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Governing the Drinking Driver: A Genealogical Analysis of Canadian Impaired-Driving Programmes

By

Rhys Steckle

**A Thesis Submitted to the Faculty of Graduate Studies
through Sociology, Anthropology and Criminology
in Partial Fulfillment of the Requirements for
the Degree of Master of Arts at the
University of Windsor**

Windsor, Ontario, Canada

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Governing the Drinking Driver: A Genealogical Analysis of Canadian Impaired Driving

Programmes

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July 24th, 2013

Declaration of Originality

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Abstract

Since the 1980's impaired driving behaviour has gained increased attention in the public sphere. Recently, the provincial government of Ontario has passed new measures designed to control this behaviour. By drawing on Ericson's (2007) analytic of uncertainty this thesis focusses on how risk and uncertainty have shaped the Ontario government's efforts to control impaired driving behaviour in manners that undermine the traditional "principles, standards and procedures" (Ericson, 2007: 30) of law. Through a Foucaultian genealogical analysis of both governmental and non-governmental documents pertaining to recent impaired driving control efforts including; the Road Safety Act, sobriety checkpoints, and report impaired driver initiatives, this thesis analyzes contemporary efforts to control impaired driving behaviour in Ontario from 2000 to 2012. Furthermore, by drawing on work from the larger perspective of governmentality, this thesis recommends changes to both Ericson's (2007) analytic and the governmentality perspective as a whole.

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Introduction

Since the 1980's there has been a great deal of attention given to the issue of impaired driving¹². This focus transcends provincial and federal jurisdictions in Canada and has had a consciousness-raising effect on the general public. The high level of concern surrounding impaired driving is partly due to the fact that drinking and driving is a source of uncertainty in society, especially as it concerns safety. Prior to the 1980's impaired driving was considered a minor, morally ambiguous offence and attitudes towards this behaviour were lax by today's standards (Transport Canada, 2009). However, we have seen this erstwhile morally ambiguous act morph into a serious criminal offence to which powerful social stigma has been affixed (Gusfield, 1981). In spite of this, much of the dominant sociological literature that deals directly with the issue of impaired driving (see Gusfield, 1981; Reinerman, 1988; Jacobs, 1988; Gusfield, 1992) predates the enactment of recent impaired driving measures. Furthermore, within the governmentality perspective most articles that discuss the issue of impaired driving deal with it only in relation to a larger point of interest (see O'Malley, 2010; O'Malley and Valverde, 2004; Levi and Valverde, 2001). In response, this thesis focusses on governing impaired driving in Ontario from 2000 to 2012. This time period is chosen because of the lack of critical focus on impaired driving measures as a whole since the early-1990's as well as because of the new impaired driving measures that have been enacted since the year 2000.

¹ This thesis uses the term 'impaired driving' instead of the more common 'drunk driving' as contemporary legislative restrictions are increasingly targeting drivers who may not be 'drunk' yet have impaired faculties. The term 'drunk driving' will henceforth be reserved for victims' rights movement discourse.

² Furthermore, the term 'impaired driving' is meant to signify acts of driving with a blood alcohol concentration which includes but is not limited to acts of consuming alcoholic beverages while driving.

To understand how contemporary impaired driving measures are meant to control the behaviour of drivers, this research thesis employs Ericson's (2007) analytic of uncertainty. Ericson's (2007) analytic is situated within the larger governmentality perspective due to the manner in which governmental power is believed to be expressed in accordance with mentalities, technologies and programmes of governance. Therefore, this research is also situated within the larger field of governmentality by its use of Ericson's (2007) analytic and will adopt this perspective's understanding of governmental power. To aid this study of contemporary impaired driving programmes, this thesis is guided by two research questions: First, through what mentalities and technologies of governance is impaired driving behaviour currently governed? Guided by this main research question, this research also asks: how and to what extent do contemporary impaired driving programmes reflect Ericson's (2007) notions of precautionary logic, counter-law one, and counter-law two?

Canadian jurisdictions have recently seen a wide array of governmental measures employed to govern impaired driving but these efforts have not been matched with serious academic critique. Through an examination of various governmental and non-governmental documents, this research examines programmes designed to manage the occurrence of impaired driving behaviour in Ontario, including: the Road Safety Act 2009, the increased use of sobriety checkpoints, and nascent report impaired driver initiatives such as Operation Lookout. By applying Ericson's (2007) analytic of uncertainty to recent governmental efforts meant to control impaired driving, this thesis contends that these initiatives reflect a preoccupation with risk and uncertainty which has structured the implementation of new governmental programmes that violate traditional, legal or procedural standards of law in the name of abating uncertainty.

Furthermore, this thesis makes several recommendations for scholars working within the governmentality perspective.

Theoretical Framework

There has been a growing tendency in recent sociological and criminological inquiries towards examinations of risk management (O'Malley, 2002, 2009; Beck, 1992). This emphasis on risk structures Ericson's (2007) analytic of uncertainty which is here divided into three constitutive elements. The first of these elements is the politics of uncertainty. For Ericson (2007: 6-7), "risk is the term through which we imagine and act as if we know the future and can do something about it". However, risk as a predictive technology is not a unified or homogeneous construct. It is instead a family of thought that involves calculations of probable futures in the face of omnipresent uncertainty (Rose, 2001). While some scholars have seen risk management as synonymous with actuarial technologies (see Feeley and Simon, 1992), this places techniques of risk assessment in contrast with what may be called "techniques of uncertainty" (O'Malley, 2009: 16) or heuristic devices such as rules of thumb or personal experiences. This binary opposition of risk and uncertainty is too restrictive for an analytics of governance because actuarial risk technologies are often guided or supplemented by heuristic techniques such as personal experience and moral discourse in mixed knowledge formats. In attempting to explore how hybrid/mixed knowledge formats shape attempts at ordering populations, this thesis draws on Moore and Valverde's (2000) use of chronotopes to examine how risk management initiatives are often supplemented by idiosyncratic and unscientific discourses.

Liberal social actors are expected to mitigate uncertainty through assessments of risk. However, it is important to note that risk analysis can often be a self-defeating process. As

Sunstein (2007) points out, we are limited by our experiences and what we can foresee as potential risks. Risk analyses are prone to fail because nascent risks do not fit with available knowledge of risk factors and serve as poor models for future action. This ironically leads to new risks which ultimately stem from the management system that was designed to govern them. This process is what Ericson (2007: 12) refers to as “routine failures of risk management” and raises questions about whether or not governments can effectively control the conduct of their citizens. This doubt fuels the second element of Ericson’s (2007) analytic which he termed precautionary logic, or the logic of the worst-case scenario. Under precautionary logic, we are to expect the worst-case scenario and act against it. Since risk management contains its limitations within its very reasoning, precautionary logic requires that we expect that which may be a statistically insignificant, but severely perilous risk. In the final element of his analytic, Ericson (2007) describes how in order to ensure certainty, precautionary logic becomes the basis for counter-laws designed to increase certainty through the erosion of traditional standards of law (counter-law one) and the introduction of intrusive surveillance practices (counter-law two).

