a result, emergency

management policy focussed on enabling unilateral action and maintaining government “control” by the executive branch. The focussing of government power within the executive during times of emergency strengthens the argument that the purpose of emergency laws such as the *WMA* is to create a “state of exception” and a suspension of the “judicial order” (Agamben, 2005, p. 4) to facilitate response efforts. From this perspective, emergency management policy in the civil defence era can be viewed as a legislative and operational method that facilitates the creation of a judicial “state of exception” in order to protect the country.

The creation of a “state of exception” and a militaristic approach to emergency policy are apparent in the application of civil defence policy in Canada. After the passage of the *WMA* there were several examples during the civil defence era that demonstrate the restriction of civil liberties as part of an emergency response. Examples of the *WMA* restricting civil liberties include the internment of persons with Japanese heritage (Oriola, 2009, p. 259) and the 1946 espionage hearings (Clément, 2008, p. 43). Most notably in these examples, fed by the public’s fear of an enemy attack, the federal government used emergency measures to suspend the civil liberties of specific groups of people as part of an approach that creates “segregations between those governed as political subjects (of law) and those in need of exceptional modes of government” (Aitken, 2008, p. 386). During WWII, for instance, the *WMA* enabled “the executive to legally intern enemy aliens, censor speech, ban groups, confiscate property, and arrest and detain individuals without charge or trial. In justifying the extremity of those measures, the government and the judiciary reasoned that curtailing the civil liberties of speech, thought, religion, and association was necessary to win the war and, ultimately, to preserve the very liberties constrained” (Adams, 2009, p. 77).

In summarizing the key aspects of the civil defence model, from an operational stand point it is dependent on applying Dynes' Triple C methodology where it is assumed civilian authorities will quickly become overwhelmed and a centralized command and control structure needs to be imposed to restore order. This model not only depends on a centralized command structure, but on the creation of a judicial "state of exception" where civil liberty protections can be bypassed as a strategy to increase control over specific "enemy" populations.

Case Study 1: The October Crisis, the War Measures Act and transitions.

On 15 October 1970, in response to the kidnapping of Quebec provincial cabinet minister Pierre Laporte and British diplomat James Cross by the Front de Liberation du Quebec (FLQ), the Government of Quebec invoked the *NDA*'s "aid to the civil power" clause to request assistance from the Canadian military (Tetley, 2006, p. 63). One day later, after consulting with provincial officials and fearing the situation was quickly spiralling out of control, Prime Minister Pierre Trudeau invoked the *War Measures Act*. The *WMA* gave Trudeau and his cabinet the power to pass regulations similar to those used during the wars. The regulations passed under the *WMA*, which remained in place for over three months, were initially directed at FLQ members and its sympathizers but undermined civil liberty protections not only in Quebec but throughout the country (Clément, 2008, p. 166).

The October Crisis and Dynes' civil defence model.

During the October Crisis, governments at both the provincial and federal level applied the civil defence model in response to the emergency. The "Aid to Civil Power" provision in the *NDA* was designed for times of "a riot or disturbance of the peace, beyond the powers of the civil authorities to suppress, prevent or deal with. In these situations, a provincial premier could, in times of need, request in writing through the provincial attorney general that the Chief of the

Defence Staff provide the required aid. While legally the CDS was bound to respond to the request, the magnitude of the response, in terms of forces, material, and effort, was entirely up to him” (Maloney, 1997, p. 137). The use and deployment of the Canadian Forces was only the first step in a civil defence response. As William Tetley, who at the time was the Quebec Minister of Revenue, notes the invocation of the *NDA* and subsequently the *WMA* meant that the provincial Attorney General could “order any man under his command to detain anyone or to search anywhere without a warrant, when it was judged necessary” (Tetley, 2006, pp. 63-64).

Dynes’ Triple C Model for civil defence holds that civilian authorities are fragile and as a result when faced with a significant emergency event are quickly overwhelmed and fall into chaos. As civilian organizations fall into chaos, higher authorities insert command and control elements creating a centralized command structure which impose a legal “state of exception” over specific populations. Violent FLQ activities in Quebec and Eastern Ontario had been occurring for the better part of 10 years before the events of October 1970. When the crisis began, both provincial and federal authorities concluded that the civilian police authorities could no longer contain the situation. Some members of the federal and provincial cabinet believed that “open insurrection and civil war were imminent” leading to the “deployment of the Canadian military to the streets of Ottawa and Montreal, the invocation of the *WMA*, and massive police detentions” (Munroe, 2009, p. 289). Fear of a complete breakdown of civilian government control was a key aspect of the debate leading to the use of “exceptional legislative action” (Munroe, 2009, p. 293).

Dynes suggests that the traditional civil defence model assumes “social chaos and dramatic disjuncture during emergencies” (Dynes, 1990, p. 12) and that “extra ordinary efforts have to be made to maintain social control” (Dynes, 1990, p. 10). Based on this perspective the

October Crisis and the reaction of both federal and provincial officials can be seen as falling within Dynes' definition. Decisions made to invoke the *NDA*'s "Aid to Civil Power" and use the *WMA*, are an acknowledgement of the perceived chaos existing on the ground and supports the civil defence model concept that civilian organizations fall into chaos when faced with large scale emergencies requiring a military style command and control element to facilitate an effective response.

The October Crisis and Civil Liberties

The October Crisis demonstrates core civil defence operational concepts at work. For instance, when the federal government invoked the *WMA* it was under the belief the country was under attack by a terrorist organization and that military control needed to be imposed. Although at the time the Trudeau government was widely supported for its actions there were some who believed the Criminal Code of Canada provided an adequate legal framework to both capture and prosecute FLQ members and sympathizers (Tetley, 2006, p. 85). Despite these objections, the courts and civil liberty experts such as F.R. Scott hesitantly admitted using the *WMA* to combat domestic terrorism was warranted (May, 2013, p. 119). As in previous occasions when the *WMA* was used there were wide ranging implications to civil liberties not only in Quebec and the Ottawa-Montreal corridor but throughout the country. The government's interaction with the media was a key flashpoint during the crisis as "the FLQ crisis marked the most dramatic use of censorship in Canadian peacetime" (Siegel, 1983, p. 72). John Steel suggests that freedom of speech is one of the most important civil liberties enjoyed in Western democracies and plays a significant role in determining the health of other liberties such as freedom of conscience (Steel, 2012, p. 21). If the media can be seen as a conduit to examining how civil liberties are curbed by

legislation – then the October Crisis provides an example of how civil defence legislation can restrict civil liberties and undermine protections.

The Trudeau government “imposed censorship, prohibiting media publication of anything that threatened security or in anyway gave a platform the statements or publications by the FLQ” (Siegel, 1983, p. 72). Censorship, as observed during the war years in particular, can be seen as a core aspect of the civil defence model when emergency powers are utilized. The use of the *WMA* and the restriction of freedom of speech as part of the strategy to defeat the FLQ emphasizes the October Crisis as an example of the civil defence model. The federal government believed the media was being used to further the FLQ cause. As a result of this belief, the use of the *WMA* and the civil liberty restrictions that followed it were seen as a self preserving activity (Cohen-Almagor, 2000) targeted at containing the FLQ’s ability to reach and influence the public. The federal government’s use of the civil defence model during the October Crisis went beyond Quebec. According to sociologist Dominique Clément, there were fears of potential FLQ activity across the country (Clément, 2008, p. 170). Clément notes that student newspapers were confiscated for printing the FLQ manifesto, high profile media officials were arrested and questioned, and in British Columbia a regulation was passed banning teachers in the province, including college and university professors, from expressing sympathy with the FLQ (Clément, 2008, p. 170).

Summary

The October Crisis and the use of both the *NDA* and *WMA*, demonstrate several traits that align it to Dynes’ civil defence operational model where chaos, command and control are key aspects of both the emergency and the response. (1) Chaos: Similar to the previous uses of the *WMA* in particular, the government insisted that the country was under attack by an enemy of the

state. For government leaders debating the situation a “perceived disintegration of public order” (Munroe, 2009, p. 289) led to the implementation of the *NDA* and the *WMA* in reaction to the FLQ attacks. (2) Command: The use of the military to supplement and replace civilian police organizations speaks to the Dynes’ concept of command and fears of the fragility of civilian organizations in the face of a substantial emergency. (3) Control: The final aspect of Dynes’ civil defence model is gaining or maintaining control. During the October Crisis this aspect can be seen in the suspension of habeas corpus, widespread censorship directed and mass arrests of people who were never charged with a crime.

