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## THE NEED FOR A CANADIAN CONTINUITY OF GOVERNMENT POLICY: BEING THERE WHEN CANADIANS NEED IT MOST

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By Lieutenant-Colonel J.W. Cunningham

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## ABSTRACT

Canada's Minister of Public Safety and Emergency Preparedness has a legislated mandate to ensure the necessary arrangements for establishing continuity of constitutional government (CCG) are in place in the event of an emergency. This mandate is unsupported by any federal policy document that defines specific expectations. Whereas continuity of government (COG) is a generally accepted concept, it is not well understood from theoretical perspective. Academic treatments of the subject are either highly specific, detailing its application to a particular government, or else incidental to studies in civil defence or emergency government. By proposing definitions to several key terms, and by reviewing case studies of several nations' experience with COG (including the United States, the United Kingdom, the Soviet Union, Switzerland, Australia and New Zealand), an initial theoretical model for an effective CCG program is offered. It establishes five essential elements; namely prevention, protection, succession, relocation, and reconstitution. It further proposes six characteristics of a good CCG program; namely robustness, simplicity, clarity, immediacy, constitutionality, and reversibility. Finally, a case is made for the Canadian government to establish and operationalize its own comprehensive CCG program, built upon the existing, but disjointed and under-resourced, plans.

## **ACKNOWLEDGEMENTS**

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## **A NOTE ON SPELLING**

There are a number of interesting challenges of studying how different nations approach the same problems. One such challenge is regional spelling. This paper uses Canadian spelling except in those cases where the context implies the national spelling should be used. For example, “civil defence” is used when referring to those programs of Canada, the United Kingdom, Australia, etc. However, “civil defense” is used when referring to the United States and the Soviet Union.

## LIST OF ACRONYMS

AEI	American Enterprise Institute
AJCC	Alternate Joint Communication Center
ARP	Air Raid Precautions
CCG	Continuity of Constitutional Government
CEMO	Canada Emergency Measures Organization
COG	Continuity of Government
COOP	Continuity of Operations
CSIS	Canadian Security Intelligence Service
DPMC	Department of the Prime Minister and Cabinet
EAP	Emergency Action Paper
EASE	Experimental Army Signals Establishment
ECG	Enduring Constitutional Government
EMA	Emergency Management Act
EMO	Emergency Measures Organization
EO	Executive Order
EPC	Emergency Planning Canada
EPO	Emergency Planning Order
EPS	Emergency Planning Secretariat
FBS	Federal Buildings Service
FDRS	Federal Department Relocation Sites
FEMA	Federal Emergency Management Agency
FPC	Federal Preparedness Circular
HQJOC	Joint Operations Command Headquarters
MP	Member of Parliament

MWEAC	Mount Weather Emergency Assistance Center
NEPE	National Emergency Planning Establishment
NSAM	National Security Action Memorandum
NSD	National Security Directive
NSDD	National Security Decision Directive
NSDM	National Security Decision Memorandum
NSR	National Security Review
NSSM	National Security Study Memorandum
OCIPEP	Office of Critical Infrastructure Protection and Emergency Preparedness
ODESC	Officials Committee for Domestic and External Security Coordination
ODM	Office of Defense Mobilization
OPAL	Operation Alert
PCO	Privy Council Office
PD	Presidential Directive
PDD	Presidential Decision Directive
PRM	Presidential Review Memorandum
PSC	Public Safety Canada
RCMP	Royal Canadian Mounted Police
RRMC	Raven Rock Mountain Complex
RSG	Regional Seat of Government



*It is within the necessary power of the federal government to protect its own existence and the unhindered play of its legitimate activities.*

—Henry Campbell Black,  
*Handbook of American Constitutional Law*

## CHAPTER 1 - INTRODUCTION

The last major earthquake happened in 2010, causing minor damage and few casualties. More significant earthquakes hit the Ottawa area in 1935 and 1944.<sup>1</sup> As the third-rated urban area in Canada at risk of a major earthquake,<sup>2</sup> it was only a matter of time until the big one hit the capital.<sup>3</sup> Luckily, it happened overnight when Parliament was not in session, so the massive damage that occurred to the historic buildings on Parliament Hill caused no injuries to members of the government. However, it would be months until the Centre Block would be safe again to host the Senate and the House of Commons. In the meantime, a country needed governing.

The air traffic controllers at Ottawa MacDonald-Cartier Airport hardly registered that something was wrong when the airliner veered off course moments after takeoff from runway 32. With less than 10 kilometres to cover, the fully fueled jet took seconds to reach Parliament Hill. As the plane was piloted into the ground at full speed, it missed the Centre Block. That hardly mattered, though; as the aircraft broke apart, its massive engines punched holes in the building's facade, causing critical structural damage. The tidal wave of burning jet fuel did the rest. The pilot planned his attack carefully, striking

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<sup>1</sup> Andrew Duffy, "5.0 Val-des-Bois Quake Rattles Ottawa, Eastern North America." *Ottawa Citizen*, June 24, 2010.

<sup>2</sup> *Ibid.*

<sup>3</sup> CBC News, "Ottawa at Risk for Big Earthquake: Destruction could be far worse than in Christchurch, New Zealand." Last updated January 3, 2012. <http://www.cbc.ca/news/canada/ottawa/story/2011/12/23/ottawa-quake-risk.html>.

during the Speech from the Throne, ensuring the deaths of the vast majority of Senators and Members of Parliament (MPs), as well as the Prime Minister and Governor General. The Viceroy is replaced swiftly by the Chief Justice of the Supreme Court of Canada,<sup>4</sup> but the Cabinet and houses of Parliament are not so easily reconstituted in this chaotic time.

The globetrotting political student arrived with a mission: he wanted to see the seat of Canada's government first hand. He woke up that morning feeling ill, but had no idea he was carrying a virulent strain of an as-of-yet undetected contagion that was only beginning to affect his home country. Dismissing it as jet lag, he eagerly toured Parliament Hill. When Parliament met the following day, hundreds of pages, assistants, staffers and MPs were exposed to the pathogen. Three days later, 95 per cent of the legislative branch of the Government of Canada was incapacitated. Mercifully, no one died, but during a critical month when Canadians looked to their government for leadership and legislative support for their ailing country, no one was there.

The rookie MP's first session of Parliament was an exciting time. It took significant effort to win the election, but now she could begin the honourable work of representing her constituents. She did not realize that a computer hacker had targeted her, so when she inserted her memory stick into the government computer to transfer some personal files, malicious code transferred itself quietly to the network. In two hours, the entire parliamentary network was down, and it would take many weeks of concerted effort to eliminate the virus and restore the network. In the meantime, e-mail, schedules,

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<sup>4</sup> Letters Patent Constituting the Office of Governor General of Canada (1947), R.S. 1985, Appendix II, No. 31, Part VIII.

documents, archives and wireless handheld devices normally accessed on the network were gone, and the normal workings of government all but stalled. When Canadians needed to know quickly if they were victims of a targeted cyber attack, Parliament Hill was slowed to an analog crawl.

These vignettes are, of course, fictitious. They are meant to illustrate some of the many ways, whether benign or catastrophic, that a government can be disrupted to the point of putting its effectiveness, representativeness, or even its constitutionality into question. Given the long-term and internationally traumatic effects of the September 11, 2001 terrorist attacks against the United States, it is easy to ignore the less spectacular threats to the nation's government. Decapitating strikes by nuclear enemies and terrorists certainly cannot be overlooked, but it is short-sighted to neglect any and all potential threats to a nation's constitutional government. Legal scholar Henry Campbell Black notes that it is a "necessary power" for a government to "protect its own existence."<sup>5</sup> This applies equally to the Government of Canada and has been codified in law since at least 1985 with the *Emergency Preparedness Act*<sup>6</sup> and its successor the *Emergency Management Act* (EMA) of 2007.<sup>7</sup> The EMA assigns the Minister of Public Safety and Emergency Preparedness the responsibility of, *inter alia*, "establishing the necessary arrangements for the continuity of constitutional government in the event of an emergency."<sup>8</sup> However, neither the Act nor any subordinate legislation defines "constitutional government," or provides any of the government-wide doctrine, policy, or

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<sup>5</sup> Henry Campbell Black. *Handbook of American Constitutional Law*, 2<sup>nd</sup> ed. (St. Paul: West Publishing Co., 1897), 340.

<sup>6</sup> Emergency Preparedness Act, R.S.C., c. 6 (4<sup>th</sup> Supp.) (1985).

<sup>7</sup> Emergency Management Act, S.C., c. 16 (2007).

<sup>8</sup> *Ibid.*

management frameworks that are necessary to effectively carry out this mandate.<sup>9</sup> This is a key gap in Canada's continuity of constitutional government (CCG) program and is an important vulnerability that, if left unaddressed, exposes personnel, key physical assets, and information to risks of exploitation that simply cannot be seen as tolerable.

### **Elements and Characteristics of CCG**

How to address this disparity, however, is not entirely clear. There is no CCG textbook, nor are such program frameworks transferrable between nations. Confusion between CCG, civil defence and emergency governance—all of which are distinct but related—adds further challenges. With the benefit of a broad review of government continuity plans and histories of several nations, this paper proposes that an effective CCG program has five elements and six characteristics. Taken together, these form a sound theoretical framework for developing and ensuring that a CCG program is complete, relevant, and effective when needed.

#### Elements of CCG

From the perspective of CCG, governments appear to have four vulnerabilities: key individuals, governing assemblies, buildings and infrastructure, and information. For example, one or more key individuals, such as the head of state or government, may be incapacitated in some way. Or key governing assemblies, such as the legislature or executive agencies, may similarly be incapacitated or reduced below a quorum. Key

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<sup>9</sup> Dr. Connie Delisle and Mr. Donovan Arnaud, conversation with author, 15 April 2013.

facilities, such as the Supreme Court building, are established to best meet the functions of its occupants and cannot be duplicated without notice if they are damaged or rendered unsafe. Finally, a government's ability to generate, access, store, and transmit information is key to its ability to govern, and therefore cannot be allowed to be compromised.

Thus, a robust CCG program can be characterized by covering a finite number of elements. The five elements are prevention, protection, succession, relocation, and reconstitution.

*Prevention.* An emergency that never occurs is the best kind of success. In order to keep from being entirely reactive, a CCG program must seek out potential threats and eliminate them before they can manifest.

*Protection.* It is impossible to prevent every kind of emergency, so protecting government vulnerabilities is a vital element to a complete CCG program. An example of this element in action is the Secret Service's role in protecting the U.S. President.

*Succession.* This element is focussed primarily on the vulnerability of key individuals. It must do more than simply address the untimely death of key members of government; it must also cover temporary incapacitation. Additionally, it needs to be executable in a swift and simple way, particularly in times of chaos and uncertainty.

*Relocation.* This element deals with the vulnerability of buildings and infrastructure by allowing governance to move to an alternate location if the primary one, or the environment surrounding it, is rendered inaccessible. This is more than just securing readily accessible office or meeting space. To be effective, it must include all the infrastructure—seating, communications, records, ceremonial devices, living

arrangements, etc.—necessary to carry out the relevant assembly’s work. Additional constitutional considerations, such as U.S. Constitution’s requirement for both Houses of Congress to meet in the same city, may also be a factor.<sup>10</sup>

*Reconstitution.* A complete CCG plan includes the full reconstitution of governance in a way that is effective, representative and constitutional. There are two aspects to this element. The first is reconstituting the whole of government following an event that is serious enough to invoke CCG response plans, and may be as simple as returning to reoccupy a primary government building. The second aspect is focused on the vulnerability of governing assemblies, and refers to quickly and justly reconstituting a government body in time to support emergency government.

#### Characteristics of CCG

Apart from these five vital elements are six characteristics that, when taken as a whole, appear in the literature to demonstrate a good CCG program. They are robustness, simplicity, clarity, immediacy, constitutionality and reversibility.

*Robustness.* Given the impossibility of forecasting every potential hazard to government, a good CCG program will retain sufficient flexibility to cover unexpected events. In other words, it must have breadth and depth of applicability.

*Simplicity.* A CCG program must be executable even in the most chaotic and uncertain of circumstance. The key to this is simplicity, though this characteristic must not be sought at the expense of robustness.

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<sup>10</sup> U.S. Const. art. I, sec. 5, cl. 4.

*Clarity.* If a CCG plan is both robust and simple, it will be easy to ensure that it is well understood and broadly communicated with those required to execute it.

Understanding precisely who can order its execution is also vital. Regularly exercising the plan also supports its clarity.

*Immediacy.* Effective planning for worst-case scenarios necessarily means being able to counter no-notice emergencies. Thus, the best CCG programs are those that can be executed with the minimum notice.

*Constitutionality.* An effective CCG program must be—and just as importantly be seen to be—consistent with the constitution it supports. This is elemental, as otherwise it would not be supporting the continuation of constitutional government.

*Reversibility.* It is necessary that a CCG program be temporary in nature. It therefore must facilitate an expeditious return to normalcy. Certain aspects of this are not trivial, and if handled inappropriately may cause lingering questions of a government branch's legitimacy in the eyes of the population long after the emergency is addressed.

Any emergency that threatens the constitutionality of the Government of Canada, such as the future histories above, must be met with a simple yet robust plan that covers all three branches and essential institutions. It needs to be immediately executable and understood by all involved. Without such a plan, any CCG program will be at risk of being overly limited in scope, disjointed amongst government departments, and generally inadequate to meet the threats of today. In other words, when the insurance provisions are not in place before Canadians need their government the most, sufficient knowledge and capability will not be there to provide leadership and support to a country in crisis.





*Plans are worthless, but planning is everything. There is a very great distinction because when you are planning for an emergency you must start with this one thing: the very definition of "emergency" is that it is unexpected, therefore it is not going to happen the way you are planning.*

—Dwight D. Eisenhower,  
*Remarks at the National Defense Executive Reserve*

## CHAPTER 2 - BACKGROUND

An extensive literature search revealed no general treatment of COG or CCG as an academic or ontological area of study that addresses nations' constitutionality in emergency conditions. Instead, relevant research tends to be approached in one of two ways. One approach is highly theoretical, such as how from a jurisprudential perspective emergency government can be harmonized with modern constitutional democracies. The other approach examines CCG only in its practical application to a particular government, most often that of the United States. In either case, it is nearly always viewed incidental to emergency governance or civil defence. While these are all related concepts, this paper examines COG independently. Thus, before examining the CCG programs of different nations, a brief review of key terms, as well as the historical, theoretical and legal foundations of the concept, is warranted.

### **Definitions**

Foremost, it is important to establish key definitions. *A continuity of government (COG) program* refers to a national or sub-national program that has the goal of ensuring that the executive branch of government can survive and continue to function during a CCG event. Other branches may be included in this, but if all three branches (executive,

legislative, and judicial<sup>11</sup>) are included, then the term *continuity of constitutional government (CCG) program* is typically used instead.

A *CCG event* is an occurrence that in some way threatens the proper functioning of constitutional governance. This is not the same as *emergency governance*, which is when a constitutionally sound government uses its legislative and executive powers to address an emergency affecting its citizens. Though CCG and emergency governance share common roots, they are not equivalent. However, if an emergency, such as a natural disaster or chemical release, threatened the seat of the government directly, it also could be considered a CCG event. Additionally, constitutional events that hinder a government's ability to act, such as votes of non-confidence or early prorogations, are not CCG events because they are constitutional by definition. In other words, they are part of the legitimate means of governance.

Throughout the Cold War, CCG was tied closely with *civil defence*. Though they have similar goals, they should be seen for their differences. In 1948, the Chairman of the Canadian Defence Research Board, Dr. O.M. Solandt, defined civil defence as:

All those defensive measures which can be taken on behalf of the civilian population to insure that when such an attack is made the will to resist is

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<sup>11</sup> Some authors espouse the view that the "bureaucratic arm" represents a fourth branch of government. While this view has some practical benefits when it comes to ensuring a fully functioning government, it is strictly incorrect. The branches of government are defined constitutionally, and are intended to be coequal and independent in their jurisdictions. The bureaucratic arm exists solely to support the three constitutionally defined branches and is therefore a derivative branch. It is important and powerful in a functioning democracy, but it is neither coequal nor independent. See, for example, a consulting report by F. Murray Greenwood, and Ed Smith, "The Continuity of Constitutional Government in Canada: A Study Prepared for Emergency Preparedness Canada," December 1990.

maintained, and the economic and social organization of the community will function effectively in support of offensive operations.<sup>12</sup>

It is important to note that there is no direct connection to government continuity in this definition. However civil defence and CCG are related in two ways. First, the civil population is necessary for a government to have a purpose; protecting the government is pointless unless some measure of its citizenry remains to be governed. Second, while institutions, procedures and relationships are important, it is people—elected officials and trained, knowledgeable bureaucrats—who remain the most valuable and hard to replace elements of a constitutional government.

The U.S. CCG program adopts a layered approach, matching its tiers of government. Ultimately, the program’s goal is to ensure *Enduring Constitutional Government* (ECG), which is defined as

a cooperative effort among the executive, legislative, and judicial branches of the Federal Government, coordinated by the President, as a matter of comity with respect to the legislative and judicial branches and with proper respect for the constitutional separation of powers among the branches, to preserve the constitutional framework under which the Nation is governed and the capability of all three branches of government to execute constitutional responsibilities and provide for orderly succession, appropriate transition of leadership, and interoperability and support of the National Essential Functions during a catastrophic emergency.<sup>13</sup>

In contrast, Canada’s *Emergency Management Act* simply mandates “continuity of constitutional government in the event of an emergency.”<sup>14</sup> This is the extent of any

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<sup>12</sup> Cited in David McConnell, *Planning for Tomorrow ... TODAY! The Story of Emergency Preparedness Canada 1948-1998* (Heritage Research Associates Inc), accessed July 27, 2013, [http://diefenbunker.ca/pages/online\\_documents/History\\_of\\_EPC.shtml](http://diefenbunker.ca/pages/online_documents/History_of_EPC.shtml), Chap I.

<sup>13</sup> National Security Presidential Directive 51. “National Continuity Policy.” May 9, 2007, accessed February 17, 2013. <http://www.fas.org/irp/offdocs/nspd/nspd-51.htm>.

<sup>14</sup> Emergency Management Act, S.C., c. 16 (2007).

formal, legal definition of this program. Less formally, a 2012 staff briefing to the Deputy Minister of Public Safety chose to define CCG as

the principle of establishing defined plans and procedures that allow the three branches of the constitutional Government of Canada to continue to conduct essential operations in case of an emergency or catastrophic event in the National Capital Region.<sup>15</sup>

This indicates that CCG and ECG may be considered as equivalent concepts.

The next subordinate level of the U.S. CCG program is also called *Continuity of Government*. It is defined as “a coordinated effort within the Federal Government’s executive branch to ensure that National Essential Functions continue to be performed during a Catastrophic Emergency.”<sup>16</sup> Here, though the definition focuses on the executive branch, it should not be taken as exclusive. The same document “recogniz[es] that each branch of the Federal Government is responsible for its own continuity programs”<sup>17</sup> and although the legislative branch, for example, does not consistently use the same terminology, it is taken as equally valid for the other two branches. In the American context, COG is the branch level of a CCG program, and a COG program for each of the three branches of government would make up ECG.

The third level of the U.S. CCG program is called *Continuity of Operations* (COOP), which is defined as “an effort within individual executive departments and agencies to ensure that Primary Mission-Essential Functions continue to be performed during a wide range of emergencies [such as] localized acts of nature, accidents, and

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<sup>15</sup> Canada. Public Safety Canada. “Continuity of Constitutional Government (CCG) – Briefing for the Deputy Minister of Public Safety.” Briefing package. September 2012. It is noted that legal opinions from Canadian CCG institutions have not tended to concur and a definition for CCG in Canada appears not yet to have been endorsed at the highest levels.

<sup>16</sup> NSPD 51.

<sup>17</sup> *Ibid.*

technological or attack-related emergencies.”<sup>18</sup> Its applicability beyond the executive branch is equally valid, making this a term for CCG programs at the departmental level, which would combine to support COG.