To reduce prevalent risk factors within their jurisdictions, many western liberal democracies have passed an array of statutes which seem to fit Ericson’s (2007) definition of counter-law (see Levi, 2009; Ashworth and Zedner, 2008). Although Ericson (2007) borrows the term from Foucault (1995), he divides counter-law into two types. The first, counter-law one, takes the form of new laws that erode or eliminate traditional legal and/or procedural safeguards contained within established statutes “that get in the way of pre-empting imagined sources of harm” (Ericson, 2007: 24). Traditional legal safeguards such as rights and due process can be sources of uncertainty if they prevent consistent detection, apprehension and punishment of offences. The judicial apparatus is one method of managing risk in society because the law often

sets norms or thresholds of tolerance against which wrongdoing can be evaluated (Rose and Valverde, 1998; see also Ericson and Doyle, 2003). Legal mechanisms typically act on misconduct and limit the threat to the normative order. However, where there are perceived or actual impediments in the traditional mechanisms of risk management, governments become increasingly pressured to ensure that such obstructions are not ongoing. While counter-law's first iteration is Ericson's (2007) own formulation, its second is much closer to Foucault's (1995) original term.

Counter-law two establishes surveillant assemblages that foster detection of adverse behaviour beyond the typical limits of due process (Ericson, 2007). The surveillant assemblage is an open ended system of initiatives designed to direct social conduct in keeping with specific governmental rationalities and technologies of rule (Lippert and Wilkinson, 2010; Haggerty and Ericson, 2000). Furthermore, assemblages often mobilize across state and non-state institutions and integrate technological and non-technological aspects. For instance, traffic cameras installed to monitor flows and ensure smooth transit on city streets may also be used to alert police to the location of criminal suspects and facilitate their apprehension (Monahan, 2010). This transfer of information across departments of government characterizes the heterogeneous forms that counter-law two may take. However, "in situations where it is not yet practicable to technologically link surveillance systems" (Haggerty and Ericson, 2000: 610-11) surveillant assemblages can also use personal agency as a solution to increasing surveillance practices. For instance, citizens may be encouraged to call police to report suspected illegal behaviour thereby supplying law enforcement personnel with the reasonable grounds necessary to ensure their apprehension. This surge in surveillance capacities increases the monitoring capabilities of

governing bodies and facilitates the management of the population towards the convenient end of governmentality.

In determining whether contemporary impaired driving programmes represent forms of counter-law two, this thesis employs Ericson's (2007) version of counter-law rather than Foucault's. However, Ericson's (2007) iteration requires refinement before it can be employed in a modern governmentality analysis. While staying true to the basic principles of Foucaultian (1995) counter-law, Ericson's (2007) use of the concept in his analytic differs slightly and this requires attention. Counter-law two builds on Ericson's previous work regarding the surveillant assemblage (see Haggerty and Ericson, 2000) and extends it to an analytics of government. Counter-law two examines the increasing development and interconnectedness of surveillant assemblages designed to monitor populations beyond the traditional legal limits imposed on surveillance practices and ensure that those monitored "will internalize the gaze" (Ericson, 2007: 29) and self-police. The concept of the surveillant assemblage attempts to move beyond the popular contemporary metaphors of Orwellian and panoptic monitoring by stressing horizontal over hierarchical developments in modern surveillance. Others have put forth similar ideas drawing on Bauman's notions of liquid modernity (see Lyon, 2010) or Deleuze's notion of control societies (see Walters, 2006). In a similar vein, Haggerty and Ericson (2000) draw on the work of Deleuze and Guattari (1987). Surveillant assemblages differ from the traditional panoptic and Orwellian notions of totalizing surveillance due to how they function as a multiplicity with the potential to work together as a functional entity. In an effort to advance contemporary understandings of surveillance, Haggerty and Ericson (2000) attempt to move beyond the contemporary Foucaultian metaphor of the 'gaze' and its inherently disciplinary function (Ericson and Haggerty, 1997). In a society where disciplinary governmental tendencies

are increasingly displaced, populations are broken down into discrete flows that are mobilized horizontally, rather than in a top-down manner. For Haggerty and Ericson (2000), contemporary surveillance is increasingly characterized by the interconnectedness of diverse surveillance infrastructures and as such the panoptic metaphor which characterizes 18th century prisons, schools, and workhouses is insufficient.

However, while the surveillant assemblage was developed to create a more effective intellectual tool for understanding surveillance practices (see Haggerty, 2006), its inclusion as a constitutive element of counter-law two may actually negate this effect. The understanding that various institutions cooperate for the purposes of observation may not lead to the development of better analytical research tools but instead may actually muddle important distinctions between governmentalities. For example, as an element of counter-law two surveillant assemblages are constituted by governmental efforts that seek to “striate the space over” (Deleuze and Guattari, 1987: 385) which they reign by “introducing breaks and divisions into otherwise free-flowing phenomena” (Haggerty and Ericson, 2000: 608) to ensure the effective disciplining of populations under observation (Ericson, 2007). At these artificial junctions, information is collected about populations to compare their behaviour to normative standards and more effectively govern their conduct. Problematically, counter-law two’s introduction of breaks into flows to ensure normative self-governance appears to adhere to a disciplinary governmentality while Ericson’s (2007) analytic is driven by neoliberal governmental logic obsessed with uncertainty and securitization (Deukmedjian, 2013). Before determining whether contemporary governmental efforts to control impaired driving behaviour reflect Ericson’s (2007) notion of counter-law two, a distinction must be made between disciplinary and securitizing surveillance lest these become conflated.

