Coordination Failure, Pandemic Prevention, and Political Polarization in Global Perspective

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ABSTRACT

The aftermath of the February 2022 public order emergency in Canada offers a timely opportunity to modernize the *Emergencies Act* and revisit the coordination imperative with the complexity of global emergencies squarely in mind. The failure to coordinate globally in the early stages of the Covid-19 outbreak, despite a vast repository of knowledge of how to do so—set against the backdrop of increasingly polarized politics and geopolitics—transformed an avoidable public health emergency into multiple humanitarian, economic, social, and political crises. This short article highlights Commissioner Rouleau's focus on coordination failure throughout his report. It then situates the public order emergency in a global perspective, focusing on pandemic preparedness and the polarized political context that framed it. The goal of this essay is to stress the importance of viewing emergency powers holistically, and to advocate reading the Commissioner's recommendations not in isolation, but as a small and partial response to a wicked—or super wicked—problem of global proportions.

I. INTRODUCTION

The aftermath of the February 2022 public order emergency in Canada offers a timely opportunity to modernize the *Emergencies Act*[1] and revisit the coordination imperative,[2] with the complexity

[1] RSC., 1985, c. 22 (4th Supp.).

[2] Canada's *Emergencies Act* does not directly address the problem of coordination. Instead, coordination is the focus of the ministerial duties set out in the *Emergency Management Act*, SC 2007, c. 15.

of global emergencies squarely in mind. Five months before Commissioner Paul S. Rouleau tabled his Report of the Public Inquiry into the 2022 Public Order Emergency,[3] the Lancet Commission—"an interdisciplinary initiative encompassing the health sciences, business, finance, and public policy"[4]—released its own final report on the Covid-19 pandemic, describing "a massive global failure at multiple levels."[5] The two reports make compelling side-by-side reading. The failure to coordinate globally in the early stages of the Covid-19 outbreak, despite a vast repository of knowledge of how to do so—set against the backdrop of increasingly polarized politics and geopolitics—transformed an avoidable public health emergency into multiple humanitarian, economic, social, and political crises.

This short article begins by highlighting Commissioner Rouleau's focus on coordination failure throughout his report. It then situates the public order emergency in a global perspective, focusing on pandemic preparedness and the polarized political context that framed it. My goal in this essay is to stress the importance of viewing emergency powers holistically, and to advocate reading the Commissioner's recommendations not in isolation, but as a small and partial response to a wicked—or *super* wicked[6]—problem of global proportions.

I. COORDINATION FAILURE

Like the Lancet Commission's observation on multiple failures, Commissioner Rouleau's Report properly acknowledges, in its narrative account, the complexity of the problem and the failure of a coordinated response. The report's 56 recommendations themselves mention "coordination," "coordinate," and their linguistic cognates more than a dozen times.[7] The report includes recommendations that the federal

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[3] Canada, Public Order Emergency Commission, *Report of the Public Inquiry into the 2022 Public Order Emergency* (Ottawa: Privy Council Office, 2023) (Chair: Hon Paul S. Rouleau) (the Rouleau Report).

[4] See <covid19commission.org/>.

[5] Jeffrey D. Sachs, et al. "The Lancet Commission on Lessons for the Future from the COVID-19 Pandemic" (2022) 400: 10359 *The Lancet* (British edition) 1224, [Lancet Commission Report] at 1224.

[6] Graeme Auld, et al, "Managing Pandemics as Super Wicked Problems: Lessons from, and for, COVID-19 and the Climate Crisis" (2021) 54 *Policy Sciences* 707.