The October Crisis demonstrates how the civil defence model can restrict civil liberties. Although the civil protection model and an increased focus on natural disasters was gaining increasing support in the emergency management field, fears of a national security emergency compiled with limited legislative options led the government to implement policies that utilized a civil defence model response. The implication then becomes, for civil defence to manage chaos and impose command and control it can often come at the expense of undermining civil liberty protections.

The *Emergencies Act 1988* and the new order

Civil Protection and Dynes' civil protection model

In the aftermath of the October Crisis significant changes to the emergency management field were undertaken, culminating with the creation of the *Emergencies Act 1988*. This transformation led to the formalization and bureaucratization of the civil protection approach as the core model underlying the emergency management field.

The *EM* is a recognition that the traditional civil defence model was not appropriate to deal with the increasing complexities of modern emergency and disaster management. Thomas Drabek suggests that chaos, control and command are “simply the wrong concepts for the system of shared governance that comprises the emergency management system” (Drabek, 1986, p. 86). He further notes that many of the assumptions made in imposing the traditional civil defence model do not reflect the complexities of emergency behavior (Drabek, 1986, p. 86). Dynes echoes these points by suggesting the primary assumption of the civil defence method is that “an emergency is a drastically different social situation than ‘normal time.’ In part, this assumption originates from the enemy attack scenario and also implies that emergencies are easy to recognize. That in fact, is not the case, even with situations such as earthquakes, which have sudden onset (Dynes, 1990, p. 6). Inherent in Dynes' conclusion is that the civil defence model is ill equipped to deal with complex emergency situations. Emergencies such as natural disasters are social creations that often have long incubation periods fueled by several underlying factors (Scadlyn et al, 2013, p. 248). In this view, factors such as poverty levels, education and infrastructure failures work together to decrease resiliency and increase a community's vulnerability to a specific hazard. The combination of all these social factors working over long periods of time create vulnerability and lead to disasters (Adger, 2006, p.269).

Increasing resiliency against a hazard and in turn avoiding a disaster becomes a matter of addressing core social factors such as poverty and education, rather than solely focusing on response efforts. The civil defence model focus on response capacity through the concentration of power in the executive at the expense of civil liberties (Weinrib, 2002, p. 102) does not reflect the social complexities that cause disasters. Dynes fundamentally agrees with Drabek and suggests that faced with the increasing challenges and shortfalls of the civil defence approach instead of chaos, command and control the emphasis should be on continuity, coordination and cooperation (Dynes, 1990, p. 14). The *EA* represents an acceptance of the complexities involved in emergencies and that a more nuanced approach is often necessary. The events of the October Crisis and “the excesses of power authorized by the *WMA* became the standard example demonstrating the need for constitutional protection of basic rights and freedom” (Weinrib, 2002, p. 99). The result of these varying conversations on civil liberties and government power was the creation of the *Charter of Rights and Freedoms 1982* and eventually the replacement of the *WMA* with the *EA*. The *EA* created new boundaries and limitations to the executive’s power to enforce the POGG but also shaped a bureaucratic and legislative model that diverged from the traditional civil defence approach. Whereas the *WMA* was an all purpose blunt instrument, the *EA* defined the rules on how and when emergency management legislation could restrict civil liberties. The *EA* through its public security mechanisms particularly in Sections 2-4 (*EA, 1988*) accept the “chaos, command and control” model inherent in civil defence but also incorporates the civil protection “continuity, coordination and cooperation” criteria for dealing with traditional civil protection activities such as natural disaster relief.

Civil liberties in the civil protection era

The *EA* ensures Canada's emergency management apparatus conforms to the Canada *Charter of Rights and Freedoms 1982* and increases the power of Parliament rather than the cabinet unilaterally shaping a response (Tenofsky, 1989, p. 296). For instance, the *EA* defines emergencies as public welfare, public security, international and war. While the majority of disaster situations, manmade and natural, will fall under the public welfare category, only Sections 2-4, public security, international and war emergencies could potentially result in the federal government passing restrictions similar to those seen under the *WMA*. Under Section 2 – Public Security Emergencies the federal government can prohibit public assemblies travel and assume control of public utilities and services so long as the emergency extends to a specified area of Canada and does not impair or infringe on a provincial government to act (*EA*, 1988). To invoke these restrictions imbedded in Sections 2-4 requires a “specific declaration of the state of affairs on the ground, the special temporary measures to be taken and and areas which the declaration will effect. Further these types of emergencies and restrictions can only extend beyond 90 days with parliamentary approval (Tenofsky, 1989, p. 296). These new boundaries imposed by the *EA* radically changed the nature of Canada's emergency management regime. The *EA* provides for provincial consultation, increases parliamentary supervision over the actions for the executive and expands the role of the judiciary (Holthuis, 1991, p. 85). Restrictions and definitions inserted into the *EA* reflect both a dynamic shift away from civil defence as well as an acceptance, with parliamentary oversight, that under certain circumstances civil liberty restrictions could be necessary. Where civil defence doctrine treats every situation as if it were a security threat requiring a firm protection of the *POGG*, the *EA* is a tacit acknowledgement of the nuances and challenges decision makers face during large scale emergency situations. At its

heart, the *EA* gives a clear definition to the powers and limitations of the executive in times of disaster.

Despite these changes, during the committee stage many were unconvinced the *EA* could prevent another overreach when it came to protecting civil liberties. According to Eliot Tenofsky, “there is still an apprehension that suggests that future governments, faced with situations encompassed in the Act, might not be as easily restrained. Courts both in Canada and the United States have been reluctant to interfere with powerful majorities in favor of getting the immediate job done” (Tenofsky, 1989, p. 303). Previous uses of civil defence emergency powers in North America were tacitly supported by the courts as creating a “state of exception” outside the judicial order. Many commentators suggest, including Borovoy and Holthuis, there is every possibility the courts could support a legislative overreach during an emergency situation. In considering the *EA*'s civil liberty protections centered around the *Canadian Charter of Rights and Freedoms*, some “argued that the exercise of certain emergency powers, for example, the prohibition on right of public assembly, limitations on freedom of movement and warrantless searches and seizures, envisage the infringement of certain *Charter* rights (Holthuis, 1991, p. 126). This concern echoes similar fears regarding the use of *WMA* during the civil defence era. Despite these restrictions, many believed in 1988 that when faced with a national emergency - specifically those regarding a public security or enemy threat - the federal government could still circumvent the *Charter* and restrict civil liberties in the same way and to the same extent seen during the October Crisis. Conversely, based on the restrictions placed in the *EA*, there are tighter controls put in place regarding to public welfare emergencies. These restrictions not only further differentiate civil defence from civil protection but also restricts the civil defence aspect of the field to specific threats rather being used as a one size fits all solution for emergencies.

Case Study 2: The Oka Crisis

The civil defence model was replaced with one that reflected a growing realization of the complicated sociological and economic forces at work during emergencies and disasters. This new approach recognizes the complicated and dynamic relationships that exist not only between different levels of governments but also within communities themselves (Wisner et al, pp.5). In contrast to the civil defence hierarchical approach, Dynes describes the civil protection approach as focused on continuity, coordination and cooperation (Dynes, 1990, p. 14) as well as having a greater concern for civil liberty protections.

The Oka Crisis represents the first major challenge to the civil protection regime formalized in 1988. Although the crisis had several hallmarks of a traditional civil defence operation, for instance the *NDA*'s "Aid to Civil Power" clause was invoked by the government of Quebec, the Oka Crisis falls within the purview of a civil protection response indicative of the bureaucratic and legislative machinery that emerged in the emergency management field after 1988. During the Oka Crisis, the success of the civil protection approach can be observed by examining the effectiveness of Dynes' continuity, coordination and cooperation model. The efficacy of the civil protection triple "C" method can be seen by examining the media coverage and the ability of post 1988 emergency management legislation to protect civil liberties.

The Oka Crisis and Dynes' civil protection model.