To determine through which mentalities and technologies impaired driving is governed as well as how and to what extent drinking driving programmes reflect Ericson's (2007) analytic it is necessary to discuss how governmental power is expressed and elaborate these key concepts. This research examines new legal statutes and extrajudicial initiatives programmes of governance. Under Ericson's (2007) analytic of uncertainty, counter-laws are used as programmes designed to promote certainty. In doing so, the healthy functioning of competitive enterprise is aided in fulfillment of the governmental ends emblematic of neoliberal mentalities of governance (Foucault, 2007). Programmes such as counter-law create "a practicable object for corrective intervention" (Donzelot, 1979: 77) and governmental redirection. This is done in line with the mentalities or strategies of government that structures how we see reality and objects of governance. Closely related to the strategies of governance are various technologies of governance that allow for programmes to be established. With the ascendancy of neoliberal governmentality the individual (in opposition to the social (see Rose, 1996)) becomes the primary object of governmental intervention and technologies of risk and insurance are employed to structure programmes designed to facilitate the entrepreneurial enterprise of free subjects consistent with this governmentality. In contradistinction to the grand sociological focus of Beck (1992), Ericson (2007) views risk analysis as a technology of governance that works in tandem with the governmental logic of neoliberalism to activate and manage communities (Rose, 1996) on the basis of their risk. Under a neoliberal mentality, contemporary governance largely abandons the social as the primary locus of governmental programmes. It is seen instead as a potential source of energy comprised of the enterprising free will of individuals "who are to be active in their own government" (Rose, 1996: 330). Risk has become an increasingly important governmental technology as individuals are to choose how best to

maximize their potential and govern themselves “at a distance” (Rose and Miller, 1992: 9) from the state. Where risk factors threaten individual enterprise, governments must take action to reduce fear and unpredictability. By adopting this understanding of governmental power and acknowledging the central importance of risk in contemporary society, this thesis examines through what mentalities and technologies impaired driving behaviour is currently governed. By examining these aspects of governmental power, this thesis also examines how and to what extent contemporary impaired driving programmes reflect Ericson’s (2007) notions of precautionary logic, counter-law one, and counter-law two.

Literature Review

While the issue of impaired driving has achieved significant cultural capital in recent years, the current literature has neglected coherent analyses of impaired driving in favour of producing work analyzing the efficacy of contemporary governmental policy (see Sen, 2001; Voas, 1997; Beck and Moser, 2006). From the perspective of governmentality, this type of work has the unfortunate tendency of neglecting the impetus behind the move to criminalize impaired driving as well as the incentive fueling contemporary governmental policy. Programmes designed to govern impaired driving emerge at specific time periods due to the unique interaction of prevalent discourses. As various discourses gain ascendancy or fade into obscurity new programmes develop using new discursive reasoning. In spite of this, much of the current scholarship fails to ask how such measures have been implemented or why they are altered. While much of the present scholarly work concerning impaired driving neglects coherent theoretical engagement, during the 1980’s there was a large body of scholarship devoted to constructionist analyses of the anti-impaired driving movement and its use of social capital in

having its initiatives legislated (see Reinerman, 1988; Jacobs, 1988; Gusfield, 1981). However, this body of scholarship largely faded from view by the mid 1990's.

Where constructionist sociological analyses often examine the manifestations of social problems such as impaired driving, studies within the governmentality perspective tend to focus on the regulation of these problems through their governance (Lippert and Stenson, 2010). In their efforts to govern the occurrence of impaired driving on roadways many liberal democracies have passed increasingly harsh penalties since the 1980's which have included "mandatory jail sentences for first offenders convicted of [driving under the influence]" (Reinerman, 1988: 100). To justify these harsh penalties, contemporary policies rely heavily on the cultural trope of the "killer drunk" (Gusfield, 1981: 173). The killer-drunk represents those who willfully drive while impaired and cause a collision in which the innocent (sober) person(s) is killed while the driver emerges unscathed. Their pursuit of pleasure outweighs the potential negative consequences of their actions and as such they represent a social actor unable to be deterred without austere disciplinary intervention (Houston and Richardson, 2004). By existing solely to ensure the manifestation of their own hedonistic desires, the killer drunk counters the characteristics deemed necessary for enterprising subjects and thereby "poses a threat to us all" (Houston and Richardson, 2004: 53). The risk calculating behaviour that is required of all neoliberal citizens is absent from the mind of the killer drunk and as such they represent an anomaly in a period characterized by autonomous self-governance (Rose, 1996). This cultural trope became widely disseminated in the late 1970's and the image of all impaired drivers as representations of this malevolent social actor became embedded in governmental programmes (Gusfield, 1981). As a result, since the 1980's there are few impaired driving programmes that do not focus on the worst-case scenario of mortality and calamity as a result of driving after drinking. While the

killer drunk has attained widespread cultural dominance, it has not received much attention in sociological studies and practically none within the governmentality perspective.

There is a clear void in the governmentality literature as it pertains to the issue of impaired driving. Although drinking and driving has been a popular subject in modern legislatures it cannot be said to have received the same degree of interest from governmentality scholars. Whereas previous work, such as O'Malley and Valverde (2004), and Levi and Valverde (2001), has examined the governmental discourses of pleasure and the use of legal knowledge surrounding alcohol use and/or impaired driving, there remains a need for work that critically analyzes the measures taken to govern impaired driving and the mentalities of governance behind them. The focus of these articles is often the use of police science or the problematization of professional discourse instead of a critical analysis of contemporary programmes of governance and the rationalities and technologies that structure their implementation.

This thesis therefore fills a void in the governmentality literature by examining through what mentalities and technologies impaired driving behaviour is currently governed as well as how and to what extent contemporary impaired driving programmes reflect Ericson's (2007) analytic of uncertainty. Much of the current literature being distributed by Mothers Against Drunk Driving (MADD) repeatedly states that impaired driving is "the most tolerated, frequently committed violent crime in America" (Mejeur, 2007: 16). The dominant focus on the threat to the social good by the malevolent killer drunk in political discourse necessitates increased attention to how notions of risk and uncertainty influence the perceived necessity of recent impaired driving measures. By exploring how and to what extent contemporary impaired driving

programmes reflect Ericson's (2007) analytic of uncertainty, this thesis represents a novel study in the governmentality literature.

Methodology and Data Sources

To understand through which mentalities and technologies impaired driving is currently being governed as well as how and to what extent impaired driving programmes reflect Ericson's (2007) analytic, multiple data sources covering a diverse array of governmental and non-governmental documents have been employed. Using a governmentality perspective makes it insufficient to rely solely on governmental or state sources. The judicial apparatus relies heavily on "knowledge and expertise that [is] non-legal" (Rose and Valverde, 1998: 543) and thus employing only governmental documents is unsatisfactory. Therefore, governmental and non-governmental textual sources have been studied to respond to the research question. It is especially important to look at how the problem of impaired driving is given its form via non-governmental bodies under neoliberalism while also looking at the various programmes implemented in line with this governmentality. In keeping with the Foucaultian nature of governmentality, this research used a genealogical approach (see Foucault, 2010) to interpret the data sources employed.