It is worth reiterating that these definitions are not universally established, even within the United States. The Congressional Research Service—notably a part of the legislative branch of government—defines COOP planning much more broadly, to include the continuity plans of branches:

COOP planning is a segment of federal government contingency planning that refers to the internal effort of an organization, such as a branch of government, department, or office, to assure that the capability exists to continue essential operations in the aftermath of . . . operational interruptions.<sup>19</sup>

Researching CCG is complicated by this general lack of standardized terminology. For example, a 1983 article uses the term “continuity of U.S. government operations” to refer to program stability between administrations.<sup>20</sup> Even today, the New Zealand’s *Cabinet Manual 2008* similarly uses the term “continuity of government” to mean effective transition between administrations.<sup>21</sup>

## **History and Theoretical Foundations**

The history of CCG is found in emergency government and a general treatment of this subject is provided in Annex A. In sum, the requirement for a nation to permit its

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<sup>18</sup> *Ibid.*

<sup>19</sup> Eric R. Peterson, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*. Congressional Research Service Report for Congress RL31857, November 8, 2004.

<sup>20</sup> Bernard Rosen, “Effective Continuity of U.S. Government Operations in Jeopardy.” *Public Administration Review* 43, no. 5 (September/October 1983): 383-392.

<sup>21</sup> New Zealand. Department of the Prime Minister and Cabinet, *Cabinet Manual 2008* (Wellington: Cabinet Office, 2008), 73.

leaders additional powers to protect the integrity of the state when threatened is at least as old as the first constitutions. The ancient Romans' concept of the *dictator* illustrates this. The philosophy of emergency governance continued to develop throughout the Middle Ages and was taken up by English philosopher John Locke with his concept of *prerogative*. This he defined as when rulers “[exercise] a power the people never put into their hands.”<sup>22</sup> More recently, the discussion has been polarized between the legalist and extra-legalist positions, in an attempt to determine if a government's emergency powers should be pre-emptively and laid out constitutionally.

CCG really began to differentiate itself from emergency government when governments themselves could be existentially threatened. This strategy of decapitation—that is, an attack targeted at the nation's civilian leadership so as to confuse and paralyze any effective counterattack—matured with the yield, range and precision delivery of bombs. It was World War II when this truly culminated, and CCG became distinct from emergency governance, though it remained closely associated with civil defence, particularly during the Cold War.<sup>23</sup>

### **Legal Foundations in Canada**

It is the legalist view of CCG that Canada has adopted in existing legislation. The 1984 *Canadian Security Intelligence Service Act*, which authorizes the establishment of Canada's domestic security and intelligence agency (CSIS), implicitly acknowledges its

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<sup>22</sup> John Locke, *Second Treatise of Government*, 1690, ed. C.B. McPherson. Project Gutenberg EBook no. 7370. Last updated April 1, 2012. <http://www.gutenberg.org/ebooks/7370>. § 168.

<sup>23</sup> See, for example, James Mann, *Rise of the Vulcans: the History of Bush's War Cabinet* (New York: Viking, 2004), 139; or Tracy C. Davis, *Stages of Emergency: Cold War Nuclear Civil Defense* (Durham, N.C.: Duke University Press, 2007), 17.

role in Canada's CCG program. The Agency's first duty is to "collect, . . . analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting *threats to the security of Canada* and, in relation thereto, shall report to and advise the Government of Canada [emphasis added]."<sup>24</sup> The Act defines "threats to the security of Canada" as, *inter alia*, "activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada."<sup>25</sup>

The *Emergencies Act* of 1988 is the statute by which the Government of Canada defines its powers of prerogative. Its applicability to CCG, however, is less clear. Within the Act, legal definitions of emergencies are dual-gated: each of the four categories of emergencies—public welfare, public order, international and war emergencies—is individually defined, but any one of them must also be deemed a "national emergency" to justify invoking emergency governance. A "national emergency" first needs to be "an urgent and critical situation of a temporary nature that . . . cannot be effectively dealt with under any other law of Canada."<sup>26</sup> It then needs to fit one of two other criteria. The first is that the danger to health and welfare of Canadians must be at a scale that overwhelms provincial capabilities. The second criterion might imply application to CCG when it considers if the emergency "seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada."<sup>27</sup> Further, a

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<sup>24</sup> *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23, §12.

<sup>25</sup> *Ibid.*, §2.

<sup>26</sup> *Emergencies Act*, R.S.C., 1985, c. 22 (4th Supp.), §3.

<sup>27</sup> *Ibid.*

“public order emergency” is defined as an emergency “that arises from threats to the security of Canada,”<sup>28</sup> and then directly references the *Canadian Security Intelligence Service Act* to define “threats to the security of Canada.” Thus, the *Emergencies Act* can legally be invoked to deal with at least some types of CCG events in Canada.

In 2007, the *Emergency Management Act* replaced the *Emergency Preparedness Act*, establishing the responsibilities of the Minister of Public Safety and Emergency Preparedness. It changes some terminology (mandating departments establish “emergency management plans” instead of “civil emergency plans”) and while individual ministers retain responsibilities for establishing COOP plans for their government institutions, it firmly establishes the Minister of Public Safety as the central coordinating authority for the government, and the minister responsible for establishing Canada’s CCG program. It is also here that the Government of Canada acknowledges the difference between emergency government and CCG by including the latter as a separate and distinct task from the other emergency-related responsibilities.

Any CCG program must be customized to the nation and the government that it supports. The government of the United States is unique in the world (for example, no other nation uses a body like the Electoral College to elect its head of state), thus any CCG approach must be tailored to those elements that make it distinct. Even Commonwealth countries with Westminster governments can vary in important ways. Australia’s upper house of Parliament is popularly elected and exercises more legislative power than the Canadian upper house, which by contrast is appointed and plays a more

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<sup>28</sup> *Ibid*, §16.



consultative and ceremonial role. Even given that no single CCG program is suitable for every government, examining different programs in light of the previously mentioned five-elements and six-characteristics models is useful. Further, approaches taken and lessons learned by some nations can certainly be applied to others. Arguably, the United States has had a significant amount of experience in this matter, given the nation's superpower status and the threats that it has faced since its independence. Thus, Chapter 3 examines the U.S. experience with CCG.



*Government which goes on with some kind of continuity will be like a one-eyed man in the land of the blind.*

—Dwight D. Eisenhower,  
quoted in *This is Only a Test*

### **CHAPTER 3 - CCG AND THE UNITED STATES**

Given the matchless elements of the United States' form of government, it is often referred to as a “unique and improbable . . . experiment.”<sup>29</sup> As a nation it prioritizes individuality, personal freedoms and a government subordinated to the people. As well, its development from as rebel colony, to an up-and-coming global power, to one of two world superpowers, and finally the sole superpower, has exposed the nation to a number of threats, some of which—notably the Cold War with the Soviet Union—have been existential in nature. Balancing these sometimes competing aspects has been an important aspect of governing the United States. This context makes a review of the history and challenges of American CCG efforts both interesting and illustrative.

#### **U.S. History with Continuity of Government**

The U.S.'s history with CCG can be broadly categorized into three periods. The first, which started when the nation declared independence from Great Britain, is characterized by a routine and administrative approach to the matter. The biggest risk to continuity of government was seen as the untimely deaths of key individuals and this is what the policy addressed. The second period was dominated by the Cold War, though it began as the United States entered World War II. The realization that the United States

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<sup>29</sup> Helle C. Dale, “The American Experiment.” *The Heritage Foundation*. July 5, 2007. Accessed 22 May 2013. <http://www.heritage.org/research/commentary/2007/07/the-american-experiment>

faced geopolitical threats from other nations was soon accompanied by the spectre of mutual assured destruction. Thus, the threat to constitutional government was seen as existential and preparations were coupled closely with civil defence. The many changes that were brought about by the end of the Cold War included the nature of the threats against the United States. No longer was national annihilation considered probable, but proliferation of destructive technologies meant that threats to constitutional government did not retreat back to pre-war levels. Even if the nation might not be destroyed in a nuclear exchange, a government building, a city block or perhaps even more could still be destroyed in a successful terrorist attack. New phenomena such as electronic interconnectedness, globalization and drug-resistant pathogens opened up new threats to constitutional government that did not previously exist. This third period, which began with the end of the Cold War but has been most heavily influenced by the global war on terrorism, continues today.

#### From Independence

Certain clauses in the American Constitution can be interpreted as a broad mandate to ensure CCG. Article II, section 1 mandates the President, before taking on the role as head of the executive branch, to swear or affirm to “preserve, protect and defend the Constitution of the United States.”<sup>30</sup> Further, article VI directs that all members of the Senate, the House of Representatives, the state legislatures, as well as the executive and judicial officers of the federal government and those of each state must also take an oath

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<sup>30</sup> U.S. Const. art. II, sec. 1, cl. 8.

or affirmation “to support this Constitution.”<sup>31</sup> The exact wording of these oaths is codified in federal law: federal elected or appointed officials swear or affirm to “support and defend the Constitution of the United States against all enemies, foreign and domestic,”<sup>32</sup> whereas legislative, executive and judicial officers at the state level swear only to “support the Constitution of the United States.”<sup>33</sup> From the wording of these oaths, it can be inferred that the President stands as the ultimate guarantor of constitutional government. Notwithstanding, the oath taken by all federal officers establishes a collective responsibility, across all three branches of government, to defend the Constitution from threats.

In light of this mandate, the U.S. Constitution includes rudimentary elements of a CCG program, though only matters of succession and reconstitution are covered. This is not surprising given the limited threats to government that were envisioned at the time. For the executive branch, the *Vacancy and Disability Clause* sought to ensure clear succession in the event of the “death, resignation, or inability to discharge the powers and duties” of the President by directing that the office “shall devolve on the Vice President.”<sup>34</sup> The legislative branch is, of course, treated differently. In the case of the House of Representatives, vacancy management is not a federal issue; it is the State whose seat is vacant that is responsible for arranging elections to fill it. Temporary appointments are not permitted.<sup>35</sup> The Senate, in contrast with the House, was not originally established to be popularly elected. Instead, the Constitution establishes two

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<sup>31</sup> U.S. Const. art. VI, sec. 1, cl. 8.

<sup>32</sup> 5 U.S.C. §3331.

<sup>33</sup> 4 U.S.C. §101.

<sup>34</sup> U.S. Const. art. II, sec 1, cl. 6.

<sup>35</sup> U.S. Const. art. I, sec. 2, cl. 4.

senators for each State chosen by its legislature.<sup>36</sup> This was done in order to establish a bond between the States and their national government as well as to remove from Senators the pressures of having to face their constituents on a regular basis.<sup>37</sup> Therefore, the State legislatures themselves were responsible for filling vacancies, with provision for governors to make temporary appointments when their legislatures are in recess.<sup>38</sup> This process worked until the middle of the nineteenth century when the Senate saw chronic vacancies due to political infighting at the State level.<sup>39</sup> The Seventeenth Amendment, ratified in 1913, addressed this directly by establishing a popularly elected Senate, though it continued to allow State governors to make temporary appointments provided that their legislatures so empowered them.<sup>40</sup> This difference between the two houses of Congress is significant when considering succession and reconstitution of the legislature.

The first potential test of U.S. CCG occurred when Andrew Jackson, the seventh president, was the target of the first presidential assassination attempt. In January 1835, an unemployed house painter fired two pistols in succession at the president's chest. Both misfired, and the president was unharmed.<sup>41</sup>

The first actual test of government continuity occurred four years later in 1841, when the ninth president, William Henry Harrison, died only a month into his term. This became the first test of the *Vacancy and Disability Clause* and it revealed two important

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<sup>36</sup> U.S. Const. art. I, sec. 3, cl. 1.

<sup>37</sup> United States Senate, "Direct Election of Senators," accessed May 24, 2013, [http://www.senate.gov/artandhistory/history/common/briefing/Direct\\_Election\\_Senators.htm](http://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm).

<sup>38</sup> U.S. Const. art. I, sec. 3, cl. 2.

<sup>39</sup> Senate, "Direct Election of Senators."

<sup>40</sup> U.S. Const. amend. XVII.

<sup>41</sup> Jon Grinspan, "Trying to Assassinate President Jackson," last modified January 30, 2007, accessed via *Internet Archive Wayback Machine*, <http://web.archive.org/web/20081024234731/http://www.americanheritage.com/people/articles/web/20070130-richard-lawrence-andrew-jackson-assassination-warren-r-davis.shtml>.

flaws. First, the wording made it unclear if the Vice President inherited the *office* of the President or only the *powers* of the President, thereby becoming an Acting President for as long as it took to call for an emergency election. Second, the Constitution established no means by which a vacancy in the Vice Presidency could be filled. Thus, when Harrison's Vice President, John Tyler, moved into the White House, took the Presidential oath of office, and assumed the full powers of the Presidency, he had no Vice President. While his actions set a precedent in succession that was followed seven more times until the passage of the Twenty-fifth Amendment in 1967, it also left the nation without a Vice President.

It was not until the assassination of President Abraham Lincoln in April 1865 that serious thought was given to “the continued functioning of constitutional government under all circumstances.”<sup>42</sup> Lincoln's death in office was followed in relatively quick succession by the assassination of James Garfield in 1881, William McKinley in 1901, and the attempted assassination of presidential candidate—and former president—Theodore Roosevelt in 1912. With this context, it is easy to see why the U.S. Secret Service, an organization established to suppress counterfeit currency, began part-time protection of President Grover Cleveland in 1894.<sup>43</sup> Although initially this had to be done informally because the Secret Service lacked statutory sanction,<sup>44</sup> it represents the element of prevention. Congress recognized the importance of this in 1901 after the

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<sup>42</sup> Harold C. Relyea, *Continuity of Government: Current Federal Arrangements and the Future*, Congressional Research Service Report for Congress RS21089, August 5, 2005.

<sup>43</sup> United States Secret Service, “Secret Service History,” accessed May 24, 2013, <http://www.secretservice.gov/history.shtml>

<sup>44</sup> Relyea, *Continuity of Government...*

assassination of McKinley, and in 1902 the Secret Service assumed responsibility for protecting the President full time.<sup>45</sup>

Notwithstanding the role of the Vice President as a direct presidential successor, the Constitution allowed Congress to enact laws to cover the incapacitation of both the President and the Vice President simultaneously.<sup>46</sup> The Second Congress did this relatively quickly with the Presidential Succession Act of 1792.<sup>47</sup> This act set the President pro tempore of the U.S. Senate as the next in line to the presidency after the Vice President, followed by the Speaker of the House of Representatives. This act was nearly implemented twice. The first was in 1844 when President John Tyler, who had no Vice President at the time, was nearly killed in an accident when a gun aboard the *U.S.S. Princeton* exploded.<sup>48</sup> The second was in 1868 when President Andrew Johnson, who succeeded Lincoln following his assassination and therefore had no Vice President, was impeached and subsequently came within one vote of being removed from office.<sup>49</sup> At the time, it was very apparent that one of the votes against the President was from the man who would succeed him. Senator Benjamin Wade, who was the President pro tempore at the time, “vigorously participated in the trial and voted to convict Johnson. Indeed, Wade had apparently already selected his new Cabinet when he cast his impeachment vote.”<sup>50</sup> Not only was this arrangement a judicial conflict of interest, but it

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<sup>45</sup> Secret Service, “Secret Service History.”

<sup>46</sup> U.S. Const. art. II, sec. 1, cl. 6.

<sup>47</sup> 1 Stat. 239, § 9-10 (March 1, 1792)

<sup>48</sup> Department of the Navy, “Princeton,” *Dictionary of American Naval Fighting Ships*, accessed May 25, 2013, <http://www.history.navy.mil/danfs/p12/princeton-i.htm>.

<sup>49</sup> Akhil R. Amar, and Vikram D. Amar, “Is the Presidential Succession Law Constitutional?” *Stanford Law Review* 48 (1995-1996): 123.

<sup>50</sup> *Ibid.*



also called into question the very constitutionality of the proceedings. The Constitution adamantly separated the three branches of government, but the *Presidential Succession Act* was being used to potentially allow the legislature “the power to pick its own leader as President.”<sup>51</sup>

This was one of the factors that led to a revised *Presidential Succession Act* in 1886. This new law removed the leaders of both houses of Congress from the line of succession, and instead named the members of Cabinet—members of the executive branch—in order of seniority of their departments.<sup>52</sup> These arrangements were never used, but remained in effect until 1947 when, at the repeated urging of President Harry Truman,<sup>53</sup> Congress passed the *Presidential Succession Act of 1947*.<sup>54</sup> President Truman succeeded President Franklin Roosevelt, who died in office, and still had no constitutional means to appoint a Vice President. Thus, as he named his Cabinet he was also appointing his successor in the event of his own incapacitation. Truman’s position was that the Chief Executive should, as much as possible, be elected. Since only the President and the Vice President are elected by all the voters of the United States, his view was that House of Representatives was the next closest governing institution to the will of the people. Further, since the entire House was elected every two years, and

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<sup>51</sup> *Ibid.*, 124.

<sup>52</sup> 24 Stat. 1-2

<sup>53</sup> President Truman formally made his case to Congress no fewer than three times. See Harry S. Truman Library & Museum, “Special Message to the Congress on the Succession to the Presidency, June 19, 1945,” *Public Papers of the Presidents: Harry S. Truman*, accessed May 25, 2013, <http://www.trumanlibrary.org/publicpapers/index.php?pid=70&st=&st1=>; and Harry S. Truman Library & Museum, “Message to the Congress on the State of the Union and on the Budget for 1947, January 14, 1946,” accessed May 25, 2013, <http://www.trumanlibrary.org/whistlestop/tap/11446.htm>; and Harry S. Truman Library & Museum, “Letter to the President of the Senate and to the Speaker of the House on Succession to the Presidency, February 5, 1947,” *Public Papers of the Presidents: Harry S. Truman*, accessed May 25, 2013, <http://www.trumanlibrary.org/publicpapers/index.php?pid=2224&st=&st1=>.

<sup>54</sup> 3 U.S.C. § 19.

always at the same time as the President, it was much more likely that the House would be “in agreement politically with the Chief Executive.”<sup>55</sup> On this basis, he urged Congress to replace the existing *Presidential Succession Act* with legislation that put the Speaker of the House of Representatives, followed by the President pro tempore, in the line of succession after the Vice President and before any members of the President’s Cabinet. Although Congress did pass such a law in 1947, it has never been used, and its constitutionality remains in question to this day.<sup>56</sup>

### WWII and the Cold War

During this second period, the primary threat to continuity of government was seen as nuclear war with the Soviet Union and Washington attempted to counter it in four ways. First, it considered dispersal, where agencies and personnel deemed essential to government function during wartime were to be relocated beyond a 20-mile ring from the centre of Washington, D.C. Second, it pursued civil defence programs, though inconsistently and with ultimately little success. Third, it instituted continuity of government programs that included relocation planning, as well the construction of multiple alternate government sites. Fourth, it staged exercises in order to test the government’s readiness.<sup>57</sup> Ultimately colouring these efforts was a constant theme: defensive plans that sorely lagged behind weapons development. For example, the yields

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<sup>55</sup> Harry S. Truman Library & Museum, “63. Special Message to the Congress on the Succession to the Presidency, June 19, 1945,” *Public Papers of the Presidents: Harry S. Truman*. Accessed 25 May 2013, <http://www.trumanlibrary.org/publicpapers/index.php?pid=70&st=&st1=>

<sup>56</sup> Amar and Amar, “Is the Presidential Succession Law Constitutional?”

<sup>57</sup> David F. Krugler, *This is Only a Test: How Washington, D.C. Prepared for Nuclear War* (New York: Palgrave Macmillan), 4.

of the first atomic bombs (using fission technology) were 16 and 21 kilotons.<sup>58</sup> Within a decade, hydrogen bombs (using fusion technology) had a yield of a thousand times that,<sup>59</sup> and the Soviet Union's research was not far behind. This was significant; as a senior engineer and academic stated in 1953, "New York City could survive 2 or 3 A-bombs but one H-bomb and no more N.Y.C. There is all too little intelligent thought being given to change created by the magnitude of destructiveness of H-bomb."<sup>60</sup> A second facet to this was the development of nuclear delivery systems. At first, heavy bombers were the only means of delivering nuclear weapons (apart from the hypothetical "suitcase nuclear bomb," which was considered as early as 1953<sup>61</sup>) and the Soviets lacked a reliable intercontinental strategic bomber until 1955, when the Tupolev Tu-95 Bear entered service.<sup>62</sup> Thus, warning from northern radar stations built in the 1950s was expected to provide several hours' warning of an attack. But as intercontinental ballistic missiles and submarine-launched ballistic weapons were fielded, warning times fell to as little as 15 minutes.<sup>63</sup>

These developments logically would have affected CCG planning, but until the Cuban Missile Crisis of 1963 there is little evidence that it did. In fact, it is useful to view

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<sup>58</sup> Carey Sublette. "Nuclear Weapons Frequently Asked Questions," *The Nuclear Weapons Archive*, last modified July 3, 2007, <http://nuclearweaponarchive.org/Nwfaq/Nfaq8.html>.