The Oka Crisis began as a long simmering land dispute between the Town of Oka QC, and the Mohawk native reserve of the Kanaestake. The dispute, which led to the 78 day stand off with Quebec's provincial police the Surete du Quebec (SQ) and then the military, centered on the town's decision to approve the expansion of a golf course onto disputed land. In response to the town's decision, Mohawk warriors established roadblocks along major routes leading into

Kanaestake, in protest to what was perceived by many natives as another provincial affront to their land claims in the region. Although the situation simmered for several months it was not until a disastrous dawn raid by the SQ on 11 July 1990 that the crisis took on national and eventually international proportions. The SQ arrived with almost 100 tactical officers, trucks, police cruisers and a front end loader and attempted to storm the Mohawk barricades. The confrontation quickly turned into a shooting match between both sides and “when the dust settled a few minutes later, the implications of the confrontation were clear: SQ police corporal Marcel Lemay lay dead from a bullet” (Lackenbauer, 2014, p. 177). The SQ retreated, leaving their equipment behind with all three routes leading to the reserve under Mohawk control. The situation worsened as Mohawks at the neighboring Kahnawake reserve established more blockades and seized the Mercier Bridge on the outskirts of Montreal as part of a larger “stratagem and action designed to support Kanestake, while providing more negotiation leverage through the importance of the bridge” (Lackenbauer, 2014, p. 178). As a result of these actions and the fact the SQ did not have the capability to resolve the situation, Premier Robert Bourassa invoked the *NDA*’s “Aid to Civil Power” clause and requested military assistance. In response the Canadian Forces deployed 4,500 soldiers, helicopters and tanks and as dictated within the Aid to Civil Power regulation made it clear “that the provincial government could only ask the military to come in, or leave. Whatever happened in between was a matter strictly for the army to decide” (Ciaccia, 2000, p. 210).

On the surface, the deployment of the military to contain the Mohawk uprising in 1990 bears all the hallmarks of Dynes’ civil defence approach. This was a situation where civilian authorities were overwhelmed and could not control the chaos resulting from the early morning raid of 11 July 1990. Brigadier General J.A. Roy, commander of Operation SALON, explanation

that the army was “essentially replacing the police and turning this into a purely military operation” (Ciaccia, 2000, p. 210) further accentuates the Oka Crisis connection to civil defence in the areas of command and control, and also draws comparisons to the military deployment during the October Crisis. Despite outward appearances a closer examination of the military’s strategy during the crisis suggests a more nuanced which balanced civil defence and civil protection priorities.

When the first elements of the Canadian Forces arrived at Kanastake and Kahnawake as part of Operation SALON, they did so with the intent of not only establishing a firm presence but to contain the crisis and prevent it from spreading to other native communities throughout the country (Winegard, 2006, p. 191). The initial military operation was based on concepts of continuity – specifically commanders on the ground primarily wanted to reduce tension and return some type of normalcy to life in the area. Beyond returning public order and security one of the key military tasks was to “restore freedom of movement across the Mercier Bridge” and transport routes throughout the region (Maloney, 1997, p. 150). This stands in contrast to military activities during the October Crisis that included conducting public security and police tasks such as assisting “the RCMP guarding federal buildings, escorting dignitaries and government officials and to if necessary provide a rapid reaction force [to capture FLQ suspects] (Winegard, 2006, pp. 144-145). Although the military did bring an element of overwhelming force to the region, to include deploying Leopard tanks, commanders believed that the Mohawks were less likely to start shooting and more likely to seek a peaceful end to the standoff if they believed they had no chance of winning a violent exchange as they had with the SQ (Ciaccia, 2000, p. 210).

A second aspect of the military intervention during the Oka Crisis involved cooperation. As the crisis continued, military officials actively worked with government negotiators and Mohawks in an attempt to reach a peaceful settlement – this approach often went against the wishes of many in the Quebec legislature who wanted the military to forcibly remove the Mohawks (Ciaccia, 2000, p. 245). Military actions, particularly at the Mercier Bridge were also indicative of a civil protection approach. Not only was a peaceful withdrawal by the Mohawks negotiated, but both military personnel and Mohawks worked together to dismantle the blockades located on the bridge (Swain, 2010, p. 126). Military commanders throughout the crisis remained in close communication with both government negotiators and the Mohawk leaders. On many occasions as Harold Swain one of the key negotiators notes, military leaders took quiet steps to assist with negotiations and were often the only government representatives the Mohawks trusted (Swain, 2010, p. 141). This approach of cooperation, where the primary emergency response organization actively worked with all the actors involved to end the conflict despite very public calls for a military solution, demonstrates a key success of the civil protection approach.

The final aspect of the civil protection approach is coordination. It could be argued during the civil defence era the concept of control by a military organization was an illusion – even during the October Crisis the military needed to coordinate with civilian organizations such as the RCMP. The Oka Crisis differs from the events in 1970 in that coordinating with all levels of government was a primary focus for Op SALON. Although the military had replaced the SQ on the front lines and was in full command of the situation, it still worked closely with all levels of government including the RCMP and US officials to help contain and find a peaceful end to the crisis (Maloney, 1997, p. 151). A particular reason for this was that General John de Chastelaine,

the Chief of the Defence Staff, believed Oka was a no win situation for the CF and had the potential to stain its reputation and relations with native people for years in the future. As a result, “he immediately decided that two fundamental principles would guide military actions: first, the CF would use only minimum force to contain the Mohawks and facilitate a “cooling-out period”; and second, the military would not use weapons or attack the Mohawk barricades unless the Warriors took the first shots” (Lackenbauer, 2014, p. 183). As a result, military personnel approached the Oka Crisis as if it were a peacekeeping operation resulting in a greater emphasis on working with all the parties involved rather than trying to impose a military solution.

By late September 1990 the Oka Crisis was over. Although on the surface the invocation of the “Aid to Civil Power” clause and deployment of the military appears to fall under the civil defence model upon further investigation the military’s approach can be viewed as being much more nuanced. Military officials working closely with the Mohawks, provincial and federal agencies, negotiators and the US government, utilized an approach based on continuity, coordination and cooperation to reach a peaceful solution to the conflict.

The approach used by the military during the Oka Crisis reinforces that after 1988 a new normal emerged for the emergency management field. The emphasis on a nuanced approach that accepted the underlying complexities, both social and political, highlight that the civil protection method had become accepted as the emergency management field’s primary response methodology.

Oka, Civil Protection and Civil Liberties

One of the primary motivations for creating the *EA* was to respond to the civil liberty restrictions and the dictatorial aspects of the Canadian executive that emerged during the civil

defence era (Roach, 2011, p. 6). In response to these fears, the *EA* placed specific checks and balances designed to prevent a political over reach by the executive branch.

A defining aspect of the October Crisis was the censorship of the media – specifically organizations willing to print the FLQ manifesto, mass arrests and the suspension of habeas corpus that resulted from the regulations passed under the *WMA*. The FLQ during the October Crisis attempted to use the media to promote its cause to the general public. Its most prominent demand, the publication of its manifesto and the censorship ban that resulted, provides an example of the media’s importance in times of public safety emergencies. Free speech concerns and the manipulation of the media was also a key aspect of the Oka Crisis. As Whitney Lackenbauer notes “playing the press had become a daily occupation the Kanestake...the Mohawks on their side were putting out press releases by the dozens. They also knew how to win the hearts and minds of the world by influencing press coverage” (Lackenbauer, 2014, p. 199). Similar to the October Crisis, controlling the media was a key strategy for all parties involved. During the October Crisis, the *WMA* and the censorship regulations that followed defined the government response. During the Oka Crisis, having recognized the Mohawk agenda was based on using the media to tarnish the reputation of the Canadian government (Lackenbauer, 2014, p. 185), instead of seeking to curb civil liberties the government and specifically the military, proactively worked to use the media to counter Mohawk initiatives.

Anita Recchia conducted a discourse analysis of the standoff focused on the Montreal Gazette, the Globe and Mail, the Ottawa Citizen and the Winnipeg Free Press. Her study shows that instead of censoring the Mohawks, the government used a sophisticated public relations strategy to discredit them. For the military during the Oka Crisis, winning the media relations battle involved portraying the Warriors as a fringe group with no support from mainstream native

society. As a consequence of this strategy, the Warriors would be discredited and public support for them would dwindle (Recchia, 1993, pp. 66-67). Further, Recchia concludes that "the government's campaign against the Warriors worked. The newspapers described the Warriors exactly in the manner in which the government wanted them to" (Recchia, 1993, p 81). Led by the military's public relations campaign and without the freedom of action afforded by the *WMA*, the government response shifted dramatically from the approach used during the October Crisis. Instead of censoring media outlets, the military effectively told its side of the story more effectively than the Mohawks. It should be noted that there were instances where elements of the Quebec government and the military to censor journalists - particularly during the later stages of the stand off. In an attempt to prevent reporters embedded with the Mohawks to communicate with what they viewed as sympathetic newspapers the "SQ secretly went to the justice of the peace to seek a court order authorizing them to terminate the phones. Without giving the media any opportunity to defend itself in court, the justice had granted the police request" (York and Pindera, 1991, p. 380). Military commanders also took steps of cutting journalists off from supplies or blocking their passage from the Mohawk barricades under the guise of suggesting that a large scale attack was imminent (York and Pindera, 1991, p. 382). These actions generated a great deal of criticism and was immediately considered "a violation of the *Charter of Rights and Freedoms*." Specifically, decisions to censor reporters on the scene were criticized for the lack of parliamentary debate and sidestepping the restrictions and criteria established in the *EA* (York and Pindera, 1991, p. 381).