To ensure a comprehensive analysis of the governmental documents, this research used the following seven data sources: ten years of MADD Canada's Annual Reports, a government brochure entitled, *Smashed: A Sober Look at Drinking and Driving*, Hansard documents regarding the Road Safety Act 2009, twenty-five articles from *The Globe and Mail* covering the police use of sobriety checkpoints, a Traffic Injury Research Foundation study detailing the use of sobriety checkpoints as well as a public awareness brochure, and finally a procedures manual pertaining to the Operation Lookout Call 9-1-1 campaign.

As its first main source of data this thesis used ten years of Annual Reports published by MADD Canada spanning from 2001-2002 to 2010-2011. These reports summarized MADD Canada's view on the issue of impaired driving and contain statistics used by legislators. These reports also dictated the persistent nature of the problem of impaired driving and make recommendations for new policies to be enacted. Second, in addition to MADD Canada's Annual Reports, this thesis also examined a Canadian government brochure titled, *Smashed: A Sober Look at Drinking and Driving*. *Smashed* is a public awareness brochure found by accessing the federal government's website and using the search term 'impaired driving'. This document detailed the continuous hazard that impaired drivers are believed to pose to the safety of Canadian roadways. Furthermore, it documented recent impaired driving programmes and explains how motorists are apprehended. This brochure was chosen over others because it was published by the Canadian government as well as because it used information published by MADD Canada thereby granting it cultural esteem as well as pairing it nicely with the MADD Canada's Annual Reports. To determine how and to what extent contemporary impaired driving programmes reflect Ericson's (2007) analytic, it was important examine the manner that these documents, which have influence over the implementation of programmes, expose a growing preoccupation with risk and uncertainty.

It is important to examine the role that discourses present in public awareness documents play in shaping actual governmental programmes to govern impaired driving. As the third data source, this research used Hansard texts that described the enactment of the Road Safety Act 2009. Hansard documents are an excellent data source because of their easy accessibility and thorough examination of the measures proposed. Furthermore, Hansard texts detail the rationality used to support the implementation of a proposed programme. The Hansard

documents from the first, second, third and outside committee readings were examined to determine how and to what extent this programme reflects Ericson's (2007) analytic of uncertainty.

The final data sources that were employed in this research thesis pertain to the establishment of new surveillance measures that may be deemed emblematic of the second form of counter-law in Ericson's (2007) analytic. In seeking to determine whether or not counter-law's second iteration was present in government initiatives, this thesis analyzed various official and unofficial documents pertaining to the use of sobriety checkpoints as well as the nascent 'Call 9-1-1' programs. Each of these endeavours is elaborated in turn. These surveillance apparatuses represent two distinct approaches to combatting impaired driving and require independent analyses.

Sobriety checkpoints are hardly novel approaches to governing impaired driving as they have been operating in Canada since the 1970's. However, in jurisdictions such as Ontario sobriety checkpoints have expanded in recent years and operate year round as opposed to functioning mostly as intensive holiday season initiatives (Government of Ontario, 2012). To ascertain the increased operation of sobriety checkpoints in Ontario since the year 2000 in relation to the second form of counter-law in Ericson's (2007) analytic and due to the lack of official government documentation, the fourth source of data this thesis employed was print media articles pertaining to sobriety checkpoints in Ontario. Twenty-five articles printed in *The Globe and Mail* from 1979 to 2007 were used to detail how sobriety checkpoints were employed in Ontario as well as to provide a view of the perceived necessity of such a programme. Since *The Globe and Mail* is the newspaper 'of record' in Canada as well as one of the nation's most widely read publications it is highly likely that these articles have been read by a sizeable

proportion of the population and accurately reflect the dominant discourse as it pertains to impaired driving.

In addition to print media, the fifth and sixth sources of data this research analyzed were both published by the Traffic Injury Research Foundation (TIRF) and pertain to the use of sobriety checkpoints. To determine how these programmes were used in accordance with governmental rationalities and technologies it was vital to analyze the research carried out by TIRF as they are a non-governmental agency which is directly employed by the federal government in order to determine the efficacy of proposed programmes. The literature published by TIRF detailed the history of sobriety checkpoints and offered a national and international perspective on this programme. The first document by TIRF this research analyzed was a public awareness pamphlet that examined the benefits of employing sobriety checkpoints. This was designed to garner public support for the programme. The second of TIRF's publications that this research examined was an annual progress report (2005-2006) from Transport Canada's Strategy to Reduce Impaired Driving (STRID) 2010. STRID 2010 is a five year plan designed to reduce the amount of fatalities per annum believed to be associated with alcohol impaired driving. This report provided extensive documentation of the use of sobriety checkpoint across Canada. In addition to this holistic focus, as an officially commissioned report, the findings had a direct effect on the operation of sobriety checkpoints and reflected the dominant discourse surrounding their use.

In recent years, there has been a wide array of surveillance measures designed to govern this behaviour. In addition to sobriety checkpoints, report impaired driver programmes reflect a unique and nascent approach to governing impaired driving. Using the infrastructure of the 9-1-1 emergency hotlines, motorists who suspect someone is driving while impaired are able to alert

the police and provide the reasonable grounds needed by police to stop and assess a motorist's sobriety. While there are several programmes in operation throughout Canada, their novelty has resulted in very little attention in the academic literature. The seventh and final data source this thesis examined was an instruction manual published by the Ontario Community Council on Impaired Driving (OCCID). OCCID started an initiative called Operation Lookout that was designed to encourage communities to watch for impaired drivers and notify the police of suspected motorists. This instruction manual documented the steps needed to implement Operation Lookout in various communities and made suggestions for how best to ensure impaired drivers are kept off the road. As it provided detailed information regarding the use of this 'Call 9-1-1' programme this manual was a valuable data source for determining through which rationalities and technologies impaired driving is currently being governed as well as how and to what extent contemporary impaired driving programmes reflect Ericson's (2007) analytic of uncertainty.