<sup>59</sup> Krugler, *This is Only a Test...*, 75.

<sup>60</sup> Vannevar Bush, "Summary of Meeting of the Ad Hoc Committee on Armaments," March 16, 1953, quoted in Krugler, *This is Only a Test...*, 119.

<sup>61</sup> Krugler, *This is Only a Test...*, 99.

<sup>62</sup> Steve Zaloga, *The Kremlin's Nuclear Sword: The Rise and Fall of Russia's Strategic Nuclear Forces, 1945-2000*. (Washington: Smithsonian Institution Press, 2002), 12-21, 26-28. The Tu-95 Bear remains an important part of the Russian strategic bombing force even today, with expectations to serve into the 2040s; see Ilya Kramnik, "Return of a Flying Bear: The Hero of the 'Cold War' Tu-95 Came Out of the Shadows," *Lenta*, July 19, 2007, accessed June 11, 2013, <http://lenta.ru/articles/2007/07/19/tu95/>

<sup>63</sup> U.S. National Security Council Planning Board, "U.S. Policy on Continental Defense," July 14, 1960, in William Burr, ed., *Launch on Warning: The Development of U.S. Capabilities, 1959-1979*, National Security Archive Electronic Briefing Book No. 43, April 2001, accessed Jun 8, 2013. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB43/>.

CCG during the post-World War II period in two periods, each separated by the Cuban Missile Crisis.

*The First Period – Truman and Eisenhower.* It is self-evident that the Japanese attack on Pearl Harbor had wide-ranging historical impacts, but its role in ushering this second period of CCG in the United States is perhaps less well known. The strike against the Hawaiian naval base, as well as the subsequent retaliatory raid against Tokyo, demonstrated that carrier-based aircraft, including bombers, could conceivably reach the continental United States.<sup>64</sup> This brought the North American continent's geographical isolation to an end and America faced the reality that the nation, and by extension its government, faced greater and potentially more direct threats than just the untimely deaths of key government officials. The U.S. Secret Service, exercising its preventative role in CCG, was quick to assess the dangers and recommend action:

The week after Pearl Harbor, the Secret Service presented the president with a long report of recommended changes to improve White House security. It proposed covering the skylights with sand and tin, camouflaging the house, painting the colonnade windows black, setting up machine-gun emplacements on the roof, and building an air raid shelter in a subbasement area of the new East Wing. The president rejected most of the suggestions, 'with not a little annoyance,' though he finally agreed to the construction of a temporary shelter in the Treasury Department, which would be accessed by a tunnel that would run under the street from the White House to the Treasury.<sup>65</sup>

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<sup>64</sup> Relyea, *Continuity of Government...*

<sup>65</sup> Doris Kearns Goodwin, *No Ordinary Time: Franklin and Eleanor Roosevelt: The Home Front in World War II* (New York: Simon & Schuster, 1994), 298.

This temporary shelter was replaced in the fall of 1953 by one built for the atomic age. Designed to withstand a 20-kiloton A-bomb detonated 1,500 feet above the White House, the hydrogen bomb rendered it obsolete before the shelter was operational.<sup>66</sup>

It was August 29, 1949 when the Soviet Union exploded its first atomic bomb, with a yield of 20 kilotons.<sup>67</sup> This caught the Truman administration by surprise given that U.S. intelligence had placed the Soviets “months, even years, away from detonating an atomic weapon.”<sup>68</sup> Lawmakers knew something had to be done, but flailed at their attempts. The House introduced a resolution authorizing a study of protective measures for the President, Congress and essential personnel. A constitutional amendment to supersede the *Presidential Succession Act* of 1947 was drafted that would allow “ranking military officers to name an interim chief executive should both the president and vice president die.”<sup>69</sup> Other proposals included moving the nation’s capital west of the Mississippi, and even establishing a mobile, train-based government.<sup>70</sup>

In the decades following the War, the perceived threat to the U.S. and its government increased. Early crises, such as the blockade of Berlin in 1948-49, and the Korean War in 1950-1953, raised tensions between the U.S. and the U.S.S.R.<sup>71</sup> It was the latter that motivated Truman to get serious about dispersal. He requested funds to move 40,000 federal employees up to 50 miles away from the capital. But the war was a

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<sup>66</sup> Krugler, *This is Only a Test...*, 69-75.

<sup>67</sup> The History Channel website, “Soviets Explode Atomic Bomb,” accessed June 8, 2013, <http://www.history.com/this-day-in-history/soviets-explode-atomic-bomb>.

<sup>68</sup> Krugler, *This is Only a Test...*, 35.

<sup>69</sup> *Ibid.*, 35-36.

<sup>70</sup> *Ibid.*, 36.

<sup>71</sup> Matthew L. Conaty, “The Atomic Midwife: The Eisenhower Administration’s Continuity-Of-Government Plans and the Legacy of ‘Constitutional Dictatorship,’” *Rutgers Law Review* 62, no. 3 (Spring 2010): 629.

political blade that cut both ways. Though it gave the President impetus to protect the executive through dispersal, it made anathema any action that appeared to give preferential protection to politicians and bureaucrats while soldiers were dying overseas.<sup>72</sup> Concerns that 40 to 50 per cent of public servants would quit rather than commute reduced the dispersal radius to between 15 and 20 miles, and the realization that a night-time bombing of Washington would annihilate federal employees in their homes, leaving no one to work in the dispersed buildings, further reduced the enthusiasm for this approach.<sup>73</sup>

Additionally, not all executive departments espoused dispersal. The Secretary of Defence, James Forrestal, and his Joint Chiefs of Staff felt that a hardened, emergency headquarters was a more appropriate response. Studies for an underground command post began in 1948, and were expanded by Forrestal's successor. In May 1950, Truman approved construction of the Alternate Joint Communication Center (AJCC) Site R (Raven Rock) which was completed in 1953.<sup>74</sup> This self-contained, "underground Pentagon" is reported to contain as many as 25,000 square metres of space,<sup>75</sup> remains operational today as the Raven Rock Mountain Complex (RRMC),<sup>76</sup> and was apparently used during the terrorist attacks of September 11, 2001.<sup>77</sup>

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<sup>72</sup> Krugler, *This is Only a Test...*, 50-51.

<sup>73</sup> *Ibid.*, 60.

<sup>74</sup> GlobalSecurity.org, "Site-R Raven Rock Alternate Joint Communications Center (AJCC): Alternate National Military Command Center," last modified July 24, 2011, <http://www.globalsecurity.org/wmd/facility/raven-rock.htm>.

<sup>75</sup> Tom Vanderbilt, *Survival City: Adventures among the Ruins of Atomic America* (New York, N.Y.: Princeton Architectural Press, 2002), 145.

<sup>76</sup> Sharon Weinberger, "How To: Visit a Secret Nuclear Bunker," *Wired*, June 11, 2008, accessed April 10, 2013. <http://www.wired.com/dangerroom/2008/06/how-to-visit-a/>

<sup>77</sup> Krugler, *This is Only a Test...*, 186.

Before politicians understood the full effects of nuclear war, Truman's doctrine—initially adopted by his successor—vigorously asserted immediate and massive nuclear retaliation in the event of an attack against American interests. As elements such as radioactive fallout and the consequences of electromagnetic pulse became better understood, however, this doctrine was walked back to one of “limited retaliation” under Eisenhower.<sup>78</sup> Notwithstanding, it was Eisenhower's who moved CCG from being primarily focussed on succession and dispersal, to being able to operate under the extraordinary circumstances following a nuclear strike against the United States. He did this by establishing the Federal Relocation Arc, “a covert constellation of still-classified underground facilities stretching from Virginia to Pennsylvania.”<sup>79</sup> By 1957, more than 90 such sites existed, though most were considerably less secret and more above-ground than indicated.

Eisenhower came from a military background where plans are “worthless unless tested.”<sup>80</sup> He therefore oversaw a series of exercises, operations and drills to test the Arc. At 2 o'clock on the afternoon on December 12, 1952, an air raid drill was carried out in Washington to test the Federal Buildings Service (FBS), “a wardens corps and warning system for the 200 or so buildings housing more than 200,000 employees of the executive branch.”<sup>81</sup> It lasted two hours for the wardens (and 15 minutes for the employees) and amounted to “something less than a fire drill.”<sup>82</sup> It did, however, demonstrate how sterile

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<sup>78</sup> Conaty, “The Atomic Midwife...”, 630.

<sup>79</sup> Vanderbilt, *Survival City...*, 145.

<sup>80</sup> Krugler, *This is Only a Test...*, 98.

<sup>81</sup> *Ibid.*, 116.

<sup>82</sup> *Ibid.*, 117.

this “construction of nuclear reality” really was.<sup>83</sup> Only “two nominal type atomic bombs” were simulated and no consideration was given to the fire storm that would ensue.<sup>84</sup> The following year, a joint District of Columbia / Maryland civil defense exercise called Operation Fireball did not go well either, highlighting poor inter-governmental coordination.<sup>85</sup>

From these initial efforts a series of annual exercises developed, dubbed “Operation Alert,” starting in June 1954 and lasting until 1961. They simulated atomic attacks on Washington and other cities, and apart from their civil defence elements “were designed to test the capability of all levels of government to operate following an attack and to make proper provision of allocation of remaining resources.”<sup>86</sup>

Operation Alert (OPAL) 54 was a national-level exercise that included federal employees and the entire executive branch. Its most significant outcome was a renewed debate on the merits (and physical possibility) of city evacuation. Officials expected that the early warning system would provide two hours’ notice, but limited public infrastructure meant that under optimal circumstances it would take nearly six hours to evacuate Washington.<sup>87</sup> This had serious CCG implications; if the roads were jammed with evacuating citizens, essential government workers could not use them. Eisenhower summarized this to Congress in February 1955 when he said,

In case of an atomic attack on our key cities, the road net must permit quick evacuation of target areas, mobilization of defense forces and

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<sup>83</sup> Guy Oakes, *The Imaginary War: Civil Defense and American Cold War Culture* (New York: Oxford University Press, 1994), 78. See chapter 3: “The Cold War Conception of Nuclear Reality.”

<sup>84</sup> Krugler, *This is Only a Test...*, 116-118.

<sup>85</sup> *Ibid.*, 119-120.

<sup>86</sup> Conaty, “The Atomic Midwife...”, 632-633.

<sup>87</sup> Krugler, *This is Only a Test...*, 121-124.



maintenance of every essential economic function. But the present system in critical areas would be the breeder of a deadly congestion within hours of an attack.<sup>88</sup>

A smaller exercise to specifically test government continuity operations was held in November of 1954. It was called Operation Readiness, and was held at the yet-to-be-finished High Point Special Facility at Mount Weather.<sup>89</sup> This site, originally used by the National Weather Bureau, was taken over by the Bureau of Mines in the late nineteenth century where it trialed new mining techniques.<sup>90</sup> It took five years to work the “exceptionally hard and tight” rock into a finished facility by 1958, which reportedly contained provisions, fresh water and sewage capacity to sustain 200 workers for more than a month.<sup>91</sup> It remains operational to this day, if unofficially, and again, was likely used during the September 11 attacks.<sup>92</sup>

Mount Weather was ready enough to host Operation Readiness in 1954. It was a “subdued, one-day affair,”<sup>93</sup> held in an underground chamber where “water was dripping from the ceiling and oozing from the walls.”<sup>94</sup> The morning started with a videoconference address by the President followed by an intelligence brief on Soviet capabilities. Communications were tested throughout the day, but many difficulties were evident. Again, planners made unrealistic assumptions regarding numbers of bombs

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<sup>88</sup> Dwight D. Eisenhower, "Special Message to the Congress Regarding a National Highway Program, February 22, 1955," *The American Presidency Project*, by Gerhard Peters and John T. Woolley, accessed June 8, 2013, <http://www.presidency.ucsb.edu/ws/?pid=10415>.

<sup>89</sup> Krugler, *This is Only a Test...*, 106, 108.

<sup>90</sup> GlobalSecurity.org, "Mount Weather High Point Special Facility (SF) Mount Weather Emergency Assistance Center (MWEAC): Western Virginia Office of Controlled Conflict Operations," last modified July 24, 2011, [http://www.globalsecurity.org/wmd/facility/mt\\_weather.htm](http://www.globalsecurity.org/wmd/facility/mt_weather.htm).

<sup>91</sup> Ted Gup, "Doomsday Hideaway," *Time* 138, no. 23 (December 9, 1991).

<sup>92</sup> Krugler, *This is Only a Test...*, 186.

<sup>93</sup> *Ibid.*, 108.

<sup>94</sup> GlobalSecurity.org, "Mount Weather High Point Special Facility (SF)..."

dropped, warning times and city evacuations. In the end, the operation was characterized as a “rather feeble command and staff exercise,” but it did demonstrate to Eisenhower the need for a proper evacuation test.<sup>95</sup>

OPAL 55 took place seven months later in the summer of 1955. Originally planned as an evacuation exercise, it ended up seeing 6,000 workers representing 30 executive agencies operate for three days from the Arc. Like OPAL 54, this was a national exercise that imagined 61 nuclear bombs striking 60 cities. Eisenhower and the entire executive was deeply involved. As the warning of attack was announced, the President was driven to Mount Weather with some of his staff; others were driven to the Presidential Retreat, Camp David, which had been designated as a presidential relocation center. It was during this exercise that Eisenhower surprised his staff by declaring simulated martial law almost immediately. The chairman of the Joint Chiefs of Staff “cautiously suggested that martial law required additional discussion.”<sup>96</sup> Eisenhower’s appointed lead of the Federal Civil Defense Administration observed that “some people thought the order meant the military would take complete control of the government.”<sup>97</sup> During a press conference two weeks later, Eisenhower was asked about it. Noting that he was not pre-briefed on the OPAL 55 scenario, he replied:

I was suddenly told that 53 of the major cities of the United States had either been destroyed or so badly damaged that the populations were fleeing; there were uncounted dead; there was great fallout over the country. Here there was, as I saw it, no recourse except to take charge instantly; because even Congress, dispersed from Washington because of a bomb, would take some hours to meet, to get together, to organize

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<sup>95</sup> Krugler, *This is Only a Test...*, 108-109.

<sup>96</sup> *Ibid.*, 127.

<sup>97</sup> *Ibid.*

themselves. It was a terrible situation, one which you would hope would be terminated very quickly as soon as you get Congress together.<sup>98</sup>

It is not fully clear whether Eisenhower thought martial law would be required to address the hypothetical state of the American continent from the angle of civil defence or continuity of government. His own views were that civil defence was a state, municipal and personal responsibility, suggesting the latter.<sup>99</sup> However, it is interesting to note that, though he thought Congress might require “some hours to meet,” his initial declaration of martial law was for 30 days.<sup>100</sup> His reasoning was simple, perhaps coloured by his military background:

Under the circumstances of chaos assumed in Operation Alert, we would have to run this country as one big camp - severely regimented. No longer would only the armed services bear the brunt of war . . . all the ordinary processes by which we run this country simply will not work under the circumstances we have assumed here. Our great fundamental problem will be how to mobilize what is left of 165 million people and win a war. We must be very much bolder in our whole approach.<sup>101</sup>

Eisenhower took the need for a strong executive during emergency government even further. In April 1956, two months before OPAL 56, executive agencies were directed to submit “documents which involve matters of supreme national importance requiring immediate action or execution by the President.”<sup>102</sup> In practice, these Emergency Action Papers (EAPs) were nearly one hundred executive orders,

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<sup>98</sup> Dwight D. Eisenhower, “The President’s News Conference – July 6, 1955,” *The American Presidency Project* by Gerhard Peters and John T. Woolley, accessed June 9, 2013, <http://www.presidency.ucsb.edu/ws/index.php?pid=10287&st=&st1=>

<sup>99</sup> Eisenhower, “The President’s News Conference...”

<sup>100</sup> Krugler, *This is Only a Test...*, 127.

<sup>101</sup> Minutes of the Second Plenary Meeting of the Interim Assembly, Ravenrock Conference Room 1 (June 17, 1955), quoted in Conaty, “The Atomic Midwife...”, 643.

<sup>102</sup> Krugler, *This is Only a Test...*, 156.

congressional reports and bills that could be enacted immediately upon receipt of a code word. Most remain classified, though context from other documentation indicate that they deal with such actions as immigration/emigration restrictions, establishment of emergency executive agencies such as a national censorship office, conscription and nationalization of funds, materiel, etc.<sup>103</sup> Eisenhower's Staff Secretary characterized them as reflecting that martial law would have been declared.<sup>104</sup> There is no indication that the EAPs received any legislative or judicial review. Notwithstanding, a 2010 analysis of Eisenhower's approach of "constitutional dictatorship" concluded that, regardless of how one may feel as to its legitimacy, it was entirely consistent with the U.S. Constitution.<sup>105</sup>

OPAL 56 was a six-day exercise in late July 1956. Forty-two executive agencies participated by activating their Arc sites. Additional problems with government continuity were uncovered, and for the first time the benefit of maintaining permanent cadres of personnel at alternate sites was discussed.

It was the following year that the brutal concept of nuclear reality started to really take hold in the government. OPAL 57 imagined over 150 nuclear strikes amounting to 374 megatons of destruction and the deaths of a third of the U.S. population.<sup>106</sup> Damage estimates put two-thirds of the government's field offices out of play. Although a large number of the Arc sites remained undamaged, the number of workers that could arrive and remain fit for duty—both physically and mentally—remained an unknown. Even so, the exercise scenario assumptions remained unrealistic because the destructive

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<sup>103</sup> Conaty, "The Atomic Midwife...", 635-637, 654.

<sup>104</sup> Krugler, *This is Only a Test...*, 162.

<sup>105</sup> Conaty, "The Atomic Midwife...", *passim*.

<sup>106</sup> Krugler, *This is Only a Test...*, 160.

capabilities of atomic war were fast outstripping defensive measures. This emboldened Eisenhower and his plan for martial law, going so far as to openly defy legal objections to his actions, wryly observing that there “won’t be any lawyers—most of ‘em will be in big cities and be killed [sic].”<sup>107</sup>

OPAL 58’s scenario was no better. The Office of Defense Mobilization (ODM) prepared an evacuation and capability estimate that saw half of those making their way to the Arc sites incapacitated en route. Two weeks following the attack, only 35 of 90 Arc sites would remain operational, and it would take the relocated federal government three months before it could “effectively direct the national economy toward recovery.”<sup>108</sup>

It also identified another problem with a CCG plan: families. As early as OPAL 55, a federal official was quoted as saying, “directive or no directive, fallout or no fallout, I am going to hunt for my wife and either live or die with her.”<sup>109</sup> This was not a unique position. In an interview in 1991, the Deputy Undersecretary of State during the Cuban Missile Crisis called it “unrealistic” to expect bureaucrats to leave their families,<sup>110</sup> and in 1992, Representative Tip O’Neill called the idea of leaving behind his family as Congress sought shelter “the craziest thing I ever heard of.”<sup>111</sup> Nor was this solely an American concern; the Government of Canada established its own hardened alternate site for CCG near Ottawa. It is rumoured that, despite authorizing its construction, when Prime Minister John Diefenbaker was briefed on the site, he balked: “upon learning that the

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<sup>107</sup> *Ibid.*, 161, 230.

<sup>108</sup> ODM Telecommunications Area, “Operation Alert 1958 – Evacuation and Capability Estimate,” June 13, 1958, quoted in Krugler, *This is Only a Test...*, 162-163.

<sup>109</sup> Warren Unna, “Officials Call Alert Test a Success for Weak Points That it Revealed.” *Washington Post and Times Herald*, June 26, 1955.

<sup>110</sup> Gup, “Doomsday Hideaway.”

<sup>111</sup> Ted Gup, “The Ultimate Congressional Hideaway.” *The Washington Post*, May 31, 1992.

bunker only had space and resources for the government officials themselves and not their spouses or children, [Diefenbaker] promptly dismissed the idea of being separated from his wife.”<sup>112</sup> These issues persist in modern CCG planning.