Case study comparison: The Oka Crisis vs the October Crisis and civil liberties

In analyzing attempts by the military and the provincial government to impose civil liberty restrictions during the Oka Crisis, media organizations and civil rights groups looked

toward the *Charter* and the *EA* as bedrock legislation to bolster their objections. The *Globe and Mail*, *Ottawa Citizen* and *Montreal Gazette* challenged these restrictions under the *Charter* while the “Canadian branch of the international writers group, PEN, criticized the government for failing to invoke any parliamentary debate or special legislation such as the *EA* to authorize military censorship” (York and Pindera, 1991, p. 381). For these organizations, since the Oka Crisis did not fall within the *EA*’s jurisdiction, there were no legal reasons to impose civil liberty restrictions. This suggests that despite not being invoked during the Oka Crisis, the *EA* still provided the framework for government action and the basis for a civil liberties dialogue that was not possible during the October Crisis. This interplay between the *EA* and civil liberties provides an example of a fundamental difference between the civil defence and civil protection eras. The civil defence model views civil liberty restrictions as a necessary part in protecting the country from an enemy threat. In contrast the civil protection era focusses on restraining the executive branch while tying emergency management activity to the *Charter*.

In considering this history, civil defence and civil protection can be seen as a pendulum existing within the emergency management field. As the pendulum swings so to does civil defence or civil protection rise to prominence over the other. The Oka Crisis provides evidence that the pendulum for emergency response shifted toward civil protection. Further to this, it also provides evidence that civil protection can be characterized as placing specific restrictions on the executive branch’s powers, a greater consideration for civil liberty protection and an operational focus toward continuity, coordination and cooperation. The Oka Crisis, particularly when compared to the October Crisis, can be viewed as the first prominent crisis in Canada to be managed using the civil protection approach formalized by the *EA*. The *EA* restrained the federal cabinet by clearly defining the Oka Crisis as not meeting the requirements of a current national

crisis. Further, as seen through the media's interaction with response agencies during the crisis, the *EA* combined with the *Charter*, created a clear basis for dialogue for civil libertarians when the military and provincial government attempted to censor reporters embedded with the Mohawks. In contrast during the October Crisis, media organizations had little recourse against the censorship policies created under the *WMA*.

The Oka Crisis in 1990 upon examination demonstrates the civil protection approach in a public security setting. The military's deployment and interaction with both provincial and Mohawk actors indicate an active use of the continuity, coordination and cooperation model. In examining the swinging pendulum of the emergency management field, after 1988 the pendulum swung distinctively away from the civil defence model. At the federal level, emergency response reflected both the deeper sociological aspects of emergencies and disasters but also a greater concern for civil liberty protections.

9/11 – A focusing event

At an operational level the *EA* formalized a process occurring in the emergency management field for the better part of 40 years. For policy makers the *EA* represented a formal acceptance that the civil defence apparatus was being used for civil protection activities. The primacy of civil protection after 1988 did not necessarily constitute the death knell of civil defence. Parts 2-4 of the *EA* specifically speak to core civil defence activities by defining government actions during times of Public Security Emergencies, International Emergencies and War Emergencies respectively. At a fundamental level the *EA* although endeavouring to give greater definition to executive power during disaster and emergency situations, foresees circumstances where the civil protection apparatus can be coopted by the civil defence approach (Roberts, 2014, p. 372).

The return of Dynes' civil defence model.

The implications of the terrorist attacks in New York City on 11 September 2001 were far reaching and directly impacted the emergency management field. Only a week after the attacks “President George W. Bush announced the commencement of the ‘War on Terror.’ From that moment forward, a new era of security protocols were created to defend the United States and its allies from future terrorist attacks” (Bell, 2011, p. 1). One of the key questions lawmakers faced echoed arguments made during the civil defence era – “how much freedom should be sacrificed in the name of national security?” (Ripberger, 2011, pp. 87-88). The sudden focus of the public and government on security led to heightened security measures as well as new restrictions on civil liberties and suggest that “emergency management was swept up into the bigger issues of "homeland security" because September 11 made the issue so big that nearly everyone wanted a piece of the action" (Birkland, 2013, p. 185). Legislative activity since 9/11

has been successful in creating and reinforcing Agamben's "state of exception," without having to declare an emergency as defined in the *EA*. Perhaps the most significant of this new wave of legislation is Bill C-36 or the *Anti Terrorist Act*. Passed only weeks after the New York terrorist attack, the new bill introduced significant changes to the emergency management field. Bill C-36 can be seen legislatively as the starting point of returning the emergency management field to a civil defence model and a reintroduction of Dynes' Triple C methodology of chaos, command and control.

During the 9/11 attacks, under extreme conditions the police and fire response element command and control elements broke down leading to a chaotic response. In reviewing the events of the 9/11 attacks the National Commission on Terrorist Attacks Upon the United States in its final report found that during the emergency response "effective decision making in New York was hampered by problems in command and control and in internal communications" (9/11 Commission, 2004). The report also notes that due to the size of the incident "commanders had difficulty communicating with their units...and once units arrived at the World Trade Centre they were neither comprehensively accounted for nor coordinated" (9/11 Commission, 2004). Further, the Commission recommended the "integration of strategic intelligence from all sources into joint operational planning-with both dimensions spanning the foreign-domestic divide" (9/11 Commission, 2004). The 9/11 Commission's review of the events of 9/11 and its recommendations played a major role in defining the post 9/11 emergency management landscape. Its findings in regard to operational failures highlighted the fears Dynes attributed to civilian organizations in the civil defence model – namely they do not have the capability to handle large scale disasters such as 9/11. The committee also commented that the United States' security apparatus contributed to the the "shock" of the attack and noted the 9/11 attacks should

not be considered a “surprise.” As a result of the 9/11 attacks, operationally the emergency management field shifted away from natural hazards response towards security-oriented issues such as terrorism and the response to a future terrorist attack (Henstra, 2011, p. 109). Both in the United States with the creation of the Department of Homeland Security and in Canada with the creation of Public Safety Canada through Bill C-36, many of the federal government agencies and programs designed for civil protection were merged and at times placed in subordinate positions to anti terrorism efforts. These new conglomerates were created under the assumption that technological modern societies were built on fragile interconnected networks and as Birkland notes the “security establishment that sprang up after September 11 assumed that all disasters looked like terrorism” (Birkland, 2013, p. 187).

Similar to the height of the Cold War and civil defence, the primary focus of response efforts is to react to an enemy attack, in this case in the form of a terrorist attack - with the secondary program objective of responding to natural disasters and other emergencies. Indeed, almost 15 years after the *EA* was passed, Canadian politicians in 2003 came to believe that “the same emergency management concerns that characterize reactions to natural and technological hazards and disasters are also present in government reactions to terrorist threats and disasters” (Waugh, 1990, p. 91). As a result, Public Safety Canada was “designed to enhance the federal government’s capacity to protect Canada from terrorist threats” (Dyzenhaus, 2002, p. 25) and strikingly resembles in premise the Civil Defence Organization created in 1950. Further while Bill C-36 is primarily a security bill, “security is defined broadly...to include not only traditional concepts of national security but economic security. The preamble of the legislation refers to the threat of terrorism to ‘the stability of the economy and the general welfare of the country’” (Roach, 2002, pp. 155-156). The Civil Defence Office was created to respond to an enemy

nuclear attack with secondary duties of supporting natural disaster response. Public Safety Canada centralizes the federal response apparatus, shifting it away from civil protection and toward a civil defence approach. In 2007 the shift toward civil defence was further expanded with the passage of the *Emergency Management Act (EMA)*. Whereas Bill C-36 centralizes Canada's emergency management apparatus in order to confront a terrorist threat, the *EMA* formalizes the Minister of Public Safety's responsibilities in the emergency management field (*EMA, 2007*) and reflects "the changes in how the federal government plans for emergencies have been driven by the kinds of threats the nation has faced" (Lindsay, 2014, p. 8). Further the *EMA* emphasizes comprehensive emergency management approach throughout Canada by specifically mandating the use of the Incident Command System (ICS). The ICS is a military command structure and is widely used in NATO militaries as the basis for both operations and planning (Chief of Land Staff, 2008, p. 1-3).