[7] While not the central concern of this article, the recommendations (abbreviated in this and subsequent notes to "R") in the report also address questions of *consultation* on such matters as critical trade corridors and infrastructure (R30). As for the text of the *Emergencies Act* itself, it recommends including a duty to consult with the territories and consultations with Indigenous communities to develop consultation protocols.

government work with "provincial, Indigenous, and territorial governments; police and intelligence agencies; the Canadian Association of Police Chiefs; and other stakeholders" to develop information sharing, gathering, distribution, and evaluation protocols[8] and create a national intelligence coordinator for "major events of a national or interprovincial or interterritorial dimension."[9] Other recommendations focus on the co-development of national standards, the joint review of policing of protests, federal inter-agency coordination, and mitigation of intrusions of provincial jurisdiction.[10] The report also recommends intergovernmental coordination in studying misinformation and disinformation generated through social media as well as the use of cryptocurrencies[11] and various other forms or coordination on a range of other matters relating to policing.[12] Taken as a

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Underlining the point that consultation is not the same as coordination, R36 provides that, when the *Emergencies Act* is invoked, "[a]lthough not determinative, the views of provincial, territorial, and Indigenous governments that such measures are not needed within their jurisdictions should be considered in the development of the measures and the jurisdictions to which they are made applicable."

[8] Rouleau Report, *supra* note 3, R1.

[9] *Ibid*, R2.

[10] *Ibid*, *supra* note 3. Consider the following recommendations (emphasis added in notes 10-12): R9: "All governments and their police services should work *cooperatively* to create, to the extent possible, national standards on how these issues are addressed." R23: "The federal government, *in conjunction with* other governments and with police services and other stakeholders, should comprehensively examine the scope and limitations on police powers in relation to protest activities." R29: "The federal government should initiate a review to ensure that the federal government agencies with a responsibility for the collection or analysis of security intelligence are fully *coordinated* among themselves ... to minimize duplication, and to promote integration and effective and timely sharing at the federal level and among stakeholders at other levels of government." R35: "Should invocation of the *Emergencies Act* be necessary and to the extent that circumstances permit, the federal government should *co-operate* with the provinces to ensure that the measures it adopts to deal with the emergency comply with the requirements of subsection 19(3) of the Act so as to mitigate any infringement on provincial jurisdiction."

[11] R53: "All levels of government should continue to study the impact of social media, including misinformation and disinformation, on Canadian society, with a focus on preserving freedom of expression and the benefits of new technologies, while addressing the serious challenges that misinformation, disinformation, and other online harms present to individuals and Canadian society. Governments should *coordinate* their work in this area to ensure that any jurisdictional issues may be addressed." R54: "The federal government should continue with its study into cryptocurrencies. This study should be informed by the findings of this Commission. Federal officials should seek to *collaborate* with counterparts at other levels of government to benefit from existing study in this area and to ensure that any jurisdictional issues may be addressed."

[12] Other recommendations address *coordination* issues among specific actors such as R3:

whole, the recommendations could reasonably be read as an indictment of Canadian federalism[13] and of the inability of multiple levels of government and the private and not-for-profit sectors to work together—a precondition of effective emergency management.[14]

The Commission's appeal to governments and agencies for better coordination shows that the immediate problem that the *Emergencies Act* was invoked to address, the multiple problems arising from the Freedom Convoy in Ottawa, was a symptom of larger, more complex problems. Since the 1970s, following Horst Rittel and Melvin Webber,[15] these kinds of problems are often described as *wicked problems*, signifying their contentious and intractable nature. In Rittel and Webber's formulation, wicked problems have no clear definition and no obvious end; there is no definitive answer, no exhaustive set of solutions, and no unambiguous test to confirm that any solution is effective; there is also no opportunity "to learn by trial-and-error."[16] Every wicked problem is unique and the way it is framed will affect the options for its resolution, even as policy mistakes generate serious consequences.[17] Critically, every wicked problem might be understood as a symptom of another, higher-level problem—so there is no "natural level of a wicked problem."[18] In today's terminology, we might therefore see wicked problems as "nested."[19]

"police and other law enforcement agencies" and recommend, for example, the creation of a R10 and R11:"major event management *coordinator*" at different levels of government to "promote accountability and a seamless transition to integrated command, where appropriate" and, in the context of the federal government, R15: "to address and *coordinate* policing responses across the country to major events of a national dimension." The Commission also recommends that the RCMP take the lead in developing "a single command and control model, with shared nomenclature to facilitate integrated operations in appropriate situations". R20 and R24 recommend that the federal government *work with other relevant levels of government* on accreditation processes for RCMP or police officers working inter-provincially to enforce provincial legislation and other by-laws and on policing and security in the National Capital Region.