Up to this point in American CCG history, nearly all of the government’s preparation for continuity centred on the executive branch. Congress expressed no interest in participating in OPAL activities, partly because of the political liability of abandoning “the people’s business” to practice their own preservation, but also because they had no alternate site to which they could evacuate. That did not change until 1959, when, after four years of urging by the President, Congress authorized the construction of its own alternate site—hardened, underground, and top secret. With the code name Casper,<sup>113</sup> it was built under the Greenbrier resort in White Sulphur Springs, West Virginia to “permit the continuation of the American form of constitutional government in the event of nuclear war.”<sup>114</sup> It had facilities that accommodated chambers for both houses of Congress, either on their own or in joint session, and could sustain 1,000 people for 40 days.<sup>115</sup> It was never used, or even exercised with members of Congress, though it was put on alert during the Cuban Missile Crisis.<sup>116</sup> In 1991, a Washington Post reporter publicized its existence in an article that remains controversial today.<sup>117</sup>

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<sup>112</sup> Dundurn Press, “Diefenbaker’s Legacy,” accessed June 9, 2013, [http://www.dundurn.com/news/diefenbaker's\\_legacy](http://www.dundurn.com/news/diefenbaker's_legacy).

<sup>113</sup> GlobalSecurity.org, “Casper: The Greenbrier, Sulpher Springs, WV,” last modified July 24, 2011, <http://www.globalsecurity.org/wmd/facility/greenbrier.htm>.

<sup>114</sup> Kenneth D. Rose, *One Nation Underground: A History of the Fallout Shelter* (New York: New York University Press, 2004), 114.

<sup>115</sup> Michael Adams, “Hidden in Plain Sight,” *Successful Meetings* 45, no. 7 (June 1996): 57.

<sup>116</sup> Gup, “The Ultimate Congressional Hideaway.”

<sup>117</sup> Susan Glaser, “Ted Gup’s Disclosure of the Greenbrier Bunker Still Controversial 17 Years Later,” *Plain Dealer*, last modified March 17, 2009, [http://blog.cleveland.com/pdextra/2009/03/ted\\_gups\\_disclosure\\_of\\_the\\_gre.html](http://blog.cleveland.com/pdextra/2009/03/ted_gups_disclosure_of_the_gre.html).

President John F. Kennedy took over the presidency on January 20, 1961. The day before, Eisenhower's staff briefed the President-elect on the most current continuity plan. He was briefed on the secret facilities at Mount Weather and Camp David. In February 1962, National Security Action Memorandum (NSAM) 127, titled Emergency Planning for Continuity of Government, was released. It directed a review of CCG arrangements "with particular emphasis on the plans for insuring the survival of the Presidency."<sup>118</sup> Kennedy endorsed the results in NSAM 166 on June 25, which de-emphasized evacuation in favour of dispersion.<sup>119</sup> Thus, during the Cuban Missile Crisis four months later, the administration's changes to CCG planning were incomplete. The EAPs had not been maintained; some were already obsolete and others were seen to be of "doubtful legality."<sup>120</sup> Behind the scenes of speeches, spy photos, and political posturing, the executive branch scrambled to put together viable continuity plans. For perhaps the first time, the executive took interest in ensuring the judicial branch's availability during a CCG event. In a common theme, Chief Justice Earl Warren "rankled that his wife Nina couldn't accompany him to Mount Weather."<sup>121</sup>

*The Second Period – After Cuba.* Kennedy's assassination was an important, if ultimately uncontroversial, exercise of CCG. Though Vice President Truman had succeeded Roosevelt after his death in 1945, the conditions were very different.

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<sup>118</sup> National Security Action Memorandum 127, "Emergency Planning for Continuity of Government," February 14, 1962, accessed June 9, 2013, <http://www.fas.org/irp/offdocs/nsam-jfk/nsam127.htm>.

<sup>119</sup> National Security Action Memorandum 166, "Report on Emergency Plans and Continuity of the Government," January 5, 1962, accessed June 9, 2013. <http://www.fas.org/irp/offdocs/nsam-jfk/nsam166.htm>.

<sup>120</sup> Krugler, *This is Only a Test...*, 169-170, 176.

<sup>121</sup> *Ibid.*, 178.

Roosevelt died of natural causes, and the military successes in Europe and the Pacific calmed fears that the President's death would make the U.S. vulnerable.<sup>122</sup> In fact, Truman did not take the oath of office for nearly two-and-a-half hours following Roosevelt's death.<sup>123</sup> The hours following Kennedy's death were much more chaotic. Nevertheless, a practiced and well-understood succession plan brought order and certainty to the nation. Though legally not required, the swearing-in ceremony was highly symbolic; an important message to the citizens, the stock market, and the Soviets alike.<sup>124</sup>

Though presidential succession was well in hand, by the end of the Kennedy administration, mutual assured destruction emerged as the new nuclear reality. Seeing each side's technology develop beyond mere nuclear parity, Cold War parties acknowledged their own nations' vulnerability, so long as the other side was comparably vulnerable.<sup>125</sup> This must have had an effect on planners, yet there is little evidence that the Johnson administration advanced CCG; for example none of the National Security Action Memoranda (NSAMs) released during his time in office addressed the subject, although the Office of Emergency Planning did release a document called *Guidance for Civil Emergency Preparedness* in April 1966.<sup>126</sup>

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<sup>122</sup> National Archives and Records Administration, *Allies Overrun Germany* (United News Newsreels, 1945), from Internet Archive, News & Public Affairs, Video, 10:56, <http://archive.org/details/gov.archives.arc.39165>

<sup>123</sup> Robert A. Caro, *The Years of Lyndon Johnson: The Passage of Power* (New York: Knopf, 2012), 323, 324.

<sup>124</sup> *Ibid.*

<sup>125</sup> Nuclear Age Peace Foundation, "Mutual Assured Destruction," accessed June 10, 2013, <http://www.nuclearfiles.org/menu/key-issues/nuclear-weapons/history/cold-war/strategy/strategy-mutual-assured-destruction.htm>.

<sup>126</sup> National Security Study Memorandum 58, "Planning Assumptions for Civil Emergency Preparedness," May 26, 1969.



Similarly, President Nixon's administration did little to improve CCG. Within six months of taking office, three national security studies requested civil defence reviews. National Security Study Memorandum (NSSM) 57<sup>127</sup> directed a review of U.S. civil defence policies; NSSM 58<sup>128</sup> directed a study of civil emergency planning assumptions, including Johnson's *Guidance for Civil Emergency Preparedness*; NSSM 64 requested an analysis of U.S. strategic capabilities vis-à-vis a nuclear attack. Included were considerations "of the actual and required capabilities of the U.S. command and control system."<sup>129</sup> The report requested by NSSM 57 was acknowledged in August 1972 under National Security Decision Memorandum (NSDM) 184, where Nixon decided "that the U.S. shall maintain the current overall level of effort in its civil defense activities."<sup>130</sup> Presumably this included the government's CCG arrangements, although one year earlier, NSSM 126, titled "Continuity of Government," directed a study "to determine the appropriate military command and control concepts, facilities and related procedures . . . in the event of either general nuclear war or crisis conditions which could lead to nuclear attack on the United States."<sup>131</sup> It was tied directly to NSSM 58 and also examined "the desirability of present concepts, facilities and related procedures with particular emphasis on facilities in the light of the changed strategic balance and its implications. . ."<sup>132</sup> What ultimately became of this study is not known. Both Presidents Gerald Ford and Jimmy

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<sup>127</sup> National Security Study Memorandum 57, "Review of U. S. Civil Defense Policies," May 23, 1969.

<sup>128</sup> NSAM 58.

<sup>129</sup> National Security Study Memorandum 64, "U.S. Strategic Capabilities," May 26, 1969.

<sup>130</sup> National Security Decision Memorandum 184, "United States Civil Defense Policy," August 14, 1972.

<sup>131</sup> National Security Study Memorandum 126, "Continuity of Government," April 22, 1971.

<sup>132</sup> *Ibid.*

Carter ordered civil defence policy reviews with NSSM 244 in July 1976,<sup>133</sup> and Presidential Review Memorandum (PRM) 32 in September 1977,<sup>134</sup> however neither contained any direction to consider CCG measures. That said, Carter's Presidential Directive (PD) 41, issued in September 1978, acknowledged, if only in passing, that improved continuity of government was a desirable outcome of the U.S. Civil Defense program, though no explicit ties between civil defence and CCG were drawn.

It is possible that Nixon's "Continuity of Government" study had an influence on the Carter administration. He released PD 58 in June 1980, also under the title "Continuity of Government," though its contents have not been declassified for release. Unfortunately at this point in history a study of U.S. CCG planning begins to mire in unreleased and still-classified documentation. However, from Kennedy to Carter, one would be forgiven for thinking that CCG and civil defense were given only perfunctory attention. Perhaps this was because this period represented the culmination of the trend in the 1950s of defensive doctrine being outstripped by offensive capability. A limited decapitation strike against the U.S. government was not considered to be the threat that it was in the two decades following World War II. National annihilation was. So instead, as each new administration called for civil defense reviews and ended up accepting the status quo, much more political effort was focussed on overall nuclear deterrence.<sup>135</sup>

Until, it appears, President Ronald Reagan. American writer James Mann details a secret continuity of government plan that was bolder than any that came before it. Its genesis lies with a document called "Fiscal Year 1984-1988 Defense Guidance," a five-

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<sup>133</sup> National Security Study Memorandum 244, "U.S. Civil Defense Policy," July 24, 1976.

<sup>134</sup> Presidential Review Memorandum 32, "Civil Defense," September 30, 1977.

<sup>135</sup> Presidential Directive 59, "Nuclear Weapons Employment Policy," July 25, 1980.

year defense plan that countered the Carter strategy spelled out in PD 59 of “pre-planned targeting for strikes against the Soviet Union, its allies and its forces.”<sup>136</sup> Underlying Carter’s approach was the belief that a nuclear conflict would inevitably be a single exchange consisting of a strike and a counterstrike. Thus a high level of confidence that pre-selected targets could be destroyed was crucial.

In contrast, Reagan’s approach was built on a foundation of the “protracted” nuclear war, which is to say any nuclear conflict that involved more than just a single exchange of weapons,<sup>137</sup> but potentially lasting up to six months.<sup>138</sup> A key point of the strategy was to defeat the U.S.S.R.’s leadership and communications capabilities—in a word, decapitate the Soviet Union quickly and win the war. But the adversary’s centre of gravity was also the American’s: the “Reagan team wanted to make sure the Soviet Union couldn’t do to America what its nuclear strategists were planning to do to the Soviets.”<sup>139</sup> Its plan to address this was through a robust CCG plan, known, perhaps histrionically, as The Doomsday Project.<sup>140</sup>

Three teams were formed by secret executive order, possibly the still-classified National Security Decision Directive (NSDD) 55 of September 1982. The teams were led by a trusted agent of the President, though not necessarily a part of his government. If a team were to be activated, the leader would become the chief of staff to a Cabinet member on the team whose job it was to succeed the President if he and his Vice

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<sup>136</sup> *Ibid.*

<sup>137</sup> Richard Halloran, “Pentagon Draws Up First Strategy for Fighting a Long Nuclear War,” *New York Times*, May 30, 1982.

<sup>138</sup> Tim Weiner, “Pentagon Book for Doomsday is to be Closed,” *New York Times*, April 16, 1994.

<sup>139</sup> James Mann, *Rise of the Vulcans: the History of Bush's War Cabinet* (New York: Viking, 2004), 139.

<sup>140</sup> Weiner, “Pentagon Book for Doomsday...”

President were incapacitated. Representatives from key agencies, including the Departments of State and Defense, would round out the forty- to sixty-person teams. Each year, for about two weeks, the teams would exercise in various locations of the Presidential Survivability Support System, a network consisting of an undisclosed number of secret command post bunkers built after the Pentagon decided “that the two huge shelters build in the 1950’s [Site R and Mount Weather] were sure to be on the Soviets’ target list.”<sup>141</sup> Each team would take turns “leading” the nation’s government under the simulated stresses of nuclear war for three to four days. At the end of each team’s turn, it would hand over to the next team, ensuring redundancy if their own site was targeted.<sup>142</sup>

This government continuity plan did have problems. Though it was simple and brutally effective, it was not legal. The means by which a successor President was selected did not take into consideration the *Presidential Succession Act* of 1947. In fact, if Congress survived the attack, the plan counted on swift and decisive action in the midst of chaos to bypass the legislature entirely. If Congress were annihilated, then so much the better; it would be much easier for the executive to focus on government continuity, war fighting and immediate rebuilding without Congressional oversight. Further, it was assessed that reconstituting Congress would take a long time and would ultimately cause

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<sup>141</sup> *Ibid.*

<sup>142</sup> Mann, *Rise of the Vulcans...*, 138-145.

confusion in establishing the legitimate President.<sup>143</sup> These issues—and others—remain today.<sup>144</sup>

The Reagan administration also pursued civil defence, which was directly tied to the nation's nuclear deterrent forces, in a more robust manner than did his predecessors. It released NSDD 23 in early-1982, where the President directly associated civil defence with continuity of government.<sup>145</sup> It also laid out details and timelines for implementation, indicating a revitalized interest in the subject since this was something that his predecessors did not do. These directives were superseded by NSDD 259 in early-1987, though, in a document entitled “U.S. Civil Defense” that made no mention of CCG.<sup>146</sup>

Reagan's Vice President, George H.W. Bush supervised Project Doomsday.<sup>147</sup> When Bush was elected in 1988, he was already intimately familiar with the government continuity plan, so the presidential transition in 1989 resulted in only minor changes to the program.<sup>148</sup> The exact nature of those changes is not clear, though it is probably contained in the still-classified National Security Review (NSR) 20 (*Review of Policy and Programs Concerning Continuity of Govt*, August 1989),<sup>149</sup> and National Security

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<sup>143</sup> *Ibid.*, 141-142.

<sup>144</sup> Continuity of Government Commission, “The Congress,” *Preserving our Institutions: The First Report of the Continuity of Government Commission*, May 2003.

<sup>145</sup> National Security Decision Directive 23, “US Civil Defense Policy,” February 3, 1982. See also the unclassified version: National Security Decision Directive 26. “US Civil Defense Policy.” March 16, 1982.

<sup>146</sup> National Security Decision Directive 259, “U.S. Civil Defense,” February 4, 1987.

<sup>147</sup> Weiner, “Pentagon Book for Doomsday...”

<sup>148</sup> Mann, *Rise of the Vulcans...*, 144.

<sup>149</sup> National Security Review 20, “Review of Policy and Programs Concerning Continuity of Govt.” August 24, 1989.

Directive (NSD) 37 (*Enduring Constitutional Government*, April 1990).<sup>150</sup> The latter appears to have been superseded by NSD 69 in June 1992, also called *Enduring Constitutional Government* and also unreleased.<sup>151</sup> It does appear, however, that the end of the Cold War changed the motivation for the program, if not its substance. NSD 66 (*Civil Defense*, March 1992)<sup>152</sup> makes explicit a theme that is only hinted at in Reagan's NSDD 259, that of expanding civil defence beyond simply a response to nuclear conflict. The new directive still establishes civil defence as "an element of our overall national security posture," but requires it to address "all catastrophic emergencies and those unique to attack emergencies in order to protect the population and vital infrastructure."<sup>153</sup> This expansion reflects the reduced concern of nuclear war and the increased concern of targeted terrorist attacks. For example, a hypothetical terrorist strike that killed both the President and the Vice President, perhaps even with proliferated nuclear weapons resulting from the fall of the Soviet Union, still needed a bold response that included enduring governance.<sup>154</sup> Thus, as the Cold War ended, so too did the second period of U.S. CCG.

#### After the Cold War

After the Cold War ended, even a terrorist attack targeting U.S. leadership was considered unlikely. In 1994, President Bill Clinton ended The Domsday Project "as an

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<sup>150</sup> National Security Directive 37. "Enduring Constitutional Government." April 18, 1990.

<sup>151</sup> National Security Directive 69. "Enduring Constitutional Government." June 2, 1992.

<sup>152</sup> National Security Directive 66, "Civil Defense," March 16, 1992.

<sup>153</sup> *Ibid.*

<sup>154</sup> Mann, *Rise of the Vulcans...*, 144.

antique of the cold war.”<sup>155</sup> Four years later, Clinton’s Presidential Decision Directive (PDD) 67, titled *Enduring Constitutional Government and Continuity of Government*, marked the beginning of the modern CCG program. Although its text has not been released, it is reported to identify the three layers of U.S. CCG: ECG, COG, and COOP.<sup>156</sup> It superseded NSD 69, but augmented Reagan’s Executive Order (EO) 12656 which established emergency preparedness responsibilities amongst the federal agencies and departments.<sup>157</sup> It was quickly followed in July 1999, by Federal Preparedness Circular (FPC) 65, *Federal Executive Branch Continuity of Operations (COOP)*, released by the Federal Emergency Management Agency (FEMA).

FEMA had been activated in 1979 by President Carter in order to bring together an increasingly unwieldy number of separate disaster-related responsibilities held by a number of agencies.<sup>158</sup> This included taking over civil defence from the U.S. Army.<sup>159</sup> The end of the Cold War saw an explicit shift of resources within FEMA away from civil defence and into disaster relief, recovery, and mitigation.<sup>160</sup> Under Clinton, FEMA acted as a supporting agency to the executive branch’s COOP program. FPC 65 was originally issued in 1999 and was updated in 2004, and “remains the central policy document for current COOP planning. [It] outlines the specific requirements for each agency’s COOP

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<sup>155</sup> Weiner, “Pentagon Book for Doomsday...”

<sup>156</sup> Federation of American Scientists. “PDD-NSC-67: Enduring Constitutional Government and Continuity of Government Operations, 21 October 1998.” Accessed June 13, 2013. <http://www.fas.org/irp/offdocs/pdd/pdd-67.htm>.

<sup>157</sup> Executive Order 12656, “Assignment of Emergency Preparedness Responsibilities,” November 18, 1988.

<sup>158</sup> Executive Order 12127, “Federal Emergency Management Agency,” March 31, 1979; and Executive Order 12148, “Federal Emergency Management,” July 20, 1979.

<sup>159</sup> *Reorganization Plan No. 3 of 1978*. 43 F.R. 41943, 92 Stat. 3788.

<sup>160</sup> Federal Emergency Management Agency, “About the Agency,” Last modified April 9, 2013, <http://www.fema.gov/about-agency>.

plans and assigns [FEMA] as the government's lead department for COOP coordination."<sup>161</sup> It expands the view of CCG—at least within the executive branch—well beyond a nuclear or terrorist attack, including “localized acts of nature, accidents, [and] technological emergencies.”<sup>162</sup> A number of important requirements for continuity plans, such as being implementable without warning, being fully operational within 12 hours of activation, and being sustainable for at least 30 days, were detailed. Further, it spelled out key elements:<sup>163</sup>

- Plans and procedures;
- Identification of essential functions;
- Delegations of authority;
- Orders of succession;
- Alternate facilities;
- Interoperable communications;
- Vital records and databases; and
- Tests, training and exercises.

Ostensibly, this was the U.S. CCG program active on September 11, 2001, though it is not clear how broadly FPC 65 was implemented by then. However, a review of the U.S. government's actions in the immediate aftermath of the September 11 attacks

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<sup>161</sup> FedSources, *U.S. Government Continuity of Operations Planning (COOP): Legislative Overview and Selected Federal Case Studies*, April 17, 2006, accessed June 13, 2013, <http://www.federalnewsradio.com/pdfs/fedsources.pdf>.

<sup>162</sup> United States, Federal Emergency Management Agency, “Federal Executive Branch Continuity of Operations (COOP)” *Federal Preparedness Circular 65*, July 26, 1999.

<sup>163</sup> *Ibid.*



suggests that the response was more similar to The Domsday Project than FEMA's FPCs.

It has been suggested that the September 11 attacks was a failure of continuity of government.<sup>164</sup> This conclusion simply cannot be rationally drawn. While prevention is an element of a CCG program and the attack implies a failure in prevention, the ultimate measure of a CCG program's success is whether or not the constitutional government maintained continuity throughout the emergency threatening it. This was clearly the case.

On the morning of September 11, 2001, President George W. Bush was travelling in Florida. His Vice President, Richard Cheney, was in Washington, D.C. The second aircraft strike made clear that it was an orchestrated attack, and the Vice President immediately assembled council and contacted the President.<sup>165</sup> Shortly thereafter, the Vice President was abruptly evacuated to the Presidential Emergency Operations Center due to a report that an unknown aircraft—later determined to be American Airlines Flight 77 which was eventually flown into the Pentagon—was headed towards the White House.<sup>166</sup> From here, Cheney established a communications “node” with key executive departments and, with an eye to ensuring the Presidential succession, advised the President to “postpone his return to the nation's capital,” reasoning that “the president should remain outside so that both men could not be hit in the same attack.”<sup>167</sup> The President, now aboard Air Force One, landed at Barksdale Air Force Base in Louisiana,

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<sup>164</sup> Paul Beach, “The Federal Government's Continuity Crisis,” *PA Times* 35, no. 2 (April 2012): 6.

