

CURRENTS/QUESTIONS D'ACTUALITÉ

Canadian Federalism, Multilevel Politics and the Occupation of Ottawa

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Abstract

For three weeks in early 2022, the streets of downtown Ottawa were occupied by protestors associated with the so-called Freedom Convoy. The inability of Ottawa's municipal police to end the protest was not only a spectacular failure of local policing but also a failure of national security policy. This article brings together literatures on Canadian federalism, multilevel politics and federal capitals to argue that the occupation of Ottawa demonstrates a misalignment between the political and jurisdictional responsibility for Ottawa's public and national security. Potential reforms range from the expansion of federal authority over the Parliamentary Precinct to the restructuring of the National Capital Region as a federal district or territory.

Résumé

L'occupation du centre-ville d'Ottawa par le « Convoi de la liberté » à l'hiver 2022 a révélé un désalignement entre la responsabilité politique et le secteur de compétence de la capitale nationale du Canada en matière de sécurité. Cet article fait appel à la documentation sur le fédéralisme canadien, la politique multi-niveaux et les capitales nationales fédérales pour soutenir que l'échec de l'État à faire face à l'occupation d'Ottawa reflète la structure de gouvernance à Ottawa-Gatineau et l'environnement politique actuel. Les réformes potentielles vont de l'expansion de l'autorité fédérale sur la cité parlementaire à la restructuration de la région de la capitale nationale en tant que district ou territoire fédéral.

Keywords: comparative federalism; national capitals; multilevel politics; protest; policing

Mots-clés : Fédéralisme comparatif; capitales nationales; politique multi-niveaux; protestation; maintien de l'ordre

Last winter, the streets around Ottawa's Parliamentary Precinct were clogged for nearly three weeks by protestors and their heavy vehicles. Ottawa residents are used to frequent protests around Parliament, but the form and duration of this so-called Freedom Convoy was unprecedented. The convoy's occupation was

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loosely organized around a wide-ranging set of demands, from ending COVID-19 restrictions to overthrowing the federal government. The protestor's illegal occupation of residential neighbourhoods, beginning in late January, not only prevented normal government and business operations but disrupted the lives of residents, as they dealt with blaring air horns, fireworks, late-night dance parties, and idling vehicles intended to keep protestors warm in Ottawa's freezing winter temperatures.

The inability of Ottawa's municipal police to end the protest was not only a spectacular failure of local policing but also a failure of national security policy. The three-week occupation had many residents and observers questioning whether the rule of law was faltering in the nation's capital. It was only when protests spread to the US-Canada border and Windsor's Ambassador Bridge in mid-February that the federal government chose to invoke the Emergencies Act—the legislative successor of the War Measures Act—and finally end the occupation of Ottawa.

In reflecting on this extraordinary set of events, two pressing questions came to mind. First, why was the federal government's intervention necessary to end a crisis whose jurisdiction rested constitutionally with the province and delegated municipal authorities? And, flipping this question on its head, why was the municipal Ottawa Police Service (OPS) tasked with protecting national institutions in the first place? Currently, these questions are being considered by several parliamentary committees and other formal review processes. In this article, I explore these questions by bringing into conversation literatures on the structure of Canadian federalism, multilevel politics, and comparative research on federal capitals. I argue that the occupation of downtown Ottawa demonstrates a misalignment between the political and jurisdictional responsibility for Ottawa's public and national security. While there are no easy solutions to Ottawa-Gatineau's governance woes, potential reforms range from the expansion of federal authority over the Parliamentary Precinct to the restructuring of the National Capital Region as a federal district or territory.

Canada's National Capital Region (NCR) is situated on unceded Algonquin territory and has an area of 4,715 square kilometres and a population of around 1.5 million people (National Capital Act). The NCR is administered by five governments spread across two provinces: the cities of Ottawa and Gatineau, the provinces of Ontario and Quebec, and the federal government. Ottawa-Gatineau hosts most of Canada's federal institutions and the largest share of federal public servants. Despite the region's functional and symbolic importance, the federal government has very little control over the region. Outside federally owned lands, the federal government has almost no policy or administrative oversight for land-use planning, transportation, health and social services, policing and security, or economic development. All these policy areas rest with the provinces of Ontario and Quebec, leaving the federal government, with its spending power, to influence policy at the margins through such organizations as the National Capital Commission.

Ottawa-Gatineau is an economically and socially integrated region, yet its various governments have distinct urban planning, transportation, environmental, and social policy programs. While some institutions in both cities communicate with each other, there is very little co-ordination among municipal or provincial governments (Andrew, 2013; Kaufman and Sager, 2019). Nowhere is this vertical fragmentation more evident than in the policing of the national capital. There are multiple

police services with jurisdiction in Ottawa: the OPS (municipal), the Ontario Provincial Police (OPP) (provincial), the Royal Canadian Mounted Police (RCMP) (federal) and the Parliamentary Protective Service (federal). As the police of jurisdiction, the municipal OPS has primary responsibility for public safety and policing in Ottawa; it is predominantly funded through municipal taxes and some provincial transfers.