To best answer the research question, this thesis adopted a Foucaultian genealogical approach to data analysis. For Foucault (2003), there are "always-already" (Hunt and Wickham, 1994: 89) multiple conceptions of various public issues with these varying discourses being activated at specific times due to their elective affinity with contemporary mentalities of rule. To determine through which mentalities and technologies impaired driving is currently being governed as well as how and to what extent contemporary governance of impaired driving reflects Ericson's (2007) analytic, this research analyzes the aforementioned texts to determine if the representation of impaired driving and the necessity of the programmes enacted to govern the behaviour reflect a preoccupation with uncertainty and risk. Genealogy represents a distinctive approach to the study of social issues. Attempts at governance including the recent focus on

impaired driving are historically contingent and fabricated from temporal interconnections. The aim of the genealogist is not to show that the historical progression of events leads inexorably to the present but instead to display how there are multiple and sometimes inconsistent knowledge discourses imbued within efforts to know and govern social issues (Foucault, 2010). There is no unity, teleology or destiny linking the historical progression of events; rather, social events are assemblages of multiple heterogeneous factors pieced together at specific points in history due to the interconnecting of knowledge and power discourses (Scheurich and McKenzie, 2007). Using a Foucaultian genealogical approach as a research method requires a strict rejection of traditional philosophical understandings of historical events. As there are always multiple conceptions of social issues which simultaneously structure efforts of governance, the genealogist takes as their mission the task of untangling this complex array of critical and effective histories (Dean, 1994) to see how they interconnect and structure attempts at governance in unique and historically contingent manners. The various types of discourses used in the governance of a problem are reflected in documents describing strategies of regulation (Rose and Valverde, 1998). Therefore, this study of governing impaired driving is an effort to determine how programmes of governance are implemented in accordance with specific mentalities and technologies of governance. Simply, how and to what extent do contemporary impaired driving programmes reflect Ericson's (2007) analytic of uncertainty? By using a Foucaultian genealogical approach this research thesis examines through which mentalities and technologies impaired driving is being governed and how and to what extent programmes implemented in the contemporary period reflect Ericson's (2007) analytic of uncertainty.

Analysis

Risk and Uncertainty in Social Liberal Governmentality

How a problem is governed, by whom, and who is targeted for governance, are questions vital to a governmentality analysis (Dean, 2010). Attempts to govern a problem shape how it becomes “known” and therefore controlled (see Hunt and Wickham, 1994: 89). Since the mass production of the automobile in the early 20th century, attempts at governing driving behaviour have “produced at least two new governable subjects” (Simon, 1997: 523) that had not existed previously; most notably, the driver and the pedestrian. How best to govern these subjects is fundamentally a question linked to governmentalities. It calls upon specific knowledge discourses that rely on various mentalities of rule. Each contains a “characteristically moral form” (Rose and Miller, 1992: 178) and is “articulated in a distinctive idiom” (Rose and Miller, 1992: 179) that structures the perception of social issues in multiple, idiosyncratic ways. This can be seen quite clearly within initial efforts at controlling driving behaviour on a macro level in the United States. Simon (1997) examines the first large scale effort on the part of a North American government to adopt national standards about how to control automobile accidents. The 1932 Report of the Committee to Study Compensation for Automobile Accidents, or the Columbia Plan as it is popularly known, was a governmental response to the growing problem of the automobile accident. It proposed mandated third party insurance for all drivers, complete abolition of fault for drivers involved in accidents, standardization of benefits, and administrative justice by an oversight board which would respond to the resolution of claims (Simon, 1997: 571). While it was not implemented into law, the Columbia Plan represents an effort at controlling automotive behaviour through distinctive strategies and technologies of governance that differ from contemporary efforts as in the case of impaired driving.

The Columbia Plan marks an approach to governing quite alien in the current neoliberal era. As a social liberal³ governmentality began to take shape in the 1930's⁴, risk in civil society became increasingly analyzed as part of a social issue to be aggregated and dealt with at the level of the population (O'Malley, 2002). Social liberal governmentality represents a political mentality that fosters the development of national growth and prosperity through the "promotion of social responsibility and the mutuality of social risk" (Rose and Miller, 1992: 24). This represents a distinct approach to governing social issues. What characterizes social liberal governance is the manner in which bio-political governmental technologies fuse with the mentality of social liberal governmentality. As Foucault (2003b: 242) conceived it, biopolitics is a technology of power which seeks to rule "man-as-species being". As a governmental technology, it is fundamentally concerned with rates among populations. Groups establish rates in birth, mortality, health, and education solely due to the fact that there are assemblies of people living in close proximity. Rates are established prior to any attempt at governmental control. Biopolitics is a form of power that seeks to govern the population through discovery of these rates in an attempt to maintain homeostasis. Issues that plague the population must be acted upon to ensure the continuing security of the populace. Fundamentally, biopolitics seeks to maintain the "biosphere" within which human population dwell (Dean, 2001: 47). By improving living conditions and fostering life while reducing death, the biosphere is maintained and the security of the population and future generations is ensured. Under social liberal mentalities of rule, biopolitical technologies were mixed with a mentality of governance that stressed

³ As stated by Lippert (2005: 5), social liberalism is also referred to in the governmentality literature as "liberal welfarism" or less often as welfare liberalism.

⁴ This is perhaps best exemplified by the wave of measures instituted by the United States Federal Government collectively titled the "New Deal" that effectively marked the introduction of Keynesian welfare-state politics in the United States.

governing populations around the norm (see Rose, 1996). Risks that affect the security of the population are to be brought under control lest the legitimacy of the state to maintain the security of its population be called into question.

The interpretation of risk as a collective issue to be mitigated at the level of the population is exemplified by the Columbia Plan of 1932. The Plan is important because of its attempt to implement the first systematic effort at governing driving behaviour on a national scale. Of its four key elements, the most important was the recommendation for “the complete abolition of fault” (Simon, 1997: 571) on the part of individual drivers. Instead of viewing the negative consequences of driving as aberrations to be corrected by driver’s adopting error-free behaviour (Featherstone, 2004), the Columbia Plan viewed the deaths and injuries associated with automotive transportation as an inherent by-product of this form of transportation. This idea is perhaps best illustrated by the ethical proposition allegedly put to students of American philosopher Morris Raphael Cohen:

Suppose an angel came down from heaven and promised the people of the United States a marvelous invention. It would simplify their lives; enable the injured to receive quick treatment; decrease the time of transportation by a large magnitude; bring families and friends closer together and create a life of far greater ease and convenience than exists today. However, in return for this grateful boon to human welfare, the angel demanded that every year 5,000 Americans be put to death on the steps of the Capitol. Having posed the question, the philosopher then asked the class what answer should be given to the angel. After the ethical dilemma had been discussed for some time, the professor pointed out that every year many more than 5,000 were killed in automobile accidents in the United States (Gusfield, 1981: 3).

Like Cohen, the Columbia Plan stipulates that instead of automobile accidents being a problem that arises solely from a lack of individual attentiveness or outright carelessness; calamities resulting from the widespread use of the automobile are inevitable. Individual fault cannot be applied in instances of traffic accidents since they are a fundamental element of automotive transportation. As seen in the case of automobiles, social liberal governance fosters inclusive

governmental approaches to risk. Instead of focussing primarily on the risky individual and targeting them for intervention, social liberal governmentality acts on all individuals through its focus on the aggregate rates that populations establish. This emphasis on risk as a constitutive feature of the population represents a unique focus on risk management that differs from the current neoliberal governmentalities.