<sup>165</sup> *Meet the Press*. Interview with Dick Cheney, first broadcast September 16, 2001 by NBC.

<sup>166</sup> National Commission on Terrorist Attacks upon the United States. (Philip Zelikow, Executive Director; Bonnie D. Jenkins, Counsel; Ernest R. May, Senior Advisor). *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), 9.

<sup>167</sup> Mann, *Rise of the Vulcans...*, 295.

where he taped an address to the American people. From there, the Presidential party flew to Offutt Air Force Base in Nebraska, which contained “elaborate command and control facilities” which the President used to assemble his Cabinet and implement “contingency plans for the continuity of government.”<sup>168</sup> On Cheney’s advice, the House Speaker was evacuated out of Washington, as were a number of other Congressional leaders. Within days of the attack, Cheney recommended the establishment of the Office of Homeland Security, which Bush announced on September 20<sup>th</sup>. The Vice President’s decisiveness, coupled with a “command performance” for the media on the 16<sup>th</sup>, was criticised for overshadowing the President.<sup>169</sup>

Shortly thereafter, Cheney began spending much of his time apart from the President, either at Camp David or other “undisclosed locations.”<sup>170</sup> While this became the recurring punch line of jokes at the Vice President’s expense, it was clear that it was intended to ensure Presidential succession. Perhaps the most telling change was the establishment of a “shadow government.” Established “within hours of the [September 11] attacks” and intended only as a “temporary precaution,” it evolved into a perpetual arrangement seeing 70 to 150 senior bureaucrats from “every Cabinet department and some independent agencies” secured in undisclosed, underground bunkers for periods of 90 days. Strikingly reminiscent of The Doomsday Project, this “administration-in-waiting” occupies two unnamed locations, each rendered secure by the “use of geological features, [and] well stocked with food, water, medicine and other consumable supplies,

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<sup>168</sup> National Commission on Terrorist Attacks upon the United States, 325-326.

<sup>169</sup> Eric Schmitt, “A Nation Challenged: The Vice President; Out Front or Low Profile, Cheney Keeps Powerful Role,” *New York Times*, October 7, 2001.

<sup>170</sup> Francie Grace, “‘Shadow Government’ News to Congress,” *CBS News*, February 11, 2009.

and . . . capable of generating their own power.”<sup>171</sup> Understandably, some have guessed that these facilities are Raven Rock and Mount Weather. Regardless of the details, it is fascinating to note that Vice President Richard Cheney and then-Secretary of State Donald Rumsfeld were both practiced team leaders and principal figures in The Doomsday Project.<sup>172</sup>

### **US CCG Today**

Conspicuously missing throughout this historical overview has been the other two branches of U.S. government. Indeed, the legislative and judicial branches have played either a very minor role, or a significantly quieter role than that of the executive. A 2002 *Washington Post* article on the executive’s “shadow government” made a passing but unsubstantiated claim that the two branches “have separate continuity plans.”<sup>173</sup> Notwithstanding, other reports suggest that they are not nearly as robust. The anthrax-related attacks that followed the September 11 attacks shut down a number of congressional buildings, caused postponements of hearings in both Houses, and resulted in a temporary recess of the House of Representatives.<sup>174</sup> Prior to 2001, there existed “loose and largely hypothetical” plans for an alternate site for the House to meet but “detailed planning” did not begin until after the September 11 attacks. Even so, it took

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<sup>171</sup> Barton Gellman and Susan Schmidt, “Shadow Government is at Work in Secret,” *Washington Post*, March 1, 2002.

<sup>172</sup> Mann, *Rise of the Vulcans*..., 135.

<sup>173</sup> Grace, ““Shadow Government’...”.

<sup>174</sup> R. Eric Peterson and Jeffrey W. Seifert, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, Congressional Research Service Report for Congress RL31594, September 9, 2005, 4-6.

the anthrax attacks to finally establish an undisclosed building at the nearby army base, Fort McNair, as a permanently ready alternate site.<sup>175</sup>

Relocation appears as an important element of CCG, but other vital aspects of Congressional continuity remain unclear. The consequences of this are real. The Capitol Building was on al Qaeda's target list and there is credible evidence that United Airlines Flight 93's objective was exactly that.<sup>176</sup> Both chambers of Congress were sitting at the time of the attack.<sup>177</sup> America came close to losing its legislative branch of government that day.

Within a month of the September 11 attacks, this nightmare scenario was spelled out in the Capitol Hill newspaper by American Enterprise Institute's (AEI) political scientist Norman Ornstein.<sup>178</sup> A year later, AEI joined with the Brookings Institution to form the Continuity of Government Commission.<sup>179</sup> Over the course of the next decade, the Commission identified fundamental continuity issues with each of the three branches of government.

*The Congress.* In its report published in May 2003, the Commission was adamant that Congress, and in particular the House, was the government's most vulnerable branch. Recalling al Qaeda's intent to destroy the Capitol building while Congress was in session,

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<sup>175</sup> Susan Crabtree, "Ft. McNair Ready for House Action," *Roll Call*, November 1, 2001.

<sup>176</sup> National Commission on Terrorist Attacks upon the United States, 325-326.

<sup>177</sup> Norman J. Ornstein, "What if Congress Were Obliterated? Good Question," *Roll Call* 47 (October 4, 2001): 10.

<sup>178</sup> *Ibid.*

<sup>179</sup> Continuity of Government Commission, "About the Commission," October 12, 2002, accessed July 13, 2013 via *Internet Archive Wayback Machine*, <http://web.archive.org/web/20021012174351/http://www.continuityofgovernment.org/about/about.html>.

the Commission was, unlike President Eisenhower, resolute that a functioning Congress during a national emergency mattered:

If anyone doubts the importance of Congress in times of crisis, it is helpful to recall that in the days after September 11th, Congress authorized the use of force in Afghanistan; appropriated funds for reconstruction of New York and for military preparations; and passed major legislation granting additional investigative powers and improving transportation security. In a future emergency, Congress might also be called upon to confirm a new vice president, to elect a Speaker of the House who might become president of the United States, or to confirm Supreme Court justices for lifetime appointments. In the event of a disaster that debilitated Congress, the vacuum could be filled by unilateral executive action—perhaps a benign form of martial law. The country might get by, but at a terrible cost to [its] democratic institutions.<sup>180</sup>

The Commission's issue with the House was its inability to quickly reconstitute after mass casualties. In contrast, the Senate can be re-established quickly by appointment under the Seventeenth Amendment.<sup>181</sup> However, the House has no such fall-back, nor does it seem to be a priority. It is institutionally proud of its reputation as the "People's House" where every Member who has ever served has done so through popular election.<sup>182</sup> Thus, vacancies are exclusively dealt with by special election.<sup>183</sup> However, these elections take a long time to arrange. Between 1985 and 2003, it took States an average of 126 days to elect replacement Representatives. The quickest was ten weeks; the longest was over nine months.<sup>184</sup> A decimated House could not be reconstituted quickly in accordance with the Constitution, and this has long been recognized. More

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<sup>180</sup> Continuity of Government Commission, "The Congress," 3-4

<sup>181</sup> U.S. Const. amend. XVII.

<sup>182</sup> Ronald Keith Gaddie, "Restoring the U.S. House of Representatives: A Skeptical Look at Current Proposals," *Policy Analysis* 510, Cato Institute, February 17, 2004.

<sup>183</sup> U.S. Const. art. I, sec. 2, cl. 4.

<sup>184</sup> Continuity of Government Commission, "The Congress," Appendix IV.

than thirty constitutional amendments were proposed in Congress to address this in the 1940s, 1950s, and 1960s, but none passed.<sup>185</sup>

Following the Commission's report, there were a number of legislative actions on the subject. The House proposed a bill called the *Continuity of Representation Act of 2004* that, in the event that more than 100 seats become vacant, called for States to hold special elections within 45 days.<sup>186</sup> The bill did not pass the Senate, so it was re-introduced in February 2005.<sup>187</sup> Its legislated timeline for special elections was further increased to 49 days, but it also failed to pass the Senate.<sup>188</sup> Later that year, however, the President signed the *Legislative Branch Appropriations Act, 2006* which included a measure that provided for expedited elections—within 49 days—in extraordinary circumstances.<sup>189</sup>

This approach has been criticized for “sacrific[ing] democratic substance for democratic form.”<sup>190</sup> The argument is that by forcing elections too quickly, insufficient time is available to administrators to make voting arrangements, candidates to secure their party's nomination, and voters to educate themselves. Thomas Mann of Brookings

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<sup>185</sup> Continuity of Government Commission, “Continuity of Congress: Previous Efforts,” October 12, 2002, accessed July 13, 2013 via *Internet Archive Wayback Machine*, <http://web.archive.org/web/20021012213416/http://www.continuityofgovernment.org/investigation/previous.html>.

<sup>186</sup> H.R. 2844, 108<sup>th</sup> Cong. (2004). The bill was initially proposed with a time limit of 21 days, but state election administrators testified that 45 days was the minimum in which a special election could be held, so the bill was amended; see Eric R. Peterson, *Continuity of Congress: Enacted and Proposed Federal Statutes for Expedited Election to the House in Extraordinary Circumstances*, Congressional Research Service Report for Congress RL32958, August 9, 2005.

<sup>187</sup> H.R. 841, 109<sup>th</sup> Cong. (2005).

<sup>188</sup> Eric R. Peterson, *Continuity of Congress: Enacted and Proposed Federal Statutes for Expedited Election to the House in Extraordinary Circumstances*, Congressional Research Service Report for Congress RL32958, August 9, 2005.

<sup>189</sup> *Legislative Branch Appropriations Act, 2006*, Pub. L. No. 109-55, 109<sup>th</sup> Cong. (August 2, 2005).

<sup>190</sup> Thomas E. Mann, “The Continuity of Congress: Special Elections in Extraordinary Circumstances,” *Statement before the Committee on House Administration, U.S. House of Representatives*, September 24, 2003, accessed February 16, 2013, <http://www.brookings.edu/research/testimony/2003/09/24governance-mann>.

noted the potential for confusing “any form of elections [as] preferable to emergency temporary appointments in the wake of a national catastrophe. Only democratically legitimate elections merit . . . approval.”<sup>191</sup> Fundamentally, this approach means it would take nearly two months to reconstitute the House, and should Mann’s concerns be valid, its final legitimacy would remain open to question. Finally, it does nothing to address the possibility of mass incapacitation of members. In this scenario, members are unfit to participate in Congress but their seats are technically not vacant. This could leave Congress either unable to fulfil its quorum requirement, or functioning with only a handful of capable members.<sup>192</sup> Either would be unacceptable. Instead, the Commission made as its central recommendation a constitutional amendment that would allow

Congress the power to provide by legislation for the appointment of temporary replacements to fill vacant seats in the House of Representatives after a catastrophic attack and to temporarily fill seats in the House of Representatives and Senate that are held by incapacitated members.<sup>193</sup>

In September 2009, representatives of the Commission held a panel titled *An Update on Congressional Continuity* that noted since 2001, “only cosmetic changes have been made, and the continuity of Congress after a terrorist attack is still in doubt.”<sup>194</sup>

*The Presidency*. The Commission’s second report, released in June 2009, focussed on Presidential succession in the event of a successful attack against him and the

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<sup>191</sup> *Ibid.*

<sup>192</sup> Continuity of Government Commission, “The Congress,” 2, 10-13.

<sup>193</sup> *Ibid.* 14.

<sup>194</sup> “An Update on Congressional Continuity: Six Years after the First AEI-Brookings Continuity of Government Commission Report,” American Enterprise Institute press release, September 9, 2009.

Vice President.<sup>195</sup> Since other elements of CCG, such as prevention, protection, and relocation, are established, it is appropriate to consider succession in the executive branch.<sup>196</sup> Although constitutional and legal provisions for presidential succession have been established, several pre-eminent scholars have sharply criticized both the constitutionality and the practicality of the current *Presidential Succession Act*. In testimony before the Senate, constitutional lawyer Miller Baker called the law “perhaps the most poorly designed statute in the entire United States Code.”<sup>197</sup> Constitutional scholar Akhil Amar called it “a disastrous statute, an accident waiting to happen.”<sup>198</sup> The critics’ concerns are numerous. For example, including Congressional leaders in the presidential line of succession may be unconstitutional, as they are not “Officers of the United States” in the context of the Constitution’s Succession Clause.<sup>199</sup> Further, this blurs the separation between the legislative and executive branches, as was seen when partisans recommended against confirming President Nixon’s selection of Gerald Ford as his Vice President following the resignation of Spiro Agnew. Their thinking was that if the Republican president was to be impeached and the Vice President’s position was vacant, the Democratic Speaker of the House, Carl Albert, would succeed the presidency and put a Democrat into office. Ultimately, this did not happen, but it illustrates the “mischief possible” under such an arrangement.<sup>200</sup>

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<sup>195</sup> Continuity of Government Commission, “The Presidency,” *Preserving our Institutions: The Second Report of the Continuity of Government Commission*, June 2009.

<sup>196</sup> Norman J. Ornstein, “Preparing for the Unthinkable,” *Wall Street Journal*, March 11, 2002.

<sup>197</sup> M. Miller Baker, “Ensuring the Continuity of the United States Government: The Presidency,” *Testimony: United States Senate Committee of the Judiciary*, September 16, 2003.

<sup>198</sup> Akhil Amar, *Testimony before the Senate Committee on Rules and Administration and the Senate Judiciary Committee*, September 16, 2003.

<sup>199</sup> Amar and Amar, “Is the Presidential Succession Law Constitutional?” 114-118.

<sup>200</sup> Baker, “Ensuring the Continuity of the United States Government...”.



Second, members of Congress or the Cabinet must resign their posts in order to succeed the President, even if only temporarily. This might cause members to hesitate, especially if their chamber of Congress is evenly split between political parties, or if they were subject to a harsh confirmation process as a Cabinet nominee.<sup>201</sup>

Third, the Act allows for “bumping.” This is where, if a Congressional leader higher in the order of succession were to become able, available, or simply willing to take the office of the President, an incumbent Cabinet successor can be bumped out of the position.<sup>202</sup> Following a successful attack against the leadership of a nation, stability, decisiveness, and certainty are critical. Bumping provides none of these assurances.

Fourth, the line of succession was designed to be politically expedient and does not necessarily promote strong leadership. Including the President *pro tempore*, traditionally the majority party’s longest serving senator, almost certainly ensures that he will be of advanced age.<sup>203</sup> Including the Cabinet members in the order of the creation of their offices puts minor officers, such as the Secretary of Veterans Affairs, ahead of potentially more capable members, such as the Secretary of Homeland Security.<sup>204</sup>

Hence, with the view that the Act is “a sure formula for instability, hesitation, and partisan gamesmanship at the worst possible moment,”<sup>205</sup> the Commission’s seven recommendations seek to improve its clarity and constitutionality. The first five address concerns with the Act, looking to remove Congressional leaders from the line of succession and extend it outside of Washington, reorder the line of succession with more

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<sup>201</sup> Amar and Amar, “Is the Presidential Succession Law Constitutional?” 135-136.

<sup>202</sup> *Ibid.*, 135.

<sup>203</sup> Continuity of Government Commission, “The Presidency,” 40.

<sup>204</sup> 3 U.S.C. § 19.

<sup>205</sup> Baker, “Ensuring the Continuity of the United States Government...”.

critical consideration to their potential suitability while removing acting secretaries (who may be considered eligible due to a technicality in the law), and reintroduce special elections for the President and the Vice President, which is allowed for in the Constitution but is barred by the *Presidential Succession Act*. The last two recommendations look to clarify the point of temporary incapacitation of the President—which is clearly laid out in the Twenty-fifth Amendment for the Vice President but is not specified for other officials in his absence—and inaugural and pre-inaugural scenarios where the transition between administrations leaves exploitable gaps in the line of succession.<sup>206</sup>

Today, available information renders the exact state of CCG in the U.S. executive branch unclear. The national state of emergency that was declared by President George W. Bush on September 14, 2001,<sup>207</sup> has been renewed annually and remains in effect at least until September 2013.<sup>208</sup> Additionally, there is no available evidence suggesting that President Barack Obama ended the previous administration’s “shadow government” arrangements. And while there is some controversy over its arrangements, Bush’s NSPD-51<sup>209</sup> and the associated *National Continuity Policy Implementation Plan*<sup>210</sup> appear to be the extant policy documents covering CCG for the executive branch.

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<sup>206</sup> Continuity of Government Commission, “The Presidency,” 45-49.

<sup>207</sup> 66 *Fed. Reg.* 181 (September 18, 2001).

<sup>208</sup> 77 *Fed. Reg.* 177 (September 12, 2012).

<sup>209</sup> NSPD 51.

<sup>210</sup> United States, Homeland Security Council, *National Continuity Policy Implementation Plan*, August 2007.

*The Supreme Court.* In the context of CCG, the Judiciary has been called “the least vulnerable branch.”<sup>211</sup> Six of the nine judges are required by statute to establish a quorum.<sup>212</sup> The decentralization of the lower federal courts, combined with its slower operating times, means that often the nation can continue for some time without it. In fact, 1811 and 1866, the Supreme Court could not sit for lack of a quorum for extended periods of time; the nation survived.<sup>213</sup>

Notwithstanding, considering the Court’s continuity after an attack that kills or disables a majority of Justices is prudent for two reasons. First, there are several examples of constitutional matters that the Supreme Court has had to resolve quickly. The top judiciary, for example, addressed the disputed presidential election of 2000, twice in two months.<sup>214</sup> It is possible—perhaps even likely, given the aforementioned challenges in legislative and executive branch continuity—that a quick and constitutionally significant ruling might be required following a CCG event. There exists means to quickly reconstitute a quorum for the Court, but they depend on the President and Congress, neither of which should be taken for granted in a worst-case scenario. Second, the value the judicial branch brings to the U.S. Government’s oversight and legitimacy in the eyes of the public is crucial:

If all or most of the Justices were appointed by the same President at a time when the Senate was either unable or reluctant to exercise its

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<sup>211</sup> Randolph Moss and Edward Siskel, “The Least Vulnerable Branch: Ensuring the Continuity of the Supreme Court,” *Catholic University Law Review* 53, no. 4 (Summer 2004): 1015.

<sup>212</sup> 28 U.S.C. § 1.

<sup>213</sup> Continuity of Government Commission, “Proceedings of the Continuity of Government Commission Meeting, September 23, 2002,” accessed July 13, 2013 via *Internet Archive Wayback Machine*, <http://web.archive.org/web/20071004113817/http://www.continuityofgovernment.org/pdfs/020923transcript.pdf>.

<sup>214</sup> *Bush v. Gore*, 531 U.S. 98 (2000)

authority to give advice and consent, the public might well perceive the Court as a tool of the executive branch or as inadequately vetted. At a time when the need for checks and balances by a coequal branch may be most pronounced, the country cannot afford the perception that the Court is not exercising rigorous, independent judicial review.<sup>215</sup>

A Supreme Court that was wholly or even partially appointed by one political party or the other could have “a major policy impact twenty or thirty years down the road.”<sup>216</sup> A generation of legal rulings could be delegitimized if the Court’s reconstitution is not handled well.

Seven months after the September 11 attacks, the Supreme Court told the *Washington Post* that it had a continuity plan, though it was “a closely guarded secret.”<sup>217</sup> It is doubtful that this continuity plan addresses reconstitution, simply because it is a matter for the President and Congress to address. While the Continuity Commission did not give the judicial branch the same thorough treatment in their report as they gave the other two branches, it (and others<sup>218</sup>) recommended the establishment of an emergency interim court, designated in advance of any CCG event, which would ensure a continuous and legitimate legal body to support the nation’s constitution in times of crisis.<sup>219</sup>

Clearly the United States’ history with CCG is broad, rich and open. This is due to its status as a superpower, which makes it singularly vulnerable; its strong economy, which gives it the means to address this vulnerability; and its unique and open

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<sup>215</sup> Moss and Siskel, “The Least Vulnerable Branch...”,1028.

<sup>216</sup> Continuity of Government Commission, “The Supreme Court,” *Preserving our Institutions: The Third Report of the Continuity of Government Commission*, October 2011.

<sup>217</sup> Charles Lane, “After Sept. 11, Judiciary Rethinks the Unthinkable,” *Washington Post*, April 12, 2002.

<sup>218</sup> Moss and Siskel, “The Least Vulnerable Branch...”,1047.