A further examination of Public Safety Canada and the *EMA* also suggests a strong security focus as its mandate is stated as keeping "Canadians safe from a range of risks such as natural disasters, crime and terrorism" and incorporates five traditional security organizations including the Royal Canadian Military Police and the Canadian Security Intelligence Service (Public Safety Canada, 2016). This focus on security implies that the federal government has returned to a chaos, command and control approach to emergencies. Similar to the traditional civil defence belief that civilian organizations collapse under pressure, so then it can be observed that the new regime that emerged after 9/11 created a policy response based on this historical premise. Although this new model maintains an understanding of the social complexities involved in disaster situations such as the technological network underlying modern society or

the sociological forces at play - all of these have taken a secondary role to protecting against a terrorist attack.

The shift toward civil defence in the post 9/11 era displays two important traits. First, there is an increasing merger between civilian and military response efforts to defend against an enemy that exists outside the nation state construct and second, similar to the way civil protection commandeered the civil defence apparatus, disaster and emergency response are increasingly being viewed as fundamentally similar to an enemy attack. The merger between civilian and military response efforts as an aspect of the emergency management return to the civil defence model can be observed during the 2010 Vancouver Winter Olympic Games. In the post 9/11 era events such as the Olympics are large scale military style operations where the delineation between civilian and police aspects become increasingly murky. In many ways the Vancouver Olympics “were the first in Canada to incorporate a wide spectrum of security agencies so efficiently and completely that the Integrated Security Unit “blurred the lines between police, military and emergency management personnel” (McCarthy, 2011, p. 2). Preparations for the Vancouver Olympics saw security officials not only planning for terrorist threats but also focussed on training scenarios that involved a foreign enemy force in the Greater Vancouver area (McCarthy, 2011, p. 7). This increased focus on security and the use of paramilitary and military assets as primary response assets reinforce this merging of mission between military and civilian emergency management assets that blur the line “between inside and outside” security threats (Bigo, 2011, p. 101). At the height of the civil defence era the enemy was seen as existing outside a national border allowing for a clear separation between civilian forces inside the border and military forces focussed on the outside. The new reality in the post 9/11 era has seen at an operational level the formalization of an approach designed to

face an enemy that has no boundaries. The integration of police and military forces speaks to the return to the command, control and chaos model. During the Vancouver Olympics this integration materialized firstly through the Joint Intelligence Group (JIG) and the ISU that incorporated not only military and police personnel but also merged traditional military and police tasks. The JIG can be described as “an integrated collections and analysis group mandated to provide strategic, operational, and tactical intelligence...responsible for anticipating threats, issuing assessments, warnings and alerts, and responding to Requests for Information (Morden, 2012, p. 133). The JIG and the ISU concepts were borrowed from the NATO experience in Afghanistan and bares a striking resemblance to Brigade and higher command centres as described in the Canadian Forces doctrine handbook (Chief of Land Staff, 2008, p. 1-3). Similar to the military construct, the JIG consisted of multiple departments ranging from operations and planning, to information management and logistics. Unlike its military counterpart, the JIG also included multiple civilian organizations including not only police but also public works official. The merging of military doctrine within the civilian security element on one hand speaks to the practicalities of the integration and synchronization required to operate such a large organization. Within the Canadian Forces command centre there are multiple organizations with very distinct specialities that provide a command and control challenge – a similar challenge faced by the RCMP in terms of managing what amounted to a small army at the Summit. On the other hand, this merger where “military practices resemble those of other internal security agencies (Bigo, 2001, p. 107) provides insight into the continued merger of civilian and military response elements and how threat management – particularly against an outside threat – becomes the primary focus of the emergency management system. The G20 also reflects the civil defence

shift in that, instead of having the military deploy as it did during the October and Oka Crisis, civilian organizations adopt both the size and doctrine of conventional militaries.

This merger of mission can be seen in the type of surveillance operations undertaken by the JIG which ranged from observing Canadian indigenous groups to Al Qaeda activities. The second example of this civilian/military integration can be seen by the type of operations the Joint Intelligence Group and the ISU were prepared to be undertaken. These operations ranged from managing mass transit safety to an “exercise intended to simulate an airborne attack targeting the Games (Boyle et al, 2015, p. 114-115). In Canada the ISU concept addresses many of the operational concerns raised in documents such as the 9/11 Commission’s report, particularly in areas such as integration and command and control by creating a paramilitary organization which in turn has led to a militarization of the emergency management field.

Civil liberties and the normalized “state of exception”

Digo Bigo argues that security “always includes questions of civil safety, of accidents, of the environment, and it always mobilizes more agencies of security than just the soldiers” (Bigo, 2001, p. 95). Bigo premises that security becomes all encompassing, swallowing other spheres to include traditional civil protection activities such as natural disaster response. In the aftermath of the Olympic Games for instance the City of Vancouver retained much of the surveillance and crowd control technology such as the long range sonic acoustic device that was introduced by the RCMP (Boyle et al, 2015 p. 120). Although Olympic Games can be considered one off events which have at least since the 1972 Munich Games carried a large security footprint, there are increasing examples that the focus on security that emerged after the 9/11 attacks have seeped to other areas of the emergency management field. Murphy and Whitty suggest there is now a collision of security and public health emergencies with a growing range of legislation designed

to treat public health emergencies as if they were attacks on the state (Murphy and Whitty, 2009, p. 222). They believe there is a focus “first on national security and the effect of disease on military strength and preparedness,” (Murphy and Whitty, 2009, pp. 220-221). To support their position Murphy and Whitty draw on the 2003 SARS outbreak experience where “some jurisdictions, including Canada, adopted policies involving heavy limitations on individual rights” (Murphy and Whitty, 2009, p. 224), but did not necessarily require government officials to draw upon emergency powers. This convergence of public health emergencies, civil liberties and security returned to the forefront during 2014 Ebola Crisis where volunteers returning from treating the disease found themselves quarantined notwithstanding extensive assurances by medical professionals they had not contracted the infection. Kaci Lynne Hickox, a nurse writing about her experiences after returning from a country infected by ebola found herself involuntary quarantined despite testing negative for ebola and believes she was used by public officials to “falsely promote public fear, implement unlawful and unnecessary policies, all the while proclaiming to be protecting the public (Hickox, 2015, p. 11). The experiences of Hickox and the SARS Crisis as well as the use of the ISU concept during the Vancouver Olympics suggest that as Digo proposes security is the defining aspect of the post 9/11 disaster response. The civil defence model that emerged after 9/11 harbours many of the same traits of its predecessor in terms of focus on security and preparations, but with perhaps a greater sensitivity to a modern enemy that does not respect national borders. The fluid nature of the perceived enemy threat has in turn created a convergence of security fears and disaster response activities and contributes to a militarization of the emergency management apparatus.

Government policies in response to terrorist attacks fears have also had a significant impact on how emergency management undermines civil liberty protections. Although the *EA*

provides parameters for government action during times of emergency, a slew of new legislation in combination with a reimagining and aggressive use of already existing laws have undermined many of the protections that emerged during the civil protection era. Although there are several examples of post 9/11 legislation recreating the civil defence relationship between emergency management and civil liberties to include Bill C-36, Ontario's *Public Works Protection Act*, and most recently Bill C-51, this section will specifically examine Bill C-36 and the security certificate regime under the *IRPA*. This examination will suggest that while in of themselves Bill C-36 and the security certificate program do not necessarily undermine the *EA*, when used together these unconnected pieces of legislation become emergency powers that bypass the *EA* and normalize a judicial "state of exception."