Neoliberal Risk Management

Where risk under social liberal mentalities of governance saw a pooling of risks and inclusive normative governance, neoliberal mentalities see a handing back of risk from collectives to the individual. In his chapter on social security, Ericson (2007: 80) describes how the shifting of risk to the individual is underpinned by the threat of a collective “moral hazard” wherein social benefits are seen to be providing too much security and rendering individuals complacent. Under neoliberalism, risk becomes less a danger to the population in need of pooling and more suggestive of an individual threat which is to be mitigated by single entrepreneurial actors. In Foucault’s (2008) view, neoliberal policies differ markedly from those of earlier social liberalism. Programmes such as social security, redistribution, and revenue equalization become viewed as the epitome of unsound governmental policies. As the neoliberal state is believed to govern for the market (rather than through it), policies that do not actively foster individual entrepreneurship, competition, and “the multiplicity and differentiation of enterprises” (Foucault, 2008: 149) are to be avoided. The individual is believed to be not only capable of being responsible and enterprising but actively expected to do so. Whereas social liberal governmental efforts view the individual more as a passive actor which “largely subordinated free will” (O’Malley, 2002: 24), the neoliberal citizen is to be an active and enterprising subject.

By acknowledging risk is a governmental technology that is not a unified or homogeneous concept, attention is directed to how risk may be deployed in heterogeneous and conflicting ways. To un-pack the present assemblage of governmental discourses which structure the current effort to control impaired driving behaviours several of these ways will be explored. However, and in contradiction to Ericson's (2007) analytic, risk management initiatives are not the sole technology of governance involved in the control of impaired driving behaviour. Moral discourses emblematic of neoconservative mentalities of governance are also employed to structure attempts at governance. It is perhaps better to view contemporary technologies of governance in terms of their elective affinity to neoliberal or neoconservative political mentalities rather than ascribing risk management initiatives to one or the other (O'Malley, 2002). Governmental technologies which order the population in line with neoliberal mentalities see populations in terms of their riskiness, while technologies that order populations in line with neoconservative mentalities employ moral discourses that work alongside neoliberal technologies of risk. Each of these is elaborated in turn.

Actuarial Logic of Risk Management

Although actuarial logic gained prominence in the 1992 article *The New Penology*, contemporary understandings of actuarial risk management have expanded significantly beyond what Feeley and Simon (1992) initially described as a "pre-political logic" stressing incapacitation (O'Malley, 2009: 327). Current actuarial efforts designed to control risk in modern society have abandoned the foci that were so prolific under social liberal governmentalities with respect to their attention towards the risky deviant. For example, Becker's (1991) seminal book *Outsiders* exemplifies the contrast between social liberal governmental risk management with more recent actuarial efforts. Becker's (1991) primary

effort is to illuminate the social processes that have led to the marginalization of certain groups of “deviant people” based on historical discourses of morality and political economic opportunism. By focussing on marijuana users, Becker (1991) stresses that there existed specific constructions of drug taking that designed efforts at criminalization and control of these deviant populations. Actuarial logic differentiates itself from earlier work such as Becker (1991) by operating not around moral and political constructions of deviance but rather around calculations of risk among populations. Actuarial logic of risk management downplays the ‘problem individuals’ or social deviants that pervaded governmental efforts under social liberalism and instead focusses more on problematic situations.

Within the field of criminology, the actuarial logic of risk assessment is believed to be constitutive of scientific calculations of probability which are applied to populations. Actuarial logic does not grant moral-political weighting to wrongdoers but instead orders groups “based on the risk represented by an offender” (O’Malley, 2004: 326). Within an actuarial logic of risk management victims and offender are engaged in a symbiotic zero-sum gain relationship. The legal safeguards imbedded in the prosecution and punishment of potential offenders are believed to manifest themselves as a loss of potential justice for victims.

An actuarial logic of risk management is present in the contemporary victims’ rights discourse as they attempt to realize their desires for new measures designed to reduce instances of impaired driving behaviour. First of all, actuarial risk management is manifested by the use of aggregate quantitative statistics designed to foster awareness of the issue that needs to be controlled and gain perspective on the problem. In their annual reports to the public, Mothers Against Drunk Driving (MADD) Canada repeatedly states the number

of impaired driving trips taken by individuals in Canada is approximately 12.5 million (MADD Canada, 2011: 7). Furthermore, MADD Canada states that every year 1,200 people are killed by impaired driving, 68,000 are injured, and the societal cost borne as a result of impaired drivers is 21 billion dollars (MADD Canada, 2011: 6). The use of aggregated descriptive statistics is designed to gauge the scope of the problem and target a group of people as the focus of governmental intervention in behaviours such as driving. Impaired drivers are believed to present a significant threat to the general population and must be targeted for removal lest the continued risk they pose to victims remain present.

In what is perhaps its most intriguing trait, victims' rights discourse contains two separate logics pertaining to the actuarial risks associated with impaired driving behaviours. One seeks to manage what could be termed "responsible (although not sober) driving" and the other seeks to eliminate "drunk driving" or the high risk instances of this same behaviour. In keeping with the actuarial logic of risk assessment, "drunk" driving is believed to represent an action that immediately poses a threat to (potential) victims. Therefore, new laws are necessary to ensure that people who drive "drunk" are unable to perpetuate the harmful consequences of impaired driving. While seeking to eliminate harm from "drunk" driving, MADD Canada does not attempt to eliminate what it deems responsible drinking among adults aged 21 and older (Toomey, 2005). According to Feeley and Simon (1992: 455), what differentiates an actuarial logic from other approaches to risk is the inherent focus on "identifying and managing unruly groups", rather than the total elimination of potential risks. The victims' rights movement does not advocate for the complete sobriety of all drivers. Those who are responsible in their drinking are not targeted for intervention. It is a common misconception that MADD Canada is a neo-prohibitionist

organization seeking zero tolerance provisions on North American roads for all drivers (see Toomey, 2005). However, by stressing the management of the risky individual over the larger structural issues of alcohol availability and auto manufacturing/design, MADD Canada has been able to secure both financial and broadcasting support from large corporations that have ensured the prominence of their movement over others (Marshall and Oleson, 1994). The victims' rights movement (led by MADD Canada) promotes the management of impaired driving by differentiating between types of this behaviour based on probable risk to the population.