<sup>219</sup> Continuity of Government Commission, “The Supreme Court.”

government, which puts much of its CCG efforts into the public eye. Given that most countries are neither superpowers, nor economically dominant, nor federal constitutional republics, it is useful to take a brief look at other nations to examine approaches to CCG.



*Le droit est capable de prévoir sa propre mise à l'écart temporaire, de le planifier même pour s'assurer que son emprise sur les choses demeure entière.*

—Roger Nicolet,  
*Pour affronter l'imprévisible*

## CHAPTER 4 - CCG AND OTHER NATIONS

There is strikingly little available, non-classified literature on the subject of non-American CCG plans. However, the historic connection between civil defence and CCG allows some information to be gleaned from published sources on civil defence.

Nevertheless, either because other nations have placed less emphasis on government continuity than the United States, or perhaps because their smaller size and economies necessarily make their CCG plans less robust and therefore more dependent on secrecy, information in the public domain is scarce.<sup>220</sup>

With this in mind, this chapter will briefly examine existing CCG information for five other nations: the United Kingdom, the Soviet Union, Switzerland, Australia and New Zealand. This list is far from exhaustive, but it is not random. The U.K., Australia, and New Zealand are obvious choices in their similarity to Canada, and not just for their Commonwealth connections. Australia has nearly 70 per cent the population of Canada and a similar GDP per capita. New Zealand, like Canada, is a relatively small nation influenced by a regional hegemon. The Soviet Union was selected as a comparative counterbalance to the United States as another superpower. Switzerland is relevant for comparison because it used civil defence as a key element to maintaining its neutrality

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<sup>220</sup> The author wishes to acknowledge the assistance of Security and Intelligence Library Community representatives at the Royal Military College of Canada and the Canadian Forces College, and in particular, Cathy Murphy and Sarah Toomey, for their assistance in the literature search and their helpful recommendations.

and even in the early 1980s its civil defence spending per capita far outpaced that of the USSR, and was nearly thirty times that of the USA or Canada.<sup>221</sup>

### **United Kingdom**

Like the United States, the United Kingdom's need for CCG arrangements was borne from World War II, though much more viscerally. Over 30,000 German bombs fell on London,<sup>222</sup> killing more than 20,000 people in the city and damaging the British Parliament and Buckingham Palace.<sup>223</sup> Referred to as the “the problem of the Movement of the Seat of Government,” the government's dilemma was between moving Parliament out of London and preventing “the moral depression in the country and throughout the Empire which this exodus would undoubtedly cause.” In the end, “the Cabinet decided to continue in Whitehall until it was bombed out or communications broke down.”<sup>224</sup> This conflict between the population's perception and the protection of the government is a constant theme in the U.K.'s approach to CCG. Still, by the end of the War, the fact that “the government and the economy require special protection to ensure state survival” was a principle of its civil defence policy.<sup>225</sup>

To accomplish this, the nation was divided into a number of regions, each to be administered by a decentralized element of the national government. As the nuclear threat

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<sup>221</sup> Lawrence J. Vale, *The Limits of Civil Defence in the USA, Switzerland, Britain, and the Soviet Union: The Evolution of Policies Since 1945* (New York: St. Martin's Press, 1987), 9.

<sup>222</sup> History.co.uk, “History of London: WW2 – The Blitz Hits London,” accessed July 16, 2013, <http://www.history.co.uk/explore-history/history-of-london/the-blitz-the-lightning-war-hits-London.html>.

<sup>223</sup> BBC News, “London Blitz: Bomb Sight Interactive Map Created,” last modified December 7, 2012, <http://www.bbc.co.uk/news/uk-england-london-20637222>.

<sup>224</sup> T.H. O'Brien, *Civil Defence* (London: HMSO, 1955), 25, 532.

<sup>225</sup> Vale, *The Limits of Civil Defence...*, 127.



evolved and political will waxed and waned, these facilities changed too. In the 1950s, they were called Regional War Rooms: 550-square-metre, two-story, partially sunken concrete buildings constructed to withstand an atom bomb attack and staffed with only 45 personnel.<sup>226</sup> The 1960s saw this already anachronistic approach change to that of Regional Seats of Government (RSGs), much larger facilities that were self-sufficient and could be sealed off to protect the Regional Commissioner's staff of 400 to 500 people.<sup>227</sup> However, when the existence of these facilities was made public in 1963, the British government adamantly downplayed their role in post-disaster governance:

These places have the primary purpose not of protecting occupants, but of enabling succour and relief to be brought to the public after an attack. . . . They do not give the occupants any more chance of survival . . . if they happened to be in the area of total devastation than anybody else in the area would have. The occupants would, of course, be selected not for their intrinsic merit as judged by some anonymous Government official, but for the help they could give to others as a result of their training.<sup>228</sup>

Interest in civil defence all but disappeared from 1968 to 1980, driven by politics and economics.<sup>229</sup> Its re-invigoration in 1980 also reanimated the public concern that government officials were getting special protection that regular citizens were not. Curiously, this led the government to publicly declare how ineffective its CCG measures supposedly were. In February 1980, the Secretary of State for the Home Department flatly denied that underground bunkers for RSGs were being maintained.<sup>230</sup> A 1981 civil defence pamphlet stated that “senior ministers, government officials, and service chiefs

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<sup>226</sup> Subterranea Britannica, “The Regional War Rooms: 1950’s,” last modified February 2006, [http://www.subbrit.org.uk/rsg/features/war\\_rooms/index.html](http://www.subbrit.org.uk/rsg/features/war_rooms/index.html).

<sup>227</sup> *Hansard*, June 27, 1963, col 1842.

<sup>228</sup> *Ibid.*

<sup>229</sup> Vale, *The Limits of Civil Defence...*, 138.

<sup>230</sup> *Hansard*, February 22, 1980, col 363W.

would have to remain at their desks if war threatened, and they would take their chance like anybody else if the U.K. were attacked.”<sup>231</sup> Author Duncan Campbell calls this and other such claims “deception at its most unashamed.”<sup>232</sup> Perhaps the confusion derives partly from how the RSGs were to have been employed in an emergency. Since 1967, no facility was to be given “definitive RSG status until after a nuclear attack occurred, when the site for the central seat of government would also be determined.”<sup>233</sup> It is not known who would make this decision if Cabinet was unavailable to do so. Notwithstanding the official denials of their existence, the U.K. government decommissioned the RSG bunkers in the 1990s.

Today, arrangements for continuity of government remain secretive. Research reveals that a freedom of information request on the topic was sent to the Ministry of Defence in 2010. The response focussed on the government’s ability to respond to generic “disruptive challenges at the national, regional and local levels,” in the context of the *Civil Contingencies Act 2004* without dealing with emergencies that specifically threaten constitutional governance.<sup>234</sup> In 1981, the Home Office admitted “that in the event of nuclear attack, central government [would] be devolved onto a regional basis and [would] operate out of war emergency headquarters.”<sup>235</sup> It remains unclear today,

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<sup>231</sup> United Kingdom, Home Office, *Civil Defence: Why We Need It* (London: HMSO, 1981).

<sup>232</sup> Duncan Campbell, *War Plan UK: The Truth about Civil Defence in Britain*, rev. ed. (London: Paladin, 1983), 163.

<sup>233</sup> Tracy C. Davis, *Stages of Emergency: Cold War Nuclear Civil Defense* (Durham, N.C.: Duke University Press, 2007), 290.

<sup>234</sup> United Kingdom, Ministry of Defence, *Freedom of Information Act Request Response*, 13 July 2010, accessed July 16, 2013, [https://www.whatdotheyknow.com/request/continuity\\_of\\_government#outgoing-75546](https://www.whatdotheyknow.com/request/continuity_of_government#outgoing-75546).

<sup>235</sup> Vale, *The Limits of Civil Defence...*, 149.

given available literature, if the U.K. has the same plan, one that is more robust and still secret, or no CCG plan at all.

### **Soviet Union**

Although literature sources differ on the beginnings of the Soviet Union's civil defense program, its earliest attribution is November 1917 following the Bolshevik Revolution.<sup>236</sup> A city-based defensive posture was required to counter the possibility of German air attacks in the west, and was expanded in the mid-1920s when it was thought that capitalist aggressors would surely use chemical weapons to prosecute a quick war, lest a long one expose their own countries to socialist revolutions.<sup>237</sup> Historically, Moscow has never been particularly defensible,<sup>238</sup> and its strongly centralized government leaves it particularly vulnerable to a decapitating attack.<sup>239</sup> Thus, the Soviet's defensive mentality is hardly surprising, and that it clearly shaped its approach to civil defense and CCG is logical.

During the Cold War, the Soviet view of civil defense married it intimately to state survival and therefore directly to government continuity. Additionally, its unique view of Soviet citizens as "the main productive force" of the state made its people, or at least its productive citizenry, a "vital organ of state power."<sup>240</sup> While civil defense was

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<sup>236</sup> Edward Geist, "Was There a Real 'Mineshaft Gap'?" *Journal of Cold War Studies* 14, no. 2 (Spring 2012): 5-6.

<sup>237</sup> *Ibid.*

<sup>238</sup> Strategic Forecasting, Inc, "The Geopolitics of Russia: Permanent Struggle," last modified April 15, 2012. <http://www.stratfor.com/analysis/geopolitics-russia-permanent-struggle>.

<sup>239</sup> Fred M. Kaplan, "The Soviet Civil Defense Myth Part 2," *Bulletin of the Atomic Scientists* 34, no. 4 (April 1978): 42.

<sup>240</sup> Vale, *The Limits of Civil Defence...*, 170, 153.

presented to the population under the auspices of humanitarian goals, the writings of its leadership suggest other motives. One prominent Soviet military commander wrote in 1968 that “the principle tasks of civil defense are to ensure the required conditions for normal activity of all governmental control agencies during the course of the war and the effective functioning of the national economy.”<sup>241</sup> Marshal Vasily Chuikov, the Soviet hero of the Battle of Stalingrad who was later made the Chief of Civil Defense, said in a 1965 interview that “the basic significance of [civil defense] is to assist the government to survive in war.”<sup>242</sup> Thus, from the Soviet perspective, civil defense *was* continuity of government.

Still, that did not mean that Communist party leadership and government bureaucrats faced the same risks as the general population. Though the construction of blast shelters and the development of evacuation and dispersal plans fluctuated with perceived threats and economic realities, special arrangements were made for the elite classes. In the 1930s, the first bomb shelter was constructed for a housing complex for Moscow’s elite.<sup>243</sup> Also, even as he denied any concern about the efficacy of atomic weapons in “decid[ing] the fate of wars,” Soviet leader Joseph Stalin did see to building shelters and tunnels under the Kremlin in the 1930s.<sup>244</sup> These appear to have been improved in the 1950s “to protect critical personnel and ensure continuity of government,” however the Communist Party kept the records for these CCG facilities

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<sup>241</sup> *Ibid.*, 170.

<sup>242</sup> *Ibid.*, 170-171.

<sup>243</sup> Anna Cooper, “Bomb Shelters are Returned as Part of the Gentrification,” *Sobstvennik*, May 8, 2008, translation by Google Translate. <http://sob.ru/archive/bomboubejischa-vozvrashchayutsya-kak-chast-elitnogo-jilya>.

<sup>244</sup> Vale, *The Limits of Civil Defence...*, 164.

separate from those of civil defense, effectively hiding the costs and scale of the work.<sup>245</sup> Nevertheless, in 1982, Soviet émigré Viktor Suvorov revealed that every member of the Politburo could evacuate the Kremlin via secret, underground tunnels to the Khodynka Airfield, northwest of Moscow. From there, they could be flown away from a crisis in government aircraft, effecting an evacuation from “the huge traffic-laden city within fifteen minutes.”<sup>246</sup> Though evacuation plans for the rest of the Soviet leadership would conceivably be as good or better, they are not publicly known.<sup>247</sup>

Any such evacuation would likely be to what Suvorov described as the “Soviet Supreme Command Post,” built into the Zhiguli mountains 1000 kilometres south-east of Moscow.<sup>248</sup> In 1978, the CIA concluded that the Soviet Union had hardened blast shelter protection for 110,000 members of the leadership, including top national leadership, Communist Party and government officials, managers of key installations, and members of civil defense staffs.<sup>249</sup>

According to available sources, present-day Russian CCG efforts remain ambiguous. Some Cold War-era nuclear bunkers have been deactivated: built in 1956 and declassified in 1995, “Bunker-42” is now a museum in Moscow.<sup>250</sup> In 1997, the *Washington Times* reported that Russia was continuing to spend its very limited funds “to build underground bunkers, subways and command posts to help Moscow’s leaders flee

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<sup>245</sup> Geist, “Was There a Real ‘Mineshaft Gap’?”, 13.

<sup>246</sup> Viktor Suvorov, *Inside the Soviet Army* (New York: Berkley Books, 1984), 180.

<sup>247</sup> Vale, *The Limits of Civil Defence...*, 174.

<sup>248</sup> Suvorov, *Inside the Soviet Army*, 181.

<sup>249</sup> Cited in Vale, *The Limits of Civil Defence...*, 174. This extraordinarily high number includes the top national leadership plus 5,000 national- and republic-level Party and government officials; 63,000 regional- and local-level Party and government officials; 2,000 managers of key installations; and 40,000 civil defence staff members.

<sup>250</sup> Bunker-42 on Taganka, “The Cold War Museum,” accessed July 18, 2013. [http://www.bunker42.com/index.php?option=com\\_content&view=article&id=43&Itemid=79](http://www.bunker42.com/index.php?option=com_content&view=article&id=43&Itemid=79).

the capital and survive a nuclear attack,” including a “nuclear-survivable, strategic command post” in the Ural Mountains.<sup>251</sup> It would be difficult to imagine that a shrewd, ex-KGB politician like President Vladimir Putin did not have extensive back-up plans for a CCG-event; however, details of those plans appear to remain strictly secret.

## Switzerland

Almost nothing descriptive of Swiss CCG plans was discovered in the course of the literature review. In nearly all sources, CCG is overshadowed by Switzerland’s world-class civil defence program. With roots in the early 1930s,<sup>252</sup> Switzerland’s program has, over decades of incremental but consistent develop, fulfilled its promise to ensure a bunker space for every inhabitant. Its keystone document, *The 1971 Conception of the Swiss Civil Defence*, guarantees “equal chances of survival for all.”<sup>253</sup> However, the document also suggests that there exists “special protection of government and civil defence personnel and facilities.”<sup>254</sup> The means or extent of these special measures is unknown.

What is clear is how the Swiss Constitution handles the concept of emergency governance. In short, it does not.<sup>255</sup> Instead, it adopts Carl Schmitt’s extra-legalist view—the doctrine of necessity. Operating under this doctrine, a federal executive can bypass the oversight of Parliament and “take all necessary decisions, even including decisions

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<sup>251</sup> Bill Gertz, “Moscow Builds Bunkers Against Nuclear Attack,” *Washington Times*, April 1, 1997.

<sup>252</sup> “Passive Air Defence. Equipment for Swiss Population,” *The Straits Times*, June 9, 1943, accessed July 19, 2013. <http://newspapers.nl.sg/Digitised/Article/straitstimes19340609-1.2.32.8.aspx>.

<sup>253</sup> Cited in Vale, *The Limits of Civil Defence...*, 118.

<sup>254</sup> *Ibid.*, 119.

<sup>255</sup> Federal Constitution of the Swiss Confederation, April 18, 1999.

that are unconstitutional.”<sup>256</sup> Historically, this has been called into effect twice, during both World Wars. In both cases the state of exception remained in effect until well after the war; after World War II, it took a popular referendum for the government to finally relinquish its emergency powers in December 1950.<sup>257</sup> Thus, while not a particularly enlightening example of government continuity plans, Switzerland is an interesting case for further study in emergency governance.

### **Australia**

Between 1980 and 2010, over 16 million Australians were affected by natural disasters, equating to a half-million Australian citizens each year.<sup>258</sup> Given this, it is not surprising to find that the majority of the government’s public focus has been on emergency governance. In fact, the *Australian Government Disaster Response Plan* lists 33 separate emergency plans for specific events. One of these, called “Plan Mercator,” is reported to detail “arrangements to minimise disruption to critical Australian Government operations, specifically Cabinet and the Federal Executive Council.”<sup>259</sup> Details of the plan have not been publically released, but a search through contemporary newspaper articles reveals an interesting glimpse of the plan.

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<sup>256</sup> Anna Khakee, *Securing Democracy? A Comparative Analysis of Emergency Powers in Europe* (Geneva: DCAF, 2009), 19.

<sup>257</sup> *Ibid.*

<sup>258</sup> PreventionWeb, “Australia – Disaster Statistics,” accessed July 19, 2013. <http://www.preventionweb.net/english/countries/statistics/?cid=9>.

<sup>259</sup> Australia. Attorney-General’s Department. *Australian Government Disaster Response Plan COMDISPLAN*. Version 1-1 2008. September 2008. Annex B. The Federal Executive Council is roughly the equivalent of Canada’s Privy Council Office.

Influenced by the Continuity of Government Commission's report,<sup>260</sup> by 2004 the Australian government approved "broad elements of the government post-doomsday blueprint" and by early-2005, "a final 'continuity of government' plan was being prepared."<sup>261</sup> This was likely Plan Mercator, for it was also at this time that the Australian government, with strong support from the Opposition, announced plans to construct a bomb-proof bunker for MPs.<sup>262</sup> Early speculation was that this bunker was to be built near Bungendore, 30 kilometres west of Parliament House in Canberra, where the Defence Joint Operations Command Headquarters (HJOC) building was to be built. Other sites nearby were also considered until the HJOC building was finished in 2008.<sup>263</sup>

As with most Western nations after 2001, terrorism was the proximate threat. The 2002 Bali bombing killed 88 Australians, and this was bookended by two other planned terrorist attacks against Australian interests in late-2001 and 2003.<sup>264</sup> Thus, Plan Mercator appears to be focussed on countering a terrorist attack targeting Australia's Parliament by relocating senior members of the Executive,<sup>265</sup> but government sources were quoted saying that it is equally applicable in a less-likely nuclear attack against Canberra.<sup>266</sup> However, relocation is only one aspect of the plan. The element of protection was

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<sup>260</sup> Brendan Nicholson, "Government Plans Bomb-Proof Bunker for MPs," *Age* (Melbourne), February 18, 2005.

<sup>261</sup> Mike Seccombe, "Canberra's Doomsday Plan," *Sydney Morning Herald*, February 18, 2005.

<sup>262</sup> *Ibid.*

<sup>263</sup> "PM to get Bunker in Bungendore," *Asia Africa Intelligence Wire*, February 19, 2005.

<sup>264</sup> Patrick Walters, "DON'T PANIC – Ignore the Doom Merchants – The Government's Change to Labour and Security Laws will have Little Impact on our Way of Life," *Australian*, October 22, 2005.

<sup>265</sup> Sharon Weinberger, "Australia's Top Secret 'Plan Mercator,'" *Wired*, June 27, 2008, accessed July 19, 2013, <http://www.wired.com/dangerroom/2008/06/australias-top/>.

<sup>266</sup> Nicholson, "Government Plans Bomb-Proof Bunker for MPs."



addressed when Parliament House received significant security upgrades in 2004<sup>267</sup> and again in 2009.<sup>268</sup> Prevention was improved when 2005 saw “the biggest changes to Australia’s security laws since World War II.”<sup>269</sup>

When the HQJOC building was opened in late-2008, there was no mention of any CCG facilities or bunkers at the installation.<sup>270</sup> The possibility exists, though, considering that the original construction price of \$300 million did not include an additional \$1.2 billion over 30 years announced in 2006.<sup>271</sup> The facility is considered “the most secure location in Australia,”<sup>272</sup> and if it was also a CCG facility, it would seem unlikely to be publicly announced.

Of interest, just before the HQJOC building opened, an Australian public service job listing revealed that the assistant director of the Secure Services Branch would “provide communications support for the key functions of Executive Government following an activation of Plan Mercator.”<sup>273</sup> The director would work out of “a new . . . top-secret communications facility in . . . North Symonston,”<sup>274</sup> an industrial suburb of Canberra. The Symonston facility is less than 25 kilometres from the HQJOC building.

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<sup>267</sup> “Parliament House Security Upgrade under Fire,” *ABC News* (Australia), last modified June 21, 2004. <http://www.abc.net.au/news/2004-06-21/parliament-house-security-upgrade-under-fire/1996374>.

<sup>268</sup> “Parliament to get Security Upgrade,” *News.Com.Au*, last modified November 5, 2009. <http://www.news.com.au/breaking-news/national/parliament-to-get-security-upgrade/story-e6frfku9-1225794775705>.