[13] See Leah West's observations during the Rouleau Commission Hearing Transcript, vol 34, 30 November, 2022, at 89, line 2.

[14] Jack Lindsay, "Canada's Fractured Emergency Management System" (2023) 46 *Manitoba LJ*, this issue.

[15] "Dilemmas in a General Theory of Planning" (1973) 4:2 *Policy Sciences* 155.

[16] *Ibid,* at 161-164.

[17] *Ibid,* at 164-166.

[18] *Ibid,* at 165.

[19] J. B. Ruhl and Daniel M. Katz, "Mapping Law's Complexity with 'Legal Maps'" in Jamie Murray, Thomas Webb, and Steven Wheatley, eds, *Complexity Theory and Law: Mapping an Emergent Jurisprudence* (Boca Raton, FL: Routledge, 2018), 23 at 31.

The idea of a wicked problem has much to recommend for an analysis of emergency powers. Emergency powers are typically invoked after the fact, when preventive measures have failed. Any *ex post* assessment of their use will inevitably identify missed opportunities to intervene at an earlier stage and a lack of attention to root causes on the part of actors who could have made a difference. Commissioner Rouleau's report reminds us that the invocation of an emergency is, by its nature, an admission of failure: a failure to take adequate steps to prevent or mitigate a crisis. The problem, as Rittel and Webber captured so well in their study, is that root causes are themselves contentious. The next two parts of this essay will consider two contextual factors, beyond the Commission's mandate, that might usefully be brought to bear in a holistic post-mortem of the February 2022 emergency.

II. Pandemic Control Measures and Political Cleavages

One obvious root cause of the Freedom Convoy and the emergency proclamation is the Covid-19 pandemic itself. Although the Report identifies the pandemic as a background factor,[20] it was not within Justice Rouleau's mandate to address the global context. Yet the wave of protests that hit Ottawa in February 2022 was far from isolated; it had counterparts around the world, for example, in New Zealand and Australia[21] (among others) and much later, in November-December 2022, in China.[22] Some governments used emergency powers as a pretext to strengthen authoritarian rule, while dissipating mass protests only obliquely related, if at all, to pandemic policies.[23] The contribution of the pandemic to democratic regression during the Covid-19 pandemic, though by no means uniform, is well-documented.[24] In some cases, governments used pandemic-

[20] Rouleau Report, *supra* note 3, vol 1, at 13: "There is little doubt that the COVID-19 pandemic and the responses of various levels of government played a significant role in how the Freedom Convoy movement emerged."

[21] Dan Bilefsky, Ian Austen and Natasha Frost, "Ottawa Truck Convoy Drags On, Fueling Protests in New Zealand and Australia", *The New York Times* (9 February 2022).

[22] Jonathan Wolfe, "China's Covid revolt", *The New York Times* (30 November 2022).

[23] "Protection racket", *The Economist* (25 April 2020), 52-54.

[24] Aurel Croissant and Lars Pelke, "Covid-19 and Democracy: Creeping Authoritarianism?" in Aurel Croissant and Olli Hellmann, eds, *Democracy, State Capacity and the Governance of COVID-19 in Asia-Oceania* (Milton: Taylor & Francis Group, 2023), 43-68. The authors warn against "a simplistic understanding of the linkages between the pandemic

related powers to quell protests related to longstanding political grievances, as in Thailand[25] and Hong Kong.[26] The possibility that a pandemic might lead to social unrest or exacerbate political cleavages is not far-fetched; serious-minded governments could have anticipated the need for channels for peaceful dissent.[27] In some jurisdictions, notably Taiwan, governments were able to respond effectively to public concerns (e.g., over data protection and privacy) by refining their policies accordingly.[28]