Designed to be the initial reaction to the "War on Terror," Bill C-36 was implemented as an amendment to the criminal code and did two major things that have reshaped the emergency management field - particularly in regard to civil liberties. First, the Act created many new terrorism offenses, increased police powers to include preventive arrest, and extended the powers of Canada's Signals Intelligence Agency to include warrantless spying involving citizens (Roach, 2011, p. 4). Second, it included a very broad description of terrorism and centralized the Canadian security and emergency management apparatus through Public Safety Canada. These two aspects are designed to remove, in so far as the Charter permits this, law-enforcement and intelligence-gathering activities from the discipline of the rule of law. (Dyzenhaus, 2002, p. 27). Similar to the *WMA*, Bill C-36 enhances the government's ability to respond to terrorist attacks and does this by centralizing power within the federal cabinet. Further, due to the vague definition of "terrorism" Bill C-36 potentially matches and exceeds the civil liberty restrictions imposed during the October Crisis. Kent Roach suggests that Bill C-36's wide scope toward

security “adds fuel to fears that [the Bill C-36] could be applied to the disruptions of essential public and private services that have accompanied some recent anti-globalization protests at home and abroad” (Roach, 2002, p. 159). Further, the centralization of these organizations appears to undermine the reforms which resulted from the 1984 MacDonald Commission. During the 1970s repeated civil right infractions by the RCMP Secret Service, specifically that the organization had collected information on over 800 000 Canadians, resulted in the MacDonald Commission recommending the creation of the Canadian Security and Intelligence Service in order to enhance the accountability of these security organizations (Whitaker, 2012, p. 141). By implementing Bill C-36 as a criminal statute rather than an emergency power, the government bypasses the *EA* suggesting this is “an emergency law masquerading as an ordinary statute and means that we have stepped outside of the rule of law. [Bill C-36] seeks to normalize the exception by declaring a permanent state of emergency.” (Dyzenhaus, 2002, p. 28). Bill C-36 bypasses the *EA* and creates a new normal characterized as an environment where Agamben’s “state of exception” becomes the normal and reduced or restricted civil liberties are accepted by the general public as the price to be paid for greater security.

The security certificate program under *IRPA* is another example of legislation used in the post 9/11 era which has led to a rebirth of the civil defence era. The *IRPA* which passed in 1991 was “devised to protect Canadian citizens by way of regulating who can or cannot be on Canadian soil” (Oriola, 2009, p. 261). There are several key sections within the *IRPA* that have played a part in returning Canada to a civil defence model of emergency management. For instance, Section 34(1) defines when a non-citizen may be considered a threat to national security as well as grounds of inadmissibility and deportation. Further Sections 77-85 pertain to the security certificate program and sets out the conditions under which the security certificate

can be issued. The certificate is required to be signed by the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness and states that “a permanent resident or foreign national is inadmissible to Canada on the grounds of security risk, serious criminality, or because they have violated human rights” (Oriola, 2009, p. 262). Further, proactive use of the security certificate program during times of emergencies requires the *IRPA* to meet the thresholds set in the *EA*. For the security certificate program to be used without assessment requires “a national emergency for which special temporary measures are being taken under the *EA*, or in response to an emergency when it is in the interest of public welfare, health or safety or of protecting property or the environment that the activity be undertaken immediately” (*IRPA*, 1990). Since its introduction in 1991 the certificate program “has been used 27 times” and “there are five secret trial detainees fighting deportation and indefinite imprisonment without formal charges or conviction (Bell, 2006, p. 64).

Although created before the events of 9/11, the *IRPA* has become a pivotal tool in Canada’s “War on Terror,” specifically “the use of preventative arrest and detainment provisions in the *IRPA* has been a formidable power in Canada’s expanding national security apparatus” (Bell, 2006, p. 64). Although from its initial creation there were civil liberties concerns, as Rob Aitken observes the security certificate program “not only facilitates the possibility of indefinite detention (some certificate prisoners have been detained for over six years), it also authorizes a fully secret judicial practice. Section 78 establishes the basic authority for a closed court process. In cases where security detainees are constituted as threats to national security, a federal judge can conduct all proceedings in camera” (Aitken, 2008, p. 384). Similar to Bill C-36, the security certificate program creates an “exceptional legal technique but certifies particular bodies as threats requiring unique forms of governance” (Bell, 2006, p 64). Under this program the federal

government defines who it deems as a threat and then denies them fundamental rights because they are seen as aliens.

The civil defence era of the emergency management field depended on an operational focus on chaos, control and command. Further through the *WMA* and the *NDA*'s Aid to Civil Power clause during WWII and the October Crisis for instance, civil liberties were often sacrificed as a key aspect of response efforts. In the post 9/11 era in the name of security, governments have created and reimagined legislation to mimic war time measures. Civil defence measures particularly under the *WMA* were viewed as temporary in nature to reflect the belief that emergencies were temporal in nature with clear start and end points and as Tenofsky notes its harsh nature meant leaders were generally reluctant to use it (Tenofsky, 1989, p. 304). Since 9/11 the Canadian governments both at the federal and provincial level have used legislation such as Bill C-36 and the security certificate program to create emergency powers which create a permanence of the temporary, an attempt to normalize the exception.” (Dyzenhaus, 2002, p. 29). This normalization reinforces Agamben’s “state of exception” where these judicial measures “cannot be understood in legal terms and the state of exception appears as the legal for what cannot have legal form (Agamben, 2005, p. 1). Bill C-36 and the *IRPA*, when used together, constitute exceptional measures and have stark similarities to regulations passed under the *WMA*.

Case Study 3: 2010 Toronto G20 Riots

The G20 Riots in Toronto on 26-27 June 2010 provides a more recent example of how the emergency management field has changed in the 9/11 era. The G20 with almost 30,000 security personnel deployed, remains one of the largest deployments of the country’s emergency management apparatus in Canadian history. Because of the large size of the deployment compounded by the confrontation with protestors, examining aspects of the response explain the

new norms that have emerged within the emergency management field since 9/11. These new norms include the normalization of a “state of exception” and the merger of civilian and military response elements. The G20 summit demonstrates the shift of the emergency management field toward the civil defence model through the operational merger of the civilian and military security apparatus and the use of the *PWPA* to override civil liberty protections.

G20 and the return of civil defence

G20 Summits are a regular occurrence among world leaders and routinely attract protesters advocating a wide myriad of political and social causes. The Toronto Summit fell on the heels of two other high profile events that occurred in 2010. The Vancouver Winter Olympics in February 2010 and the G8 Summit that directly preceded the G20 from 25-26 June 2010 in nearby Huntsville, Ontario. Leading up to the conference, Canada’s security forces proactively worked to ensure a peaceful summit. These steps included the aggressive surveillance and infiltration of advocacy and protest groups throughout Canada, (Morden, 2012, p. 133), the deployment of thousands of police and military personnel as well as perhaps most controversial the use of Ontario’s *PWPA* and the implementation of Regulation 233/10. (Marin, 2010, p. 15). The *PWPA*, which has since been revoked, was designed to protect public works from potential enemy saboteurs and is a reflection of the time that created it. The *PWPA* provides for a very loose definition of what constitutes a public work but also “provides that any person who neglects or refuses to comply with a request or direction made by a guard or peace officer is guilty of an offence. In addition, a person who enters a public work or an approach to a public work without lawful authority is guilty of an offence (McMurty, 2011, p. 9). One of the more contentious aspects of the law is what exactly constitutes a public work. In its original form, the *PWPA* focussed on government infrastructure such as power stations but a revision in 1990

expanded this definition and allowed the government to designate any place as a public work. The *PWPA* then in turn cemented its authority by simultaneously limiting public and legal scrutiny in its application (Renzi and Elmer, 2013, p. 57). Tensions within Toronto were on the rise weeks and days before world leaders arrived on Canadian soil, specifically after 22 June “when a Toronto man (and on June 24, his wife) was arrested in connection with the G20 summit and charged with explosives and weapons offences (Marin, 2010, p. 17). By the time the conference started all the pieces were in place for a confrontation between militant protestors and the much larger security force.

On Saturday, 26 June 10, protests turned violent leading to what appeared on both the mass and social media circuits as a total breakdown of order within the city (Perpel and Babbage, 2010). The protests continued well into Saturday evening with the security forces despite some close calls managing to keep protestors away from the security exclusion zone where the conference itself was underway and taking what appeared to be a passive approach to containing violent protestors (Perpel and Babbage, 2010). As darkness fell on the city, the Toronto Police Service went on the offensive surrounding “demonstrators at the Novotel on The Esplanade hotel. Over the course of a few hours, police systematically arrested all of those involved in the protest, and by some accounts innocent bystanders as well” (Marin, 2010, p. 22). The aggressive police approach carried over onto the second day of the Summit as Toronto police raided a University of Toronto gymnasium being used as a hostel for out-of-town protestors who were primarily from Montreal, and reportedly arrested nearly 100 people. This was compounded by the arrests of hundreds more in the vicinity of a temporary detention centre that had become a flashpoint for the protestors. The CCLA later described the police action as “excessive and counterproductive. Many lawful demonstrators perceived police as having an ‘us vs them’

approach to security during the G20 that significantly increased tensions” (CCLA, 2010, p. 25).