Where impaired driving is believed to pose a significant threat to the safety of the population, a zero sum game is imagined in which the risky behaviour engaged in by impaired drivers is believed to directly "represent risk to (potential) victims" (O'Malley, 2004: 334). As MADD Canada's 2010 Annual Report argues, "the excuses [for 'drunk' driving] are myriad, 'I've only had a few', 'I feel fine to drive', 'I'm only going down the street'. 'The outcomes are tragic' (3)". Clearly, "drunk" driving is not an act conceived as ending in a situation where both the driver and the victims exist in equilibrium. Any "drunken" driving event that does not result in arrest is categorized as an affront to impaired driving victims, even if no people were actually victimized. As stated by Constable Eric Booth in MADD Canada's 2003 Annual Report, "[drunk] drivers make victims' of us all... In my opinion, one [drunk] driver on our roads is one [drunk] driver too many (pp. 1, 11)". Even an act as simple as driving down the street while 'drunk' is believed to present a serious risk to the health and safety of others. By invoking descriptive statistics to shape the perception of the impaired driving issue and by seeking to sort and classify drinking and

driving based on risk, actuarial logic of risk management is present in the current governmental efforts to control impaired driving.

However, there is another element to actuarial logic that goes beyond simply classifying groups based on their respective risk factors. According to Hannah-Moffat (1999: 79) “actuarial governing does not necessarily leave individuals free” to act and then be governed according to their defined risk level. Instead, actuarial logic also pushes responsibility back onto the individual to actively monitor their behaviours and govern themselves according to these risk categories (O’Malley, 1992). This autonomous self-governance imposed under neoliberal governmentalities is a response to the omnipresent risk and uncertainty in contemporary liberal democracies. The Canadian government brochure, *Smashed: A Sober Look at Drinking and Driving*, reflects this preoccupation with risk awareness on the part of the individual as neoliberal citizens. Drivers are required to consider their behaviour and avoid the risk of impaired driving because “in the end, the decision to drink and drive or not is a personal decision” (Transport Canada, 2009: 5). Drivers should exercise their transportation options and do one of the following: “pick a designated driver (and offer to return the favour next time). Call a cab. Take the bus” (Transport Canada, 2009: 21). The preoccupation with individual responsibility as the locus of governmental efforts reflects a neoliberal mentality of governance.

The focus on individual risk avoidance as a logic of governance constructs questions of how to govern impaired driving in a way that neglects how this behaviour is influenced by socio-cultural conditions. In their 1981 ethnographic study of bar culture, Gusfield, Kotarba, and Rasmussen (1996) found that among regular drinkers, being able to “take care of themselves” (Gusfield et al., 1996: 123) is the hallmark of a competent drinker. Instead of drinking and driving being abnormal, bar culture facilitates the development of a social system in which not

drinking and driving is the aberrant act. As their ethnography was conducted in San Diego, a city noted for its large geographic size, the necessity of driving after drinking is further exacerbated by the often long distances necessary for drivers to travel home and the lack of mass transportation available in the late evening (Gusfield et al., 1996). The conceptualization of impaired driving as an individual risk to be mitigated is predicated on both specific behavioural norms as well as the existence of alternative transportation options. These options are increasingly absent as one exits urban areas as too often impaired driving “laws are made [only] for people in the city” (Legislative Assembly of Ontario, 2008: 4537).

In spite of efforts undertaken to convince individuals not to drink and drive, impaired driving is believed to be a problem which “despite stronger federal and provincial impaired driving legislation, frequent sobriety checkpoints and awareness campaigns ... continues to be a significant issue” (MADD Canada, 2009: 5). At this juncture we can observe a schism between risk mitigation as understood by neo as opposed to social liberalism. Whereas under social liberalism risks were to be aggregated, risk in the neoliberal state is to be a source of creative enterprise as it allows for people to gauge the likelihood of future events. The solution to the problem of negative risk within a neoliberal mentality of governance is to make people more aware of the risks they take and act to mitigate them. As O’Malley (2002: 26) states, under actuarial risk management “individuals are expected as far as possible to avoid such negative risks as crime, ill-health or unemployment ... but they must do so actively and on their own behalf”. This current manifestation of actuarial risk as a governmental technology is reflected in contemporary drinking and driving discourse. The necessity of raising awareness among the population is a central goal of victims’ rights discourse and structures state sponsored efforts at control. For instance, the Strategy to Reduce Impaired Driving (STRID) 2010 report states, as

per their recommendations, that many jurisdictions had implemented the recommended initiatives that seek to:

- Implement and maintain awareness programs in schools from an early stage (i.e. kindergarten through Grade 12) with appropriately targeted messaging.
- Highlight the costs associated with drinking and driving.
- Target/personalize educational campaigns for different audiences (STRID 2008: 5).

By highlighting the costs of impaired driving and aiming to raise awareness and educate there is an implicit assumption that these individuals are capable of being deterred and a simultaneous marginalization of structural level factors. Clearly, part of the official strategy to reducing impaired driving is molding citizens into better risk managers through increased awareness campaigns. By raising awareness, neoliberal citizens will incorporate new information about risk in their effort to govern themselves at a distance from the state in accordance with an actuarial logic of risk management.

Mixed Governmental Logics: Neoconservative and Neoliberal Governmentality

While the neoliberal logic of actuarial justice is present within victims' rights discourse, actuarial logic assumes the offender is morally neutral and inert (O'Malley, 2004). The will to commit harm is not a necessary characteristic of their behaviour to warrant punishment. However, this morally neutral view of impaired driving behaviour does not encapsulate all attempts at governing drinking and driving. Moral discourses also structure attempts at controlling impaired driving behaviours in manners that differ from the risk management orientations of both social and neoliberalism. Neoconservative mentalities interact with neoliberal ones in an attempt to govern the present and control impaired driving behaviour. However, neoconservative mentalities draw upon traditional conservative beliefs and therefore require elucidation. Conservative mentalities stress that "the ultimate test of a political arrangement is its contribution to good lives" (Kekes, 1998: 16). Under traditional

conservatism, there are primary values which derive from human nature that all good people agree upon. Additionally, “good” lives are lived by acquiring “secondary values” which vary based on time and location and are found by adhering to traditions while remaining skeptical of the emergent systems of thought that counter them (Kekes, 1998: 65-66). This conventional mindset is particularly evident in issues pertaining to immigration and child care where emphases on traditionalism shape governmental efforts (see Lippert and Pyykkonen, 2012). As there are believed to be universal notions of “good” and “evil”, conservative mentalities stress facilitating the moral while avoiding the immoral. Neoconservative political mentalities are chiefly differentiated from traditional conservatism in their championing of the state as the primary initiator of conservative morality (Brown, 2006: 697). The supposed necessity of moralized state power diametrically opposes neoliberal governmentality.