On a wider timeframe, then, and viewed from an earlier stage before the Freedom Convoy was organized, the pandemic might be seen as a proximate cause of the protests, one that led to many other political and economic shocks around the world. Viewing the pandemic in this way might be seen as absolving both the protesters and the government of their respective roles in the events of February 2023—just as an inquiry into the root causes of the 9/11 attacks on the United States was thought to draw attention away from the agency of those who planned and executed the attacks.[29] But time and again, the conclusion of inquiries into emergency powers and crisis is a simple one: investing in prevention and addressing root causes pre-empts the need to invoke emergency powers later on.[30] For

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and democratic trends" (at 63-64) but observe that "the pandemic is playing into domestic political processes that were already occurring before the pandemic, which have contributed in different ways to destabilize fragile democratic institutions or harden authoritarian structures" (at 64).

[25] Khemthong Tonsakulrungruang and Rawin Leelapatana, "Thailand's Response to Covid-19: Human Rights in Decline and More Social Turbulence" in Joelle Grogan, Alice Donald, and Joelle Grogan, eds, *Routledge Handbook of Law and the COVID-19 Pandemic* (Milton: Taylor and Francis, 2022), 168 at 176.

[26] The situation in Hong Kong was particularly complex because of the imposition by China in 2020 of a national security law for Hong Kong, which drastically changed Hong Kong's relationship to the People's Republic of China and enabled Hong Kong's government to supress political protests: see generally, Hualing Fu and Michael Hor, eds., *The National Security Law of Hong Kong: Restoration and Transformation* (Hong Kong: Hong Kong University Press, 2022).

[27] On the need for legislation to regulate the parameters of peaceful assembly in Canada, see Jamie Cameron and Robert Diab, "Public Order Policing: a Proposal for a Charter-Compliant Legislative Response," (2023) 46 Manitoba LJ, this issue.

[28] Wen-Chen Chang and Chun-Yuan Lin, "Taiwan: Democracy, Technology, and Civil Society" in Victor V. Ramraj, ed., *Covid-19 in Asia: Law and Policy Contexts* (New York: Oxford University Press, 2020), 43.

[29] Mark Abley, "Root-Causes Debate Raging: Opponents Argue Need to Probe Underlying Reasons of Sept. 11 Attacks", *The Gazette* (27 October 2001), B1.

[30] The first of the Lancet Commission's five pillars for fighting emerging infectious diseases is "prevention: to stop an outbreak before it occurs by taking effective measures to prevent the emergence of a new and dangerous pathogen" (*supra* note 5, at 1227)

decades before the Covid-19 pandemic, public health officials had warned of the dangers of pandemics and the need to invest in a range of measures to prevent them.[31] Although some countries[32] responded to some of these calls, many basic recommendations relating to "preventing, detecting, and responding to health emergencies; health systems; vulnerabilities to political, socioeconomic, and environmental risks; and … adherence to international norms" were unevenly implemented or ignored completely.[33]

Two challenges of prevention stand out. First, in a democracy with relatively short election cycles and attention spans, we need to find ways of resisting the natural tendency among individuals and policy-makers to discount future interests. As Jonathan Boston explains, human beings "have a tendency to discount or ignore problems that seem distant, remote, or abstract. … Equally, citizens may question the sincerity, wisdom or durability of the government's policy commitments, all the more so in a context of low political trust or intense ideological polarization."[34] Delay discounting,[35] the preference for short-term over long-term rewards, is an important but not unique feature of democracies,[36] and one that hinders effective prevention strategies. Second, in our efforts to prevent or mitigate future epidemics and other disasters, we need to be aware of the *paradox of prevention*: the better we become at preventing disasters, the less visible preventive measures become, making them seem unnecessary.[37] Had the Chinese government

[31] Jonathan D. Mayer and Nancy Davis Lewis. "An Inevitable Pandemic: Geographic Insights into the COVID-19 Global Health Emergency" (2020) 61 *Eurasian Geography & Economics* 404. See also, Lancet Commission Report, *supra* note 5, at 1228: "Despite ample previous warnings of increasing pandemic risks, at least since the outbreak of severe acute respiratory syndrome in 2003, most of the world was not prepared for COVID-19."