<sup>269</sup> Walters, “DON’T PANIC...”

<sup>270</sup> Nick Leys, “Looks Square but it’s our Pentagon: The Pictures you’re not Supposed to See,” *Telegraph* (Sydney), 23 November 3008.

<sup>271</sup> Kerry-Anne Walsh, “Uproar at \$1.2bn Cost of Military Nerve Centre,” *Sun-Herald* (Sydney), September 3, 2006.

<sup>272</sup> “NSW get new \$360 Million Military Nerve Centre Bungendore,” *Sun Herald* (Sydney), April 6, 2008.

<sup>273</sup> Australia. Australia Public Service. “Employment Opportunity N.N. 10399787.” Closing date June 27, 2008. Accessed July 19, 2013. <https://www.apsjobs.gov.au/SearchedNoticesView.aspx?Notices=10399787%3A1&mn=JobSearch>.

<sup>274</sup> Philip Dorling, “Secret Bunker Prepares for Terror,” *Canberra Times*, June 26, 2008.

Similarly, its specific role in Australian CCG plans has not been publicized, though the media released the following details on Plan Mercator:

The plan aims "to minimise the impact of a national security emergency on critical government operations and provide for the rapid resumption of 'near normal' government business under alternate arrangements until normal operations can be resumed". Plan Mercator provides for the evacuation of the Governor-General, the Prime Minister, senior ministers and key advisers in the event of a major terrorist attack on, or threat against, Parliament House or central Canberra. A vital part of the plan is the maintenance of robust communications infrastructure, capable of operating even if central government agencies in the Parliamentary Triangle and at Russell Hill were destroyed or disabled.<sup>275</sup>

In 2009, the *Sydney Morning Herald* tied together Plan Mercator and the HQJOC building, explicitly stating that the facility would be occupied by "the prime minister, the governor-general, ministers and key government officials" in a CCG event.<sup>276</sup> To be sure, the article is breathless and sarcastic, but collocating a government CCG site with the nation's high-security, military operations centre does have many efficiency-related benefits.

## **New Zealand**

New Zealand's government ties CCG with national security. The first line in their 2011 keystone document notes that "one of the most important responsibilities of any Government is to ensure the security and territorial integrity of the nation, including

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<sup>275</sup> *Ibid.*

<sup>276</sup> Tony Wright, "KRudd's War Room to Deal with All Manner of Strangelove Situations," *Sydney Morning Herald*, October 1, 2009.

protecting the institutions that sustain confidence, good governance, and prosperity.”<sup>277</sup> Further, of its seven key objectives, the fifth is to “[maintain] democratic institutions and national values.”<sup>278</sup> That said, the organization responsible for advising the Prime Minister on security and intelligence matters, the Officials Committee for Domestic and External Security Coordination (ODESC), does not have as one of its mandates any equivalent instrument to Canada’s *Emergency Management Act* specifying a requirement to establish all necessary CCG arrangements.<sup>279</sup>

As the least populous nation of those examined in this paper, New Zealand’s approach to CCG reflects both its size and its geopolitical situation. The government formally acknowledges the “relatively benign”<sup>280</sup> nature of the country, and the small, close-knit nature of its government executives has led them to conclude that a single, comprehensive CCG plan is not warranted. Instead, an approach similar to the American department- and agency-specific Continuity of Operations (COOP) is taken, where “[the] ministries and departments, and other agencies within central government, have obligations for continuity of service under their individual statutes.”<sup>281</sup> However, when asked, New Zealand’s Department of the Prime Minister and Cabinet, noted that they did have specific plans to relocate Cabinet and key elements of Parliament out of Wellington should a CCG event occur.<sup>282</sup> No further details were provided.

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<sup>277</sup> New Zealand. Department of the Prime Minister and Cabinet. “New Zealand’s National Security System.” May 2011, 3.

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*, Annex C.

<sup>280</sup> *Ibid.*, Annex A.

<sup>281</sup> Pat Helm, “Request for Information – Continuity of Constitutional Government,” to author, June 6, 2013.

<sup>282</sup> *Ibid.* DPMC is roughly equivalent to Canada’s Prime Minister’s Office.



*The story of Canada's emergency management system is one of near misses and moving targets.*

—John Lindsay,  
*Emergency Management in Canada:  
Near Misses and Moving Targets.*

## CHAPTER 5 - CCG AND CANADA

In comparison with other non-neutral democracies, Canada's own history with continuity of government is in many ways typical. Initially driven by the Cold War, the decades since have seen interest in CCG ebb and flow with politics and economics. Even so, a number of unique factors in Canada's geopolitics—such as its geographic expanse, its proximity to the U.S., and its relatively low population density and industrialization—have given rise to interesting differences which have shaped the CCG approach today.

Like other nations, the roots of Canada's continuity of government plans are in civil defence. Historian Andrew Burtch notes that Canada's civil defence planning from the 1940s to the 1960s can be viewed in three stages that he characterized as self-help, evacuation, and national survival.<sup>283</sup> The 1970s saw a precipitous decline in interest and support of both civil defence and COG. Unfortunately, by the time interest in these programs grew again in the 1980s and 1990s, COG had been conceptually coupled to civil defence. Further, under the governments of the day, planning for localized natural disasters was a far higher priority and it significantly overshadowed civil defence planning. Thus, by the turn of the century, COG planning was seemingly inactive.<sup>284</sup>

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<sup>283</sup> Andrew Paul Burtch, *Give Me Shelter: The Failure of Canada's Cold War Civil Defence* (Vancouver: UBC Press, 2012), 1-4.

<sup>284</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap V, VI.

### Canada's History with CCG

Civil defence in Canada can be traced back to August 1936. That month, with war in Europe imminent, Cabinet established the Canada Defence Committee with the mandate to plan for the defence of Canada. From this, the Interdepartmental Air Raid Precautions (ARP) Committee was stood up. The passive defence approaches proposed by this committee were heavily influenced by similar British plans. However, the desire for secrecy kept the provinces out of the planning process and set the stage for persistent federal-provincial tensions. Thus, the government “was only prepared to act within a restricted sphere. Financial restraint and the danger of national disunity limited activity to the provision of a secret rudimentary plan of action and a skeleton federal organization.”<sup>285</sup> Because throughout the War these plans were established to defend only against conventional bombing, no COG planning occurred.

Even before the end of the War, the Canadian government sought to divest itself of civil defence; between 1943 and 1945, the federal and all but two provincial civil defence organizations disbanded.<sup>286</sup> The atomic age and the Cold War, of course, reversed this. Thus, in 1948 the government re-established the Civil Defence Directorate, first under the Department of National Defence, but later transferred to the Department of National Health and Welfare.<sup>287</sup> Atomic weapons were poorly understood, though, so the civil defence plans of this time were based heavily on those of the ARP. Operating under the concept that A-bombs were little more than powerful conventional bombs, the approach taken was to ensure that potential target cities had appropriate numbers of fire

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<sup>285</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Prologue.

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*, Chap I.

fighters, first aiders and civil defence wardens.<sup>288</sup> Again, there does not appear to be an explicit focus on COG, particularly at the national level.

As with the rest of the world, Canada's view that atomic warfare was fundamentally no different than conventional conflict changed in 1952 with the advent of the hydrogen bomb. Whole cities, let alone additional fire fighters and first-aiders, could not survive such destructive power, so civil defence from 1954 until 1959 was defined by an evacuation strategy of arranging for city-dwellers to leave the thirteen target cities within the expected three hours' warning, and host them in the surrounding rural municipalities.<sup>289</sup> It was here, in 1955, that the first recognizable elements of COG began to take shape. To be sure, it was modest and amounted to little more than standard civil defence preparations for federal employees in the national capital region, but it was the first time that any directed effort was made towards improving government survivability during a CCG event.<sup>290</sup>

As these national and provincial civil defence plans matured, so did the Canada's understanding of nuclear war. Fallout, which would have a deleterious effect on the nation even if it were not directly targeted, was a massive problem, and because it would be distributed by winds it could not be accurately predicted. Reduced warning times of an attack, either by missiles or submarines, affected Canadian planning just as it did the Americans'. Thus, 'the assumptions behind civil defence planning were reassessed and it became gradually apparent that Canada was faced with the problem of national

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<sup>288</sup> Burtch, *Give Me Shelter...*, 1-3.

<sup>289</sup> The target cities were Montréal, Toronto, Ottawa-Hull, Windsor, Niagara Falls, Halifax, Vancouver, Hamilton, Winnipeg, Edmonton, Québec City, Saint John, and Victoria. McConnell, *Planning for Tomorrow ... TODAY!*, Chap I.

<sup>290</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap I.

survival.”<sup>291</sup> More than that, Canada’s membership in NATO meant that it had alliance responsibilities. In 1957, NATO’s strategic concept saw a two-phase war. The first phase was short and brutal, “not likely to exceed thirty days, the first few days of which would be characterized by the greatest intensity of nuclear exchange.”<sup>292</sup> Raw survival was the key in this phase, but following that NATO saw an indeterminate period focussed on “reorganization, resupply and the accomplishment of necessary military tasks leading to a conclusion of the war.”<sup>293</sup> Canada and the U.S. had a key role to play here. Given the proximity of the rest of Europe to the Warsaw Pact, conventional forces to defend Europe in phase two would likely come from North America.<sup>294</sup> Thus, not only did Canada need a COG plan to ensure its survival as a nation, but also to support its obligation to defend the NATO alliance.

This led to the establishment of the Emergency Measures Organization (EMO) under the Privy Council Office (PCO) in June 1957 with the goal “to provide direction and coordination for the [COG] program, to give it the necessary momentum, and to take charge of the physical preparation of the federal emergency headquarters.”<sup>295</sup> A clear distinction was made between COG planning and civil defence and EMO’s responsibilities were specifically focussed on the former. However in early-1958, the Department of Health and Welfare was eager to cast off responsibility for civil defence—

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<sup>291</sup> *Ibid.*

<sup>292</sup> NATO Military Committee, “Overall Strategic Concept for the Defense of the North Atlantic Treaty Organization Area,” *MC 14/2 (Revised)*, February 21, 1957, 10.

<sup>293</sup> *Ibid.*

<sup>294</sup> Sean M. Maloney, “Dr. Strangelove Visits Canada: Projects Rustic, Ease, and Bridge, 1958-1963,” *Canadian Military History* 6, no. 1 (Spring 1997): 43.

<sup>295</sup> National Archives, RG 57, Records of the Emergency Measures Organization, Acc 1991-92\*037, Box 3, “Report to the Interdepartmental Committee on the War Book by the Working Group on War Measures, January 15, 1957, i, as cited in McConnell, *Planning for Tomorrow ... TODAY!*, Chap II.



the minister called the portfolio “baffling and frustrating.”<sup>296</sup> The following January, a commissioned report on the state of civil defence in Canada was tabled. Prime Minister John Diefenbaker reviewed it and in March 1959 he split federal responsibilities for civil defence amongst several departments. Defence, specifically the Army, would take over such tasks as warning, monitoring and assessing. Health and Welfare kept the limited responsibility to support provinces with those aspects related to its general mandate, such as medical services, public health and emergency billeting.

Civil Defence Canada was folded into EMO, whose mandate expanded considerably from COG to coordinating the whole of civil defence for the nation, including provincial liaison. This “created a new character for civil emergency planning in that, for the first time, programs to ensure the survival of the population were fully integrated with programs to maintain continuity of government.”<sup>297</sup> While this may have made sense from a bureaucratic perspective, it also meant that as interest in civil defence inevitably declined, so too would interest in COG planning.

In the meantime, EMO advanced COG planning considerably. Even by mid-1958 the program had advanced to the point of establishing “minimal COG requirements,” including identifying the need for “decentralized, secure, alternate headquarters outside of Ottawa and the provincial capitals; communications to link them; and an emergency national broadcast capability.”<sup>298</sup> The Soviets’ Berlin ultimatum in November 1958 only sped up planning. By the next summer, EMO had a four-point COG plan:

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<sup>296</sup> J.W. Monteith to J. Diefenbaker, May 9, 1959, Library and Archives Canada, Manuscripts Group 26M, Vol 48, File 140, cited in Burtch, *Give Me Shelter...*, 117.

<sup>297</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap II.

<sup>298</sup> Maloney, “Dr. Strangelove Visits Canada...”, 44.

1) create an interim DND and Government emergency headquarters outside of Ottawa; 2) remove from Ottawa and decentralize as much of the federal government as possible without loss of efficiency in peacetime; 3) construct a permanent 250-man underground building to replace the interim emergency HQ; and 4) develop back-up headquarters at dispersed locations.<sup>299</sup>

The first part was accomplished with haste. The basements of a number of existing buildings at Camp Petawawa, located 150 kilometres northwest of Ottawa, were modified to protect against fallout under a program called RUSTIC. Exercise ARCADIA, Canada's first COG exercise, was conducted in December 1959. Its aim was modest. It familiarized 135 key civil servants with the RUSTIC facilities and procedures. The Royal Canadian Air Force also practiced its staging and evacuation responsibilities under the COG plan.<sup>300</sup>

The third and fourth parts of the COG plan also moved forward with surprising alacrity. Original plans called for three interconnected underground complexes to shelter 1500 personnel—one building each specializing in communications, administration, and executive support. These plans were first reduced to two 750-person shelters for redundancy reasons, and finally became plans for a single 575-person bunker with three dispersed antenna farms.<sup>301</sup> This was built in Carp, 40 kilometres west of Ottawa, from 1959 to 1963. Members of the opposition derisively called it the Diefenbunker,<sup>302</sup> but it was formally known as the National Emergency Headquarters. The government's ill-fated cover story had it referred to as the Experimental Army Signals Establishment

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<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*, 45-47.

<sup>301</sup> *Ibid.*, 47-49.

<sup>302</sup> Emeline Thermidor, "The Diefenbunker: Echoes from Our Past, Or Back to the Future?" *Maple Leaf* 13, no. 37 (November 17, 2010).

(EASE).<sup>303</sup> In wartime, it would function as both the military and civil government's emergency headquarters and was supported by a number of smaller facilities, called Federal Department Relocation Sites (FDRS), proximate to, but upwind of, Ottawa.<sup>304</sup> By 1962, only two of these "little bunkers" were able to protect inhabitants from fallout, but they were nevertheless intended to serve as "rallying points" and office facilities for government workers.

However, as quickly as planning spooled up, detente between the U.S. and the U.S.S.R. following the Cuban Missile Crisis only encouraged a decline in COG planning efforts. In 1963, EMO was transferred out of the PCO and into the Ministry of Defence Production, drastically reducing its clout in government. The following year's budget cuts further reduced its capability, including the cancelation of plans to enlarge the Diefenbunker. This continued throughout the 1960s when EMO's budget and staff were further reduced under Prime Minister Pierre Trudeau. In 1968, EMO—now named Canada Emergency Measures Organization (CEMO)<sup>305</sup>—was shuffled further from the centre of the government when it was transferred to the Deputy Minister of National Defence.<sup>306</sup> In an effort to re-establish the relevance of civil emergency planning (a term used to include both civil defence and COG), Project Phoenix was initiated by CEMO. The most significant outcome of this was a redefinition of national threats. Now, instead of being narrowly defined as nuclear war, a threat was anything that could cause social,

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<sup>303</sup> Maloney, "Dr. Strangelove Visits Canada...", 49.

<sup>304</sup> Bill Manning, "Beyond the Diefenbunker: Canada's Forgotten 'Little Bunkers,'" *Material Culture Review* 57, no. 1 (Spring 2003), accessed July 28, 2013, <http://journals.hil.unb.ca/index.php/MCR/article/view/17956/22019>.

<sup>305</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap III.

<sup>306</sup> Manning, "Beyond the Diefenbunker..."

political or economic instability. Thus, “planning for peacetime disasters was placed on an equal level with planning for wartime disasters.”<sup>307</sup> Given that COG had already been linked to civil defence under civil emergency planning, this had the effect of further watering down focus on government continuity, primarily because there was little perceived threat to government from other than wartime events.

In the early 1970s, another report was tabled that proposed a novel approach to emergency governance. “Lead” departments would be assigned to manage different types of threats while other “resource” departments would support the lead. In 1973, many of CEMO’s responsibilities were reallocated to other departments; even its administrative responsibilities were transferred to the newly established Emergency Planning Secretariat (EPS) under the PCO, who in turn delegated its responsibilities to the National Emergency Planning Establishment (NEPE).<sup>308</sup> It was not long before CEMO was stood down.

In consequence, lead federal departments were given significant latitude in resourcing and prioritizing emergency planning:

How far departments should go in developing emergency plans and preparations in terms of full-time staff and dedicated resources is to be decided in the light of the Government’s priorities and with a reasonable and sensible appreciation of the risks involved.<sup>309</sup>

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<sup>307</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap III.

<sup>308</sup> United States Department of Homeland Security, “Comparative Emergency Management Book Project. Chapter 11 – Emergency Management in Canada: Near Misses and Moving Targets,” *Emergency Management Higher Education Virtual Symposiums for 2013*, accessed July 28, 2013, <http://training.fema.gov/EMIWeb/edu/CompEmMgmtBookProject.asp>.

<sup>309</sup> “Federal Emergency Planning,” *Emergency Planning Digest* 1, no. 1 (July-August 1974), 4-7, cited in McConnell, *Planning for Tomorrow ... TODAY!*, Chap III.

In practice, this meant emergency planning was “uneven and low-quality.”<sup>310</sup>

In 1975 NEPE was renamed Emergency Planning Canada (EPC). Five years later, it and the EPS were combined under EPC’s name and the President of the Privy Council was made the minister responsible. The following year, in 1981, the Trudeau government released Emergency Planning Order (EPO) 1981 which re-emphasized the decentralized approach to emergency governance, but failed to define EPC’s responsibilities. EPC therefore kept the same facilitation and coordination role that it had in the 1970s. Its role in COG, however, remained explicitly tied to nuclear war. Further, the EPO acknowledged that, while the purpose behind the COG program remained sound, the plans themselves were insufficient. This appears to have caused a temporary surge of interest in the topic, including plans to improve the Diefenbunker, and a series of training exercises conducted by EPC in 1985, 1986, and 1987. Nevertheless, additional progress was hampered by financial restraints.<sup>311</sup>

Up to this point, similar to the U.S., Canadian COG plans focussed exclusively on the executive branch of government. It was felt that “the governor general, prime minister, and a small group of ministers were . . . sufficient to re-establish legitimate government.”<sup>312</sup> This changed when the *Emergency Preparedness Act* of 1985 appended the adjective “constitutional” to “continuity of government.” This was significant. Clearly it meant more than the executive-branch continuity of Eisenhower and Diefenbaker’s day—full constitutional government must have representation from all three branches. However, defining “constitutional government” too broadly would risk establishing goals

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<sup>310</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap III.

<sup>311</sup> *Ibid.*, Chap IV.

<sup>312</sup> *Ibid.*, Chap V.

that simply could not be met. For instance, in 2013 Canada's public service numbered more than 260,000 personnel.<sup>313</sup> A CCG plan that saw every single government official and bureaucrat protected would be so excessive as to be impossible to fulfil. At the same time, if "constitutional government" was defined too narrowly, a CCG event could cause a constitutional crisis if the government needed to act without appropriate representation, much as the U.S. Continuity of Government Commission warned in 2003.

The collapse of the Soviet Union in 1991 further marginalized CCG planning. In the mid-1990s, the Diefenbunker (as well as its six provincial equivalents) was closed down and the site sold.<sup>314</sup> By the turn of the century, EPC's CCG program was dormant.<sup>315</sup>

### **Canada and CCG Today**

The September 11 terrorist attacks seemed to affect Canada just as it did other Western nations. A year after the attacks, the Office of Critical Infrastructure Protection and Emergency Preparedness (OC�PEP) released a lessons-learned document based on an analysis of the U.S. response to the attack. Its primary focus was on emergency governance, which is not surprising given the OC�PEP's mandate. It did, however, speak

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<sup>313</sup> Wayne G. Wouters, *Twentieth Annual Report to the Prime Minister on the Public Service of Canada* (Canada: Privy Council Office, 2013), Annex A.

<sup>314</sup> Diefenbunker: Canada's Cold War Museum, "About Us: Museum History," accessed July 29, 2013. [http://diefenbunker.ca/pages/museum\\_history/index.shtml](http://diefenbunker.ca/pages/museum_history/index.shtml).