In the contemporary era, attempts at governing impaired driving behaviour employ hybridized/mixed knowledge formats that draw upon both neoliberal and neoconservative political mentalities. While specific liberal discourses of rational choice and actuarial logic are still employed within mixed knowledge formats, also present are moral discourses emblematic of neoconservative political mentalities which order populations in manners distinct from those of risk management. As far as the issue of impaired driving is concerned, neoconservative moral discourses are espoused most prominently by the largest impaired driving victims’ rights group, MADD. Public awareness brochures published by MADD Canada put forth their conception of the issue of impaired driving as a war between the malevolent actions of the impaired driver and the innocent victims and their families. For MADD Canada, a complex social problem is reducible to the individual actions and moral

fortitude of the impaired driver. For instance, MADD Canada's (2012) brochure "Impaired Driving: It Will Cost You Big Time" stresses that impaired drivers "cause thousands of traffic crashes every year" and furthermore that "drinking drivers are responsible for approximately one-quarter of all people killed on Ontario roads". The immoral actions of these drinking drivers are believed to directly result in the loss of innocent lives and therefore necessitate governmental intervention.

Mixed knowledge formats rely on pairing scientific discourse with heavily moralized cultural tropes. As a result, much of the dominant discourse regarding impaired driving stresses the importance of a low blood alcohol concentration to reduce the threat of drinking and driving. In an effort to frame the dangerousness of impaired driving, the scientific determination of impairment is used to remove doubt about individual idiosyncrasy. Simply, "[blood alcohol concentration] refers to how much alcohol is in someone's blood... a driver is not over the legal limit until he or she has reached a [blood alcohol concentration] of more than 80 milligrams of alcohol per 100 millilitres of blood" (Transport Canada, 2009: 12). Furthermore, as "blood flows through the body, it releases alcohol into the lungs in proportion to its concentration in the blood" while alcohol also "moves to your liver, which breaks down 90 per cent of it into carbon dioxide and water. The rest passes, unchanged, out of your body" (Transport Canada, 2009: 12-13). This biological description of alcohol and its effects on the human body authors a sense of legitimacy void of ambiguity. What could be termed the cultural trope of blood alcohol concentration is used to shape the problem of impaired driving by appealing to the legitimacy of scientific rigour. A high blood alcohol concentration is therefore believed to be "risky" regardless of the individual mitigating factors that may complicate this interpretation.

The use of hybridized or mixed knowledge formats in the shaping of populations is important because it calls attention to how scientific determinations of risk end up doing “old moral regulation work” (Moore and Valverde, 2000: 515). Scientific discourse is often used to structure the implementation of many of the same cultural tropes that have historically justified intervention into events and behaviours involving alcohol. For example, nearly ubiquitous throughout MADD Canada’s annual reports are the “facts” that “everyday 4 Canadians are killed and 187 more Canadians are injured in alcohol and drug related crashes” (MADD Canada, 2007: 6). What is left undefined is the degree to which the involvement of alcohol caused the adverse events which are the impetus for governmental efforts. This lack of definition continues the long historical trend of assuming that when alcohol is involved in situations with adverse effects, it is believed to cause. Indeed, that “the consumption of alcoholic beverages necessarily involves major risks to the public order” (Valverde, 2003: 237) is a belief so thoroughly naturalized as to appear beyond reproach. In fact, it often appears alcohol and disorder are inexorably linked (Valverde, 2003). This supposed link between alcohol and menace justifies the neoconservative disciplinary logic of the victims’ rights movement and undergirds their famous slogan, ‘If you drink, don’t drive’. Due to the hazards believed to be caused by the involvement of alcohol, good/moral drivers are those who do not drink before driving and contribute to a more benevolent future. Conversely, immoral or sinful drivers are those who have made the conscious decision to drink before driving and therefore threaten to directly cause an accident in which innocent people may be killed or injured.

It is at this juncture where the cultural trope of the killer drunk emerges. The evocative imagery invoked by a social actor who decides to “drive drunk” and causes the

death of an innocent person justifies the necessity of controlling impaired driving without having to demonstrate the actual empirical risk posed by those drivers (Gusfield, 1981). The necessity of preventing the deaths and injuries believed to be related to drinking and driving calls upon the immoral cultural trope of the killer drunk. The victims' rights discourse repeatedly states that "[w]e can and must stop the deaths and injuries caused by this violent crime" (MADD Canada, 2003: 1). The violence of the impaired driver and their harm to the victims of this behaviour become the primary focal point for the fight against impaired driving. While certainly compelling, much of the rhetoric of victims' rights groups evokes old fashioned imagery typically ascribed to utopian moralists (see Gusfield, 1986) and simply packages "old fashioned danger talk" (Moore and Valverde, 2000: 514) in a thin language of risk.

As Moore and Valverde (2000) state, complex assemblages of risk become simplified in mixed knowledge formats as neoconservative moral discourses structure the interpretation of social problems. Certain behaviours are more easily linked with negative outcomes due to their association with moralized substances such as alcohol. For instance, the "deaths and injuries that occur each year as a result of impaired driving" (MADD Canada, 2010: 7) are not believed attributable to the system of automobile centred transportation which puts high speed vehicles on the same roads as unprotected pedestrians. Instead, these calamities are used by the malevolent effects of alcohol. The victims' rights discourse does not attribute deaths from impaired driving to automobile transportation as a whole because these groups do not believe driving to be a dangerous activity in and of itself. Regardless, driving automobiles at high speeds remains an inherently dangerous activity that results in thousands of deaths each year as automotive infrastructure fundamentally shapes the layout of public

spaces for both drivers and pedestrians alike (Lochlan Jain, 2004). Even in light of this startling fact, “the automobile’s intrinsic potential for violence and its disruptive effects on the safety of public places have been systemically underestimated or, worse still, inexcusably obscured” (Poama, 2012: 935). To be clear, calling attention to the threats posed by automobiles in traffic accidents is not an attempt to suggest these are the “true” threats to public safety. This assertion simply replaces the impaired driver as villain with the automobile in the drama of drinking and driving. Rather, this is meant to show that neoconservative moral discourses work alongside scientific discourses of neoliberalism and shape the perception of certain (and push other) conceptions to the periphery.

While the focus on the individual impaired driver is understandable given the economic logic of neoliberal governmentality, the notion of the chronotope helps to explain how non-scientific discourses also shape the threat of impaired driving. Originally coined by Bakhtin (1981), a chronotope denotes a hybrid entity that assumes the existence of a unique space/time unit which is used to unify a group of potentially heterogeneous risk factors. Moore and Valverde (2000: 520) submit that attempts at governing night club activity relied on hybridized risk amalgams that employed moralistic melodrama and semi-scientific descriptions of specific illicit drugs simultaneously to shape the dangers of club activity for female patrons. The chronotope is employed to render explicit how scientific and moral discourses are used in conjunction with one another in the formation of governable populations and spaces. Rather than attributing the new governmental efforts designed to