[32] Those affected by the SARS outbreak in 2003 were much better prepared: see chapters on Taiwan, Singapore, and Vietnam, among others, in Ramraj, ed., *Covid-19 in Asia*, *supra* note 28.

[33] Jennifer Cable et al. "Pandemic Diseases Preparedness and Response in the Age of COVID-19—a Symposium Report" (2021) 1489:1 *Annals of the New York Academy of Sciences* 17 at 17.

[34] Jonathan Boston, *Governing for the Future: Designing Democratic Institutions for a Better Tomorrow* (Bingley: Emerald Publishing Limited, 2016), at xxv.

[35] A more specific definition is provided in the psychology and economics: "Delay discounting can be defined as the cognitive process that allows the individual to compare values between the immediate and delayed consumption of a determined commodity." See Adriana da Matta, Fábio Leyser Gonçalves and Lisiane Bizarro, "Delay Discounting: Concepts and Measures" (2012) 5:2 Psychology & Neuroscience 135 at 135.

[36] Boston, *Governing for the Future*, *supra* note 34, at xxvi, xxvii.

[37] Simon Chapman, "The Paradox of Prevention", 313:7065 BMJ (2 November 1996), p. 1104.

and the World Health Organization successfully contained the virus in 2019, few would have taken seriously the importance of investing in pandemic preparedness. And yet, as with insurance and other mechanisms for safeguarding against future risks, the best way to guard against disasters and future emergencies is through pre-commitment: using "sticky" policy tools that lock-in a commitment to our future interests today,[38] accepting that continued success will make those tools seem unnecessary to future voters or policy-makers.

While the national and worldwide failure to invest in public health security measures stands out among the root causes of the Ottawa protests and the government's ultimate response, the pre-existing political context was also significant[39] in ways that that will take time for us to understand. In some contexts, notably in the United States,[40] the pandemic deepened existing political cleavages, undermining or reinforcing, along ideological lines, public trust in government,[41] and raising difficult questions about how to communicate about uncertainty in science.[42] Although some governments in Asia commanded a high level of public trust, facilitating their pandemic control measures,[43] in Canada, as elsewhere, pandemic policies were politically contentious. So in addition to managing the pandemic itself, many governments also had to manage the political fallout. The inability of Canadian government (and society) to find ways of diffusing political tensions therefore stands out among the root causes of the public order emergency.

The answer to political polarization is far from simple. While some evidence suggests that Canadians were not (at least initially) as divided over pandemic policies as their neighbours in the United States,[44] an empirical

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[38] Kelly Levin et al, "Overcoming the Tragedy of Super Wicked Problems: Constraining our Future Selves to Ameliorate Global Climate Change" (2012) 45 Policy Sciences 123.

[39] Sebastien Jungkunz, "Political Polarization During the COVID-19 Pandemic" (2021) 3 Front Polit Sci 622512.

[40] Michael Becher, Daniel Stegmueller, Sylvain Brouard, and Eric Kerrouche, "Ideology and Compliance with Health Guidelines During the COVID-19 Pandemic: A Comparative Perspective" (2021) 102 Social Science Quarterly 2106.

[41] Austin Hegland et al, "A Partisan Pandemic: How COVID-19 Was Primed for Polarization" (2022) 700 Annals of the American Academy 55.

[42] S. E. Kreps and D. L. Kriner, "Model uncertainty, political contestation, and public trust in science: Evidence from the COVID-19 pandemic" (2020) 6:43 Sci Adv.

[43] See generally Ramraj, ed., *supra* note 28; Lancet Commission Report, *supra* note 5, at 1247.