Policing in and around the Parliamentary Precinct is complex and situational. For example, the area overseen by the Parliamentary Protective Service is situationally defined in legislation, rather than geographically defined, and includes any building where parliamentary business occurs and that has been designated for that purpose by the Speaker of the House or Senate (Parliament of Canada Act). The RCMP oversees the grounds of Parliament and the protection of designated Canadians, such as the governor general and prime minister. Meanwhile, the OPS has jurisdiction over the streets and municipal infrastructure throughout the precinct, as well as jurisdiction over criminal investigations on Parliament Hill.

In 2012, the federal auditor general found that Parliament lacked an overall security policy and that continuing jurisdictional issues posed an ongoing security risk (Canada, 2012). For example, the auditor general noted that “no security force had accepted primary responsibility for the roofs of buildings in the Precinct” (Canada, 2012: 27–28). While there was some communication among services, more co-ordination and co-operation was needed. This jurisdictional confusion came into sharp relief during the 2014 shooting on Parliament Hill. Reform followed, including reducing the number of police services in the precinct from four to three and consolidating security on Parliament Hill within the RCMP (Levitz and Bronskill, 2015). Security off Parliament Hill remained with the OPS, and the federal government created the Nation’s Capital Extraordinary Policing Costs Program, which grants the City of Ottawa \$2 million per year to offset the extra policing costs associated with Canada Day celebrations, foreign visits, and protests (Canada, 2019). This amount is insufficient, however, as the total cost to municipal taxpayers for policing the convoy protest was \$36.5 million (Lapierre, 2022).

In the convoy’s aftermath, political commentators and municipal leaders alike questioned whether the jurisdictional structure of Ottawa-Gatineau could meet the policy and security challenges of a G7 capital. In a column for *TVO*, Matt Guerny (2022) wrote, “We should also consider whether the municipal structure of Ottawa makes sense. There is already some talk of perhaps carving out the National Capital Region as some unique, federal zone within Canada.” Less ambitious solutions were also suggested. For example, Bob Plamondon (2022) argued that it is “inevitable that Wellington Street, and likely Sparks Street, will be transferred from municipal to federal jurisdiction.”

In April 2022, another protest dubbed the “Rolling Thunder” highlighted the ongoing burden for a municipal police service of policing a national capital. Protestors on motorcycle planned to rally in the Parliamentary Precinct and at the War Memorial. The OPS was better prepared for this protest and was able to avoid the reoccupation of downtown. In reporting on this success, the current chair of the Ottawa Police Services Board, Eli El-Chantiry, noted the protest cost the City of Ottawa nearly \$3 million (Lapierre, 2022). In discussing these extraordinary costs, El-Chantiry stated:

This is not sustainable and, from what I'm hearing from the interim chief, we may see other types of activities happening. I think we need to have a dialogue with other levels of government—with the provincial, federal, and municipal—to see how we move forward. How often can we go back to the RCMP and OPP and other municipal police and cover costs? (Lapierre, 2022)

Emphasizing that policing within the capital was locally funded, Rideau-Vanier councillor Mathieu Fleury lamented that “it is unfortunate that the capital city does not have the right funding and governance structure to be what it needs to be” (Lapierre, 2022).

Alone, these jurisdictional issues are insufficient to explain the state's listless response to the occupation. Politics are also an important element of this story. Comparative federalists have generally grouped federal national capitals based on their status within their respective federal systems. Rowat (1973) divides capitals into two groups, federal districts and capitals not in federal districts, while Slack and Chattopadhyay (2009) use three categories: federal districts, city-states and cities within states or provinces. Federal districts, such as the Australian Capital Territory or the District of Columbia, offer the greatest control to federal governments, while capitals within states or provinces, such as Ottawa and Bern, provide the least. And this is where politics re-emerges as an important factor. Capitals within states or provinces have additional political interlocutors beyond the federal-city relationship, and these third parties can help or hinder federal needs in its capital city.

Convoy participants were protesting federal prime minister Justin Trudeau and his Liberal government. The provincial government at Queen's Park is led by premier Doug Ford, a Progressive Conservative, whose supporters share some overlap with convoy participants. As Jenni Byrne, a Conservative strategist and Ford's former campaign manager, argued during the occupation, “It's a knee jerk reaction to think [that] if it's happening in Parliament and if it's happening in downtown Ottawa, in the core blocks at the juncture of Wellington and Rideau, it's a federal government responsibility” (Air Quotes Media, 2022).