When the dust settled the combined G8/G20 Summit cost tax payers over \$1 billion (CBC, 2010) and resulted in what was the largest mass arrest in the country’s history (Marin, 2010, p. 25).

Operationally because of the high profile and multi agency aspect of the Summit, the RCMP “had primary responsibility for providing the security necessary for the proper functioning of the G20 Summit. As such, the RCMP took a lead role in the planning of security for the G8/G20 Summits, particularly around the Metro Toronto Convention Centre and the hotels where the various dignitaries were staying (Toronto Police Service, 2011, p. 41). As the lead agency, the RCMP used an ICU and JIG concept similar to the Vancouver Olympics. As part of its mandate the JIG conducted undercover operations to include recruiting informants and remained a key part of the decision making cycle during the Summit itself (Morden, 2012, p. 133). The G20 provides an example of militarized civilian emergency management organizations with sophisticated centralized intelligence gathering capabilities built to combat an enemy as part of Canada’s contribution in the ‘War and Terror’ (Whitaker, 2003 p. 254).

The militarization of civilian response elements and tactics can also be observed in the application of Regulation 233/10 under the *PWPA*. This regulation created interdiction zones that were off limits to protestors by essentially designating three places as “public works.” Under the *PWPA*, peace officers have very broad powers to require citizens to provide identification and submit to searches in connection with public works” (Marin, 2010, p. 15). The idea of creating interdiction zones was a major aspect of the military operations in both Iraq and in Afghanistan and were used as a primary way of protecting key personnel and infrastructure from an enemy attack (Joint Security Operations in Theatre, 2014, p. IV-3). The use of the *PWPA* in this way, mimics the approach of military forces fighting insurgencies synonymous with the “War on

Terror.” During the 9/11 attacks civilian response organizations found themselves overwhelmed by the size and the scope of the disaster which at times reflected the civil defence assumption of chaos with substantial breakdowns in command and control. The operational organization and response during the G20 further reinforces that in the post 9/11 era the lines between civil protection response activities and defending against an enemy that can take any form are quickly vanishing, reinforcing the emergency of the civil defence model.

Civil Liberties during the G20

The events that occurred in Toronto also support the claim that either through the creation of new statutes or the unique use of older legislation, governments are finding ways to create and normalize a judicial “state of exception” by bypassing protections that were created during the civil protection era. Discussed earlier, this cocktail approach focussed on centralizing power and increasing the influence of the executive in order to facilitate a response that avoids the calamity of 9/11. Examples of this include Bill C-36 which came into force soon after the 9/11 attacks and the security certificate program stemming from the *IRPA*. Further there is growing evidence in the post 9/11 era as John Lindsay suggests that the potential for civil liberty restrictions similar to the October Crisis still exist as the *EA* has never truly been tested and provinces still hold onto distinctly civil defence type legislation (Lindsay, 2014). These types of legislation because they often do not qualify as the traditional example of ‘emergency’ powers normalize this state of exception and is facilitated by the invocation of security. It is the appeal to national security that allows the sovereign to invoke emergency powers and to establish a state of exception in which practices – detention, expulsion, torture – outside of the normal realm of permissible modes of government can be certified (Aitken, 2008, p. 385). The use of the *PWPA* and the creation of Ontario Regulation 233/10 during the G20 summit supports Lindsay’s position on the

relationship between the *EA* and provincial legislation and the the creation of this state of exception. During the G20 the broad definition of what constituted a public work resulted in O. Reg 233/10 which placed limitations on freedom of expression and freedom of assembly by designating “significant portions of downtown Toronto as a “public work.” (McMurty, 2011, pp. 37-38). Using the *PWPA* to bypass many of the restrictions placed on the emergency management field since the civil protection era gains further credence in that O. Reg 233/10 was passed in a secret meeting and “the public was not notified of this significant expansion of police powers until after the Regulation came into effect” (CCLA, 2010, p. 22). The secret implementation of this regulation meant that it only became public knowledge after the first arrests were made by the police. Starting with its closed door approval, O. Reg 233/10 played a key part in allowing the police to effect large scale arrests, searches and seizures to an unprecedented level. The Canadian Civil Liberties Association noted that “considering the scale and systematic nature of these seemingly illegal searches, it appears that during much of the Summit and the week leading up to it, constitutional protections against arbitrary detentions and unreasonable searches had effectively been suspended across downtown Toronto” (CCLA, 2010, p. 30). The Ontario Ombudsman, Andre Marin echoed the sentiments of the CCLA but also wondered about the reasoning for using the *PWPA* in the first place. He notes that “it was as if the exceptional nature of the Act had lain dormant for decades, until someone who thought its potential could be mobilized for G20 summit security decided to dust off this war relic, and get creative (Marin, 2010, pp. 47). Although it was drafted to be an emergency measure during war time, its use during the G20 was not under this context – unless one considers the protestors as being an “enemy” to the state. O Reg 233/10 was passed as a procedural regulation stemming from the only real application of the *PWPA* since its inception – the protection of courthouses.

The use of the *PWPA* in this manner resembles the approach of both Bill C-36 and the *IRPA* – the masking of emergency measures within a procedural regulation. Under the guise of secrecy and routine, city officials implemented an emergency measure without having to worry about benchmark protections included in the *EA* or Ontario’s provincial equivalent the *Emergency Management and Civil Protection Act*. The use of the *PWPA* further reinforces the normalizing of the ‘state of exception’ in the post 9/11 world. Government officials, under the guise of maintaining a secure environment, enhance the powers of security forces and the executive branch without having to utilize emergency legislation that would require review by any legal or elected body until after the fact.

Case study comparative analysis

Operational comparisons

There are several comparisons to be drawn between the G20 and the events of both the October and Oka Crisis. Operationally during the October Crisis, the military was used as a key part of maintaining government control over a perceived threat. Although the military was not deployed during the G20 riots, the merging of military and civilian agencies in terms of an operational approach, the size of the security forces involved and the military style integration achieved the same command and control goals seen in 1970. The similarity between both events is further emphasized in that both utilized a war time measure to impose operational control over the situation. In contrast, the G20 despite occurring in the *EA* era appears to have more differences with the events in 1990 than it does similarities. The response during the Oka Crisis fell almost completely to the military after the *NDA*'s "Aid to Civil Power" clause was invoked. The military's approach during the Oka Crisis reflected a more nuanced approach indicative of the civil protection model, this despite what many at the time were calling an armed open insurrection (Swain, 2010, p.144-145). The use of the *PWPA*, because it was a provincial statute fell outside the purview of the *EA* and federal jurisdiction, created a "state of exception" that simply did not exist during the Oka Crisis. Further, during Oka, the Canadian military deployed and utilized the civil protection approach of coordination, continuity and cooperation, particularly when dealing with the natives on the blockades. Despite the confrontational nature and close calls, the military's primary objective throughout the crisis remained a negotiated settlement. The security apparatus of the G20, because it was based on an operational approach designed to combat enemy threats was much more confrontational. The G20 organization viewed protestors as the "enemy" and similar to military operations in Iraq and

Afghanistan was determined to keep this enemy away from designated interdiction zones that were created under the *PWPA*. The G20 despite falling within the *EA* era and being temporally closer to Oka, highlights the changes that have emerged in the emergency management field since 9/11. The focus on command, control and chaos as evidenced during the G20 run counter to the approach taken by the Canadian military during the Oka Crisis. These differences highlight the fact that the G20 exists outside of the civil protection model.

Civil Liberty comparisons

The *PWPA* and its use during the G20, strongly resemble the use and outcomes of the *WMA* during the October Crisis. The use of the *WMA* in 1970 resulted targeted censorship, restrictions on public assembly and mass arrests on, at the time, an unseen scale (Siegel, 1983, p. 72). This closely reflects the *PWPA* use during the G20 where “peaceful protests were violently dispersed and force was used. In an effort to locate and disable 100-150 vandals, the police disregarded the constitutional rights of thousands” (CCLA, 2010, pp. 1-2) resulting in the largest mass arrest in Canadian history (CCLA, 2010, p. 39). In the aftermath of the summit an Angus Reid poll suggested 73 percent of Torontonians approved of police action (Kennedy, 2011). This reflects similar high public approval levels that existed in the aftermath of the October Crisis. If one is to argue that the wide ranging emergency management legislation that defined the civil defence era such as the *WMA* operated by creating a legal environment outside normal law then the *PWPA* can be seen as creating a very similar environment during the G20 – indeed the CCLA directly compared the *PWPA* use to the *WMA* (Yang, 2010).