<sup>315</sup> McConnell, *Planning for Tomorrow ... TODAY!*, Chap V.

to the lack of a “government-wide alert system that incorporates high levels of security and infrastructure redundancy.”<sup>316</sup>

In 2004, the Canadian government released its first comprehensive statement on its national security policy. Once again, its focus was almost exclusively on emergency governance, with only one paragraph related to government continuity. Of interest, it spoke not of COG or CCG, but of departmental continuity of operations (COOP) plans:

The Government needs to be able to continue to provide core services to Canadians during emergencies. Building on existing work in this regard, federal departments will ensure that they can continue to serve Canadians regardless of circumstances by strengthening their continuity planning processes and requiring regular exercises to test these plans.<sup>317</sup>

Today, Canada’s CCG program arrangements are the responsibility of the Public Safety Canada (PSC). A very small staff with a tiny budget—\$35,000 per year—oversees it.<sup>318</sup> To be sure, Canada has a CCG program, but as the OCIPEP analysis and security policy indicate, it is categorically disjointed, and lacks the level of comprehensiveness necessary to objectively demonstrate its effectiveness. Several institutions play a role in the CCG program, both directly and in support, and it is important that each understands where it fits in order to enable direct communications with each other about the right things and at the right times. Viewing the CCG program—perhaps more aptly described as a patchwork—in light of the five-element model reinforces this conclusion.

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<sup>316</sup> Office of Critical Infrastructure Protection and Emergency Preparedness, *The September 11, 2001 Terrorist Attacks - Critical Infrastructure Protection Lessons Learned*, Incident Analysis number IA02-001, September 27, 2002.

<sup>317</sup> Canada, Privy Council Office, *Securing an Open Society: Canada's National Security Policy*, April 2004.

<sup>318</sup> Dr. Connie Delisle and Mr. Donovan Arnaud, conversation with author, 15 April 2013.

*Prevention* is, as defined by the *Canadian Security Intelligence Service Act*, the primary responsibility of CSIS. The Royal Canadian Mounted Police (RCMP), in their role as the federal police service, is also involved in this element. Appropriately, both agencies are part of PSC as a portfolio department, which should logically facilitate communications.

*Protection* of key individuals is the sole responsibility of the RCMP's National Division Protective Operations, which has close protection teams assigned to the Governor General and the Prime Minister. It is also responsible for protecting key facilities, such as Parliament Hill, the Governor General's residence and the Supreme Court.<sup>319</sup> It is not clear from available information how protection is assigned to and maintained for others in the executive, legislative and judicial branches in a CCG event.

*Succession* is also a CCG element that is generally well covered in Canadian law. There are two key figures in the government, the Prime Minister and the Governor General, the latter being a "symbol of the continuity of government whose key function is to ensure that a Prime Minister and a duly constituted government are always in place."<sup>320</sup> In the event of the death, resignation or incapacitation of the Prime Minister, his Cabinet ends and it falls to the Governor General to select an appropriate replacement for the head of government. This successor will hold the office until the majority party in Parliament formally chooses a new party leader, who would then be called upon to form a

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<sup>319</sup> Royal Canadian Mounted Police, "Protective Operations," last modified April 23, 2013, <http://www.rcmp-grc.gc.ca/ottawa/services/protops-opprot-eng.htm>.

<sup>320</sup> Privy Council Office, "The Responsibilities of the Privy Council Office," last modified February 1, 2000, <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=rpco-rbcprpco-rbcpr-eng.htm>.



government.<sup>321</sup> If for any reason the Governor General becomes unable to perform his duties, the King's letters patent of 1947 explicitly lay out an order of succession. The first successor is the Chief Justice of the Supreme Court, who would be formally known as the Administrator of Canada, followed by the next senior Puisne Justice.<sup>322</sup> Because the Supreme Court of Canada has nine judges, this puts a total of 10 individuals (including the Governor General himself) in the line of succession. It may be seen a vulnerability, however, that the nine successors regularly work together in close proximity. Of note, this arrangement has already been used in the past, such as when Chief Justice Beverly McLachlin temporarily acted as Administrator while the Governor General was hospitalized in 2005.<sup>323</sup>

*Relocation* is perhaps one of the most complicated and contentious elements of CCG planning owing to the number of factors involved. Foremost, if constitutional government is to be maintained, an alternate facility must be secured that accommodates sufficient members of the government to not only remain constitutional, but also be seen by the public to be representative. In December 1990, EPC commissioned a legal analysis to define this number, though purely from a legal sense. The report's conclusion is that the actual number remains open to interpretation. A "narrow view" is offered that consists of 54-100 people, all of whom are selected as members of the executive. In other words, the narrow view would ensure continuity of government, but not continuity of

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<sup>321</sup> Eugene A. Forsey, "How Canadians Govern Themselves," Parliament of Canada Website, last modified March 2012, [http://www.parl.gc.ca/about/parliament/senatoreugeneforsey/book/chapter\\_1-e.html](http://www.parl.gc.ca/about/parliament/senatoreugeneforsey/book/chapter_1-e.html).

<sup>322</sup> Letters Patent Constituting the Office of Governor General of Canada (1947), R.S. 1985, Appendix II, No. 31, Part VIII.

<sup>323</sup> Worldwide Guide to Women in Leadership, "Female Governors General," last modified May 13, 2013, [http://www.guide2womenleaders.com/Governor\\_Generals.htm](http://www.guide2womenleaders.com/Governor_Generals.htm).

constitutional government. An alternate “broad view” is provided, consisting of 320-350 people. This view expands the executive branch’s involvement and includes the bare minimum representation of the legislative and judicial branches.<sup>324</sup>

In addition to the workspace requirements, there are necessities of life and comfort such as arrangements for rest, nourishment, and hygiene. Effective communications are also vital. Robust means to communicate are needed intra-governmentally, inter-governmentally to the provinces as well as to other nations (and in particular the United States), and to the population of Canada. Consideration for the families of those officials being relocated is a factor that although not overlooked does not appear to be seamless. Transportation to alternate sites, perhaps under emergency conditions, as well as routine movement between the site and accommodations (if they are separate) are factors that amplify complexity but must also be addressed.

Canada has a CCG relocation plan. Eisenhower’s observation that plans need to be tested rings true, and like other nations, Canadian government personnel representing the plan’s constituent institutions have reportedly tested it.<sup>325</sup> In addition, one seemingly benign fact identified in the course of research is that the Canadian Constitution requires that “the Seat of Government of Canada shall be Ottawa” unless otherwise directed by the Queen.<sup>326</sup> Thus, if the relocation plan includes moving the seat of government out of Ottawa, direction and approval must be obtained. In this, it is reasonable that the PCO should play an important role because one of its key responsibilities is to

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<sup>324</sup> F. Murray Greenwood, and Ed Smith, “The Continuity of Constitutional Government in Canada: A Study Prepared for Emergency Preparedness Canada,” December 1990.

<sup>325</sup> Dr. Connie Delisle and Mr. Donovan Arnaud, conversation with author, 15 April 2013.

<sup>326</sup> Constitution Act 1867, 30 & 31 Victoria, c. 3 (U.K.), §16.

[provide] advice to the Prime Minister on the relations of the Government with Parliament and the Crown, on the roles and responsibilities of Ministers, and on the organization of government. When jurisdictional and other problems arise, the PCO develops proposals to resolve such problems according to the direction of the Prime Minister and in a manner consistent with the principles of parliamentary government and the Canadian Constitution. . . . The Clerk of the Privy Council and Secretary to the Cabinet has the personal responsibility to advise the Prime Minister in the exercise of his constitutional responsibilities, including those relating to the Governor General.”<sup>327</sup>

Options such as amending the constitution to make it more permissive of relocating the seat of government is probably not necessary. However, this issue should be addressed by the Office of the Secretary to the Governor General before a CCG event warrants relocation. Again, the PCO should be involved in its role as provider of “advice on the constitutional powers and role of the Governor General.”<sup>328</sup>

The biggest challenge with current Canadian CCG plans appears to be with *reconstitution*, mirroring a similar gap described in the U.S. Continuity of Government Commission’s report on Congress. Like the U.S. Senate, the Canadian Senate could conceivably be reconstituted as quickly as the Governor General can appoint replacements. The question of mass incapacitation, however, is not as clear. The Constitution permits replacement of Senate vacancies due to “Resignation, Death, or otherwise,” but also states that Senators shall serve until the age of 75.<sup>329</sup> Similar to the U.S. House of Representatives, the available literature remains silent on the means by which Canada would reconstitute its lower chamber urgently in case of mass vacancies.

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<sup>327</sup> Privy Council Office, “The Responsibilities of the Privy Council Office,” last modified February 1, 2000, <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=rpco-rbcp/rpco-rbcp-eng.htm>.

<sup>328</sup> *Ibid.*

<sup>329</sup> Constitution Act 1867, 30 & 31 Victoria, c. 3 (U.K.), §32 and 29.

## Conclusion

It is evident that, regardless of the country, its characteristics, its leadership, or its political environment, planning, instituting, and maintaining comprehensive CCG programs is a significant challenge. Superpower nations, namely the United States and the Soviet Union, appear to have the resources and will to address all five elements in their CCG plans, though the argument could be made that they generally prioritize succession planning over relocation and reconstitution. In contrast, smaller nations, as deduced from the available literature, struggle more with resourcing and political expediency. This leads them to a broader but less comprehensive approach that attempts to address multiple facets of CCG planning without mastering any. Common to all studied approaches is the overarching reactive nature of planning, testing and exercising to either threat of war or other CCG event.

Throughout Antiquity and the Middle Ages, nation-states generally accepted as both legal and proper the temporary suspension of civil rights and the concentration of governing power in the hands of the executive to deal with threats to the constitutional order. In contrast, today it seems there exists a common and general unease between governments and their respective citizens. Populations have manifested this as irrational and fearful responses against governments that pursue CCG planning. This is ironic, in that the intent of such plans is to ultimately assure citizens that their governments will be there when most needed. It is clear that challenges remain between “the strict and rigid observation of the laws”<sup>330</sup> and the government’s power of *prerogative*, that “power to

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<sup>330</sup> Locke, *Second Treatise of Government*, § 159.

act according to discretion, for the public good, without the prescription of the law, and sometimes even against it.”<sup>331</sup>

This presents an opportunity for avoiding popular resistance to CCG planning. In modern times, emergency governance is generally seen as the right and proper role for a liberal democratic government to prepare for, provided it is used sparingly and the extent and instruments of such governance is respected and clearly defined in law. Publicly associating CCG planning with emergency governance capitalizes on the association between the two concepts. Annex A expands on some of these associations.

In focusing the remainder of this section on Canada, it is intended to offer key insights to capitalize on opportunities and reduce existing risks. Even though Canada has the components of a CCG program, it lacks sufficient comprehensiveness across all departments and branches to guarantee its effectiveness and fully counter continuity risks to government. While the chances of a catastrophic CCG event remains low, two other facts prevent this from being a comfort. First, non-catastrophic CCG events can be just as disruptive, and are much more likely. This is demonstrated by Canada’s existing challenges in applying its emergency governance scheme. Second, the consequences of a low-risk but high-impact catastrophic event are serious enough that it should give the government pause. Here, a robust and comprehensive CCG program can be seen as the

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<sup>331</sup> *Ibid.*, § 160.

insurance policy that it is. While paying the premiums is never appealing, it is obviously too late to start after a CCG event has occurred.<sup>332</sup>

Once the government of Canada accepts that a strong, integrated CCG program is required, the next step is a thoughtful consideration of the current program components in light of the five-elements model. This will provide essential insights needed to strengthen the existing program as a whole. A thorough review to ensure the robustness of the five elements—prevention, protection, succession, relocation and reconstitution—would uncover any obvious gaps that, once identified and communicated to senior officials, can then be resourced and monitored on a prioritized basis in accordance with appropriate assessments of threat and risk.

In turn, when the gaps are addressed, the six-characteristics model—robustness, simplicity, clarity, immediacy, constitutionality and reversibility—provide a useful framework to consider the newly established comprehensive CCG plan. The areas of the plan that show weakness in relation to these characteristics would certainly benefit from re-examination.

Questions regarding the precise meaning of *constitutional government* in the Emergency Management Act are likely to stand until senior officials decide on a definition and codify it. In addition, all key functions, roles and responsibilities for CCG

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<sup>332</sup> The analogy of civil defence / continuity of government as insurance is by no means new. In 1981, the United Kingdom Home Office's pamphlet *Civil Defence: Why We Need It* draws a comparison between civil defence and wearing a seatbelt. It further makes the case that pre-event spending is not a "waste of money," but instead is "money well spent if it shows people how they can safeguard themselves and their families." This comparison is equally valid for government continuity spending, except that it is the entirety of the nation that is to be safeguarded. United Kingdom. Home Office. *Civil Defence: Why We Need It*. London: HMSO, 1981. See also Vale, *The Limits of Civil Defence...*, Ch. 6.

program planning, as well as the operationalization, monitoring, maintenance, and regular testing of the program, should be established in a cross-governmental policy.

A layered approach that covers departments, branches, and finally the whole of constitutional government, would be a logical approach to ensure flexibility in execution in the event that only a limited part of the government experiences a CCG event. It also creates a more robust and resilient framework within which each component of the CCG plan integrates with the others. Testing the plan should be done for each layer with the senior decision-makers involved as in a real CCG event. This will better assure Canadians that the government's plan is simple enough to be executed quickly and effective enough to fulfill its aim. This requires a coordinating agency, which is currently and appropriately PSC. In addition, a formal and comprehensive CCG policy, and an empowered senior leadership, may help ensure departments allocate the appropriate resources and priority to the program. The laissez-faire approach to departmental emergency planning, similar to that witnessed in the 1970s, is likely to continue facilitating event-driven reactions, where immediate issues will supplant important, but non-urgent, long-term planning. The CCG program and its operationalization will suffer as a result.

Emergency management in Canada has been described in the literature as a series of near misses and moving targets. A broadly accepted and comprehensive CCG program cannot afford this characterization; the target must be clear and the aim true. A comprehensive, government-wide CCG policy will serve Canadians in this regard. The government of Canada owes it to its citizens to be there when it is needed most.





## ANNEX A - HIGHLIGHTS OF EMERGENCY GOVERNANCE

Contemporary emergency governance literature has been influenced by two major geopolitical events. The Cold War was one; the terrorist attacks on the United States on September 11, 2001 was the other. In each of these cases, governments, particularly those in the West, seemed at the time to understand that they faced much greater vulnerability than had been previously perceived—a difficult mindset to maintain as time passes after such traumatic events.

The Cold War followed two World Wars that devastated nations, directly affected civil populations, and existentially threatened states. It was characterized by the nuclear standoff that directly threatened the most powerful nations on the planet with nothing less than extinction. Not more than a dozen years following the peaceful end of that stalemate, terrorists transformed the common convenience of air travel into manned cruise missiles, and aimed them at the symbols of American commerce and governance. It is therefore no surprise that there has been a significant increase in volume of writings on emergency governance, as well as continuity of government, since September 2001.

An example of this modern treatment is from Professor Marc de Wilde in 2010.<sup>333</sup> His highly theoretical approach examines Locke's writings on *prerogative* and compares them to the modern *state of exception*. He notes that “modern states have almost without exception developed constitutional arrangements to protect themselves from threats to

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<sup>333</sup> de Wilde, “Locke and the State of Exception...”, 249-267.

their continued existence.”<sup>334</sup> The most common form of this constitutional arrangement is the *state of exception*, which is

proclaimed when the constitutional order as such is at stake, for example, at the threat of foreign invasion, civil strife, or a large-scale terrorist attack [and] leads to a suspension of rights and a concentration of power in the executive, enabling it to respond quickly and effectively to the threat.<sup>335</sup>

Of particular interest to de Wilde is whether or not the state of exception should be fully and legally defined before it is needed, or instead left completely undefined and extralegal. The modern roots of this debate can be traced back to the writings of twentieth-century German political theorist Carl Schmitt. Schmitt thought that liberal democracy and emergency powers were simply immiscible, but he also felt that extensive emergency powers were a requisite part of progressive liberal democracies. Together, he took these premises to mean that the very concept of “liberal democracy is anachronistic, since it is not up to the task of providing sufficient possibilities for executive prerogative while preserving its core identity.”<sup>336</sup>

Since Schmidt’s time, other jurists have developed the legalist and extra-legalist positions of emergency law. The extra-legalist position attempts to reconcile Schmitt’s view of emergency power and government with a professional loyalty to rule of law.<sup>337</sup> By keeping the prerogative powers needed by the executive to preserve constitutional government in an emergency outside of the law, they cannot inadvertently become normalized over time. As extra-legalist Oren Gross summarizes, “going outside the law

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<sup>334</sup> *Ibid.*, 249.

<sup>335</sup> *Ibid.*

<sup>336</sup> William E. Scheuerman, “Emergency Powers and the Rule of Law after 9/11,” *The Journal of Political Philosophy* 14, no. 1 (2006): 61-62.

<sup>337</sup> *Ibid.*, 62.

in appropriate cases may preserve, rather than undermine, the rule of law in ways that constantly bending the law to accommodate emergencies and crises will not.”<sup>338</sup>

Fundamentally, this position is a very utilitarian one, as it seeks to outweigh the relatively small negative of operating outside of the bounds of law with a “great right, namely the preservation not only of the constitutional order, but also of its most fundamental principles and tenets.”<sup>339</sup>

The legalist position is very much counter to that of Schmitt and Gross. It posits that “emergency power can in fact be successfully legalized, and that legal and constitutional mechanisms for emergency power need not self-destruct.”<sup>340</sup> In fact, it rejects the extra-legalist position that the state of exception necessarily represents a legal *black hole*. Instead, emergency powers can be pre-emptively defined and carefully and constitutionally crafted to meet the needs of the state in an emergency. The majority of basic legal freedoms would be maintained, though some relaxations would of course be necessary, but at the same time carefully constrained to specifically address the emergency at hand.<sup>341</sup>

Academically, the legalist/extra-legalist debate is interesting and worthwhile. There are two important points that need to be emphasized about it, however. The first is that even if one were to adopt the perspective of the extra-legalists, this would not be a reason to ignore the matter of emergency government during a state of exception. The point is not that the government’s power in a constitutional crisis should be absolute,

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<sup>338</sup> Oren Gross, “Extra-Legality and the Ethic of Political Responsibility,” in *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press, 2008), 62.

<sup>339</sup> *Ibid.*

<sup>340</sup> Scheuerman, “Emergency Powers and the Rule of Law after 9/11”, 62.

<sup>341</sup> *Ibid.*, 75.

unchecked and without recourse. Instead, the position is that knowing what powers will be necessary to deal with such a crisis cannot be properly forecasted and thus cannot be written into law. In other words, adopting the extra-legalist position is not a reason to ignore emergency governance and, tangentially, a CCG program. For if the details of the state of exception are not eventually articulated clearly and completely in law, there still needs to be an agreement, even if it is only implicit, within the population of a nation as to what is acceptable for emergency executive powers.

Harvard Law professor Philip Heymann notes that “a model of emergency power needs to explain *which institution* can declare an emergency, *which institution* can end it, *what new powers* are available during it, which legal protections remain *inviolable*, and by *what standards* courts review emergency power [emphasis in original].”<sup>342</sup> These are important concepts, regardless of whether or not a state defines and enumerates its emergency powers and instruments of governance legally and in advance.

The second important point to observe is the difference between a constitutionally sound government responding to a national emergency, and a government responding to an emergency that either threatens its constitutionality, or has already rendered it unconstitutional. It could soundly be argued that both are cases of emergency government. Regardless, it remains critical to differentiate between them. In the case of the former, though much property and many lives may be at stake, the structure and the legitimacy of the government itself is not, leaving it free to act. To be sure, that action may require the exercise of prerogative, such as Locke’s illustrative example of a

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<sup>342</sup> Philip B. Heymann, “Models of Emergency Power,” *Israel Yearbook on Human Rights* 33, no. 1 (2003), 1-13, cited in Scheuerman, “Emergency Powers and the Rule of Law after 9/11”, 61-84.

government pulling down a citizen's house to create a fire break when the house next door is burning.<sup>343</sup> In such a case, failure is by no means trivial, but fundamentally it does not threaten the governance of the state as a whole. The case of CCG can be the inverse. As the vignettes in Chapter 1 are intended to illustrate, a threat to the constitutionality of government may not necessarily threaten the people of the state. Thus, a CCG event can, paradoxically, be perceived as less threatening to the nation because it affects the livelihood of fewer citizens, but at the same time more threatening to the state, as the legitimacy and capability of its government—and thus the resiliency of the nation-state itself—may be at stake.

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<sup>343</sup> Locke, *Second Treatise of Government*, § 159.



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