Under section 92(14) of the Constitution Act, 1867, the provincial government is responsible for the administration of justice and policing. Ontario's Police Services Act authorizes municipalities to provide “adequate and effective police services,” such as crime prevention, law enforcement and the maintenance of public order (Police Services Act). The OPS requested assistance from the province, but that support was both inadequate and slow to arrive. Diane Deans, who was chair of the Ottawa Police Services Board during the occupation, notes that when former OPS chief Peter Sloly stated that “there may not be a police solution to this demonstration,” it was “a cry for help. [He] realized that the Ottawa Police Service did not have the expertise or the people power or the experience and that we needed help. Both the federal and provincial government were sluggish in sending resources to this city to help us” (Raj, 2022).

For example, Ontario's solicitor general Sylvia Jones stated on February 6 that the province had sent 1,500 officers to assist with policing efforts in Ottawa. In fact, the province only deployed a total of between 135 and 200 officers (Talbot and Southern, 2022). Indeed, the province only declared a state of emergency on

February 11—two weeks after the occupation began—and only after Windsor’s Ambassador Bridge was blockaded by convoy protestors (DeClerq, 2022).

Policing in Ottawa is not an example of successful multilevel governance but rather an example of multilevel politics. Trudeau bore the political risks for inaction on the convoy because Ottawa is perceived politically to be his responsibility. The political risks to Ford rested in acting against a group of protestors with significant ties to conservative politics. While Ford had clear constitutional responsibility for policing and security in an Ontarian city, he did not have a political one. To be clear, politicians do not direct the police, but Ontario could have provided additional policing and financial resources to assist in ending the protest. Deans argues that Premier Ford’s government

was not present in Ottawa during the occupation. They were saying as little as possible about it. They were not being particularly helpful. They, for some reason, came out kind of unscathed. I don’t think [Ford] wants to do a public inquiry because he doesn’t want to draw any attention to the provincial government that seemed to stay out of the eye of the storm through the whole thing. (Raj, 2022)

Ford came out unscathed because there is a mismatch between the jurisdictional responsibility for the city designated as the national capital (provincial) and the level of government politically associated with Ottawa (federal). Addressing blockades in Windsor is politically important to the provincial government, while similar protests in the City of Ottawa are not.

Returning to my questions, the federal government was forced to intervene because Ottawa is politically understood as its responsibility. Constitutionally, however, policing and public safety in Ottawa is generally the responsibility of the province. Several solutions are being discussed, with various levels of seriousness, to mitigate this political-jurisdictional misalignment. The first is to maintain the jurisdictional status quo, with some minor policy changes to municipal infrastructure around the precinct. The City of Ottawa has debated closing Wellington Street to most vehicles and turning it into a pedestrian mall with a public transit corridor. This may solve the vehicular access concerns that led to the last occupation, but it does not address the political-jurisdictional misalignment that plagues so many areas of policy making in the NCR.

A second option proposes to slightly extend federal jurisdiction over security and policing within the City of Ottawa. In spring 2022, the House of Commons Committee on Procedure and House Affairs began investigating whether the Parliamentary Precinct should be extended to include Wellington and Sparks Streets, placing a greater area under direct federal control. The committee has heard from federal and municipal officials, as well as representatives of the OPS, RCMP, OPP and other security services. This change would require an amendment to the Parliament of Canada Act and an agreement with the Province of Ontario.

The final option is the most elegant but also the least likely solution to the problem of Ottawa: carving Ottawa-Gatineau out of Ontario and Quebec and creating a new federal district or territory. While this solution would resolve the political-jurisdictional misalignment, it would come with considerable risk, especially for residents. For example, while policing in Canberra, the capital city of Australia, is overseen by a department

of the federal police, self-government for residents was slow to emerge, and Canberra's participation within the institutions of interstate federalism remains tenuous. For Canadians, creating a federal district or territory would require constitutional negotiations among Ottawa, Ontario and Quebec to redraw their borders. Given the current nationalist stance of the Coalition Avenir Québec, this would pose significant political risks to the federal government and Canada's national unity.

Mitigating the political-jurisdictional misalignment in Canada's national capital would not only alleviate governance issues within the city but also serve national security. A municipal police force should not be tasked with protecting a national capital. At this juncture, I am not convinced that the creation of a federal district would solve more problems than it would create for Canadians or the residents of Ottawa. That said, the current governance structure of the NCR cannot continue. In the near term, the federal government should assume control of the streets around Parliament Hill and negotiate the necessary agreements with provincial and municipal authorities. Ontario has passed the buck on Ottawa and it's up to the federal government to intervene.

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