Perhaps the greatest similarity in regard to civil liberties the G20 has to the Oka Crisis comes in the secret passage of O. Reg 233/10 which resembles the way “SQ had secretly gone to the justice of the peace to seek a court order authorizing them to terminate the phones. Without

giving the media any opportunity to defend itself in court, the justice had granted the police request" (York and Pindera, 1991, p. 380). Both these approaches speak to officials attempting to bypass protections and boundaries that emerged in the civil protection era. During the Oka Crisis media intervention, and the military's generally nuanced approach limited any widespread civil liberty restrictions. O. Reg 233/10 was not noticed by the public and the media until after people were being arrested and as the riots began on 26 June the public was willing to accept these exceptional measures. Officials utilized a regulation that allowed them to bypass these restrictions reflecting a common approach in the post 9/11 era. Through comparing the G20 to both the October and Oka Crisis, the use of the *PWPA* to simulate the powers created under the *WMA* in 1970 is indicative of a wider return of the emergency management field to a civil defence model where civil liberties are sacrificed in order to respond to the emergency or disaster.

Conclusion

In Alan Moore and David Lloyd's graphic novel *V is for Vendetta*, Great Britain in the aftermath of a massive enemy attack has become a totalitarian hermit state, ruled by a government obsessed with maintaining security for its citizens at all costs. The graphic novel itself follows its protagonist "V" and his protégé Evey Hammond as they work together to overturn what they see as an authoritarian government that uses the threat of an enemy to cement its power. In this dystopian future civil liberties fundamentally no longer exist – and the story highlights the plight of a young homosexual couple who find themselves labelled enemies of the state leading to their imprisonment, torture and eventual deaths. Using Guy Fawkes as his inspiration, V in explaining the reasons for leading a revolution quips "equality and freedom are not luxuries to lightly cast aside. Without them, order cannot long endure before approaching depths beyond imagining" (Moore and Lloyd, 1988). The book was a critical success when it was first released in 1988 and many of its themes echo in the post 9/11 world particularly in regard to the relationship between emergency management and civil liberties. Drawing on the writings of Aldous Huxley and George Orwell, Moore and Lloyd wrote their story based on the fears of a nuclear war and social unrest which existed in England during the Thatcherism years. (Gray, 2010, p. 36). In many ways the fears expressed by Moore and Lloyd reflect the shift of the emergency management field and its relationship with civil liberties since 9/11.

The emergency management field exists with a pendulum swinging between the civil defence model focussed primarily on a foreign attack and the civil protection model focussed on natural and man made disasters outside of war. The civil defence era, defined by the *WMA*, focussed on protecting against an enemy and its application frequently involved overriding civil liberty protections to ensure success. Conversely the civil protection era defined by the *EA*

resulted in greater civil liberty protections but a more nuanced approach to disasters reflecting the social aspects that exist in disaster environments.

Using a historical comparative case study analysis between the Toronto G20 riots and the Oka and October Crisis it appears that in the post 9/11 era the emergency management field has shifted toward a civil defence model where the overriding concern remains defending against an enemy attack. Further this thesis has identified two specific traits of the modern civil defence model that separates it from the historical model. First, since 9/11 there has been a merging of the civilian and military apparatus in order to better defend against an enemy attack. Second, emergency management legislation has been used to create and normalize a “state of exception” where safeguards and civil liberty protections that emerged during the civil protection era are being overridden in the name of security. Secondary findings that were identified in this thesis and which may require deeper research in the future is the spread of this security focus to areas in the emergency management field that traditionally do not fall under the enemy attack scenario. This thesis identified examples, specifically in the public health realm, where traditional civil protection emergencies were being treated in the same vein as an enemy attack.

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Annex Tables

Table 1. Key terms and timelines..... 68

Annex Table 1. Key terms and timelines

Civil Defence Era
<p>Dynes' Civil Defence Model - Built on a Triple "C" approach of Chaos, Command and Control. Under this system civilian organizations fall into "chaos" when placed under significant stress requiring a military imposed command and control system to return order.</p>
<p>Emergencies Doctrine - originates from s. 91 of the BNA, which provides that "it shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government (POGG) of Canada (BNA, 1867). As Hebert Marx notes s. 91 of the BNA is "the basis for federal emergency power legislation" in Canada (Marx, 1970, p. 56).</p>
<p>Dimensions Doctrine - justified federal intervention in local and provincial jurisdictions when that matter attained "such dimensions as to effect the body politic of the Dominion" (Marx, 1970, p. 57).</p>
<p>War Measures Act 1914 - WMA provided the legislative authority for the Governor in Council in times of "real or apprehended war, invasion or insurrection" to intervene and unilaterally act in areas ranging from suspending civil liberties to dictating trade and manufacturing policy (WMA, 1914).</p>
<p>1950 Red River Flood - The flood, that resulted in the evacuation of over 100,000 people – the greatest mass exodus in Canadian history - cost \$125 million in damage in 1950 dollars (Passfield, 2002, p. 3). Due to its sheer size of its impact, there were immediate calls for funding and policy changes to reflect the reality that natural disasters posed a more immediate threat to Canadians than a Russian nuclear attack.</p>
<p>1970 FLQ Crisis - On 15 October 1970, in response to the kidnapping of Quebec provincial cabinet minister Pierre Laporte and British diplomat James Cross by the Front de Liberation du Quebec (FLQ), the Government of Quebec invoked the NDA's "aid to the civil power" clause to request assistance from the Canadian military (Tetley, 2006, p. 63). One day later, after consulting with provincial officials and fearing the situation was quickly spiraling out of control, Prime Minister Pierre Trudeau invoked the War Measures Act.</p>
Civil Protection Era
<p>Dynes Civil Protection Model - civil protection is focused on community emergency responses based on "continuity, coordination and cooperation" (Dynes, 1990, p. 14) and accepts that emergencies such as natural disasters are social creations that often have long incubation periods fueled by several underlying factors (Scadlyn et al, 2013, p. 248).</p>
<p>MacDonald Commission - During the 1970s repeated civil right infractions by the RCMP Secret Service, specifically that the organization had collected information on over 800 000 Canadians, resulted in the MacDonald Commission recommending the creation of the Canadian Security and Intelligence Service in order to enhance the accountability of these security organizations (Whitaker, 2012, p. 141).</p>

Charter of Rights and Freedoms 1982 - Legal protections for civil liberties have existed in Canada, to some degree, since the British North America Act (BNA), which included “certain constitutional guarantees of freedom implicit and incapable of abridgement by either the provincial or federal government” (Keyes, 1959, p. 27). These protections were later formalized in the Canadian Bill of Rights (1960) and the Canadian Charter of Rights and Freedoms (1982).

Emergencies Act 1988 - The EA created new boundaries and limitations to the executive’s power to enforce the POGG but also shaped a bureaucratic and legislative model that diverged from the traditional civil defence approach. The EA through its public security mechanisms particularly in Sections 2-4 (EA, 1988) accept the “chaos, command and control” model inherent in civil defence but also incorporates the civil protection “continuity, coordination and cooperation” criteria for dealing with traditional civil protection activities such as natural disaster relief.

Oka Crisis 1990 - The Oka Crisis began as a long simmering land dispute between the Town of Oka QC, and the Mohawk native reserve of the Kanaestake. The dispute, which led to the 78 day stand off with Quebec’s provincial police the Surete du Quebec (SQ) and then the military, centered on the town’s decision to approve the expansion of a golf course onto disputed land.

Post 9/11 Era

The Normalization of the "state of exception" - emergency laws such as the WMA is to create a “state of exception” and a suspension of the “judicial order” (Agamben, 2005, p. 4) to facilitate response efforts.

National Commission on Terrorist Attacks Upon the United States - The Committee assigned to review the response and events leading up to the 9/11 attacks and make recommendations to prevent and respond to future terrorist events.

Bill C-36 - Passed in the aftermath of the 9/11 Attacks led to the creation of Pubic Safety Canada and can be seen legislatively as the starting point of returning the emergency management field to a civil defence model and a reintroduction of Dynes’ Triple C methodology of chaos, command and control.

Vancouver Olympics - the first in Canada to incorporate a wide spectrum of security agencies so efficiently and completely that the Integrated Security Unit “blurred the lines between police, military and emergency management personnel” (McCarthy, 2011, p. 2).

Toronto G20 Riots - provides a more recent example of how the emergency management field has changed in the 9/11 era. The G20 with almost 30,000 security personnel deployed, remains one of the largest deployments of the country’s emergency management apparatus in Canadian history.