[44] Gordon Pennycook et al, "Beliefs About COVID-19 in Canada, the United Kingdom, and the United States: A Novel Test of Political Polarization and Motivated Reasoning." (2022) 48:5 Personality & Soc Psychology Bull 750; see also Eric Merkley et al, "A Rare

study published in 2021 observes that Canadian politics "is now more affectively charged, and left/right ideological conflict reinforces partisan political divisions to an extent not seen before in Canadian history."[45] Moreover, in a "political environment contaminated by partisan or ideological bias … neutral, objective information matters less in persuasion"[46] because "partisans and ideologues can observe the exact same information and reach diametrically opposing conclusions about its implications."[47] Critically in the context of pandemic management, political polarization undermines one of the key policy tools, *prosociality* — which includes "voluntary behaviours by individuals, such as the proper use of face masks, in addition to government regulations, such as the enforcement of workplace safety standards, to prevent the transmission of disease."[48] Political polarization is thus another piece of the wicked problem Covid-19 unleashed, revealing the "nested" Russian-doll-like quality of Canada's public order emergency. As we zoom out from that emergency, it appears as an acute moment of crisis in a multi-year pandemic, against the backdrop of an increasingly polarized world.

III. Conclusion

Neither of these two, broad concerns — inadequate pandemic preparedness and political polarization — fell directly within Commissioner Rouleau's mandate, but there are hints he was aware of them. For example, the Commissioner's recommendation relating to misinformation and disinformation generated through social media (R53) alludes to polarization. Likewise, his numerous recommendations relating to coordination failure in the context of the *Emergencies Act* echo calls for a sophisticated and nuanced approach to global coordination.[49] Wicked

Moment of Cross-Partisan Consensus: Elite and Public Response to the COVID-19 Pandemic in Canada" (2020) 53:2 *Can J Political Science* 311.

[45] Eric Merkley, "Ideological and Partisan Bias in the Canadian Public" (2021) 54:2 *Can J Pol Sci* 267 at 268.

[46] *Ibid*, at 284.

[47] *Ibid*.

[48] Lancet Commission Report, *supra* note 5 at 1227: "Prosociality generally requires some form of the Golden Rule (doing to others what you would have done to you) or the Kantian Imperative (acting according to maxims that can be universal laws). Pandemics have many strategic dilemmas, and therefore require cooperative responses rather than selfish—and self-defeating—behaviours."

[49] The Lancet Commission Report (*supra* note 5), highlighted throughout this article, is but one example. For others, see Cable et al, *supra* note 33; Auld et al, *supra* note 6; Jingyuan Zhou et al, "China's New Global Health Governance" (2023) Asian J Comparative L 1

problems — to the extent they can be addressed at all — require a holistic and multi-scalar approach[50] to problem-solving.

Let me be clear about the argument in this article. I am not disputing that emergency powers are sometimes needed. They may well have been necessary for the reasons set out in Commissioner Rouleau's Report. My point is rather that in considering what could be done after-the-fact to limit the use of such powers, a holistic approach to prevention and pre-emption is required. As the Canadian government and society anticipate other global crises—whether public health, climate, economic, food security, or otherwise—any reforms to the *Emergencies Act* (and the *Emergency Management Act*) should hold the challenge of multi-scalar, globally-conscious coordination firmly in mind. Reforming the *Emergencies Act* is important. But only a sustained focus on coordination, prevention, and the dangers of polarization—across multiple levels of government (federal, provincial, municipal, Indigenous), multiple sectors (public, private, not-for-profit, and transnational), and international and intergovernmental bodies—can help make Canada's *Emergencies Act* truly a measure of last resort.

("first view" version).

[50] See Neil M. Coe, Philip F. Kelly and Henry W.C. Yeung, "Geography: How do we think spatially?" in *Economic Geography: A Contemporary Introduction*, 3rd ed (Hoboken, NJ: Wiley-Blackwell Publishing, 2020), 3 at 29 (highlighting eight scales for understanding geographic processes: global, macro-regional, national, regional, urban, local, workplace or home, and the body); see also Lancet Commission Report, *supra* note 5, Figure 1 ("Synergies between prosociality and governance at each level of society"), at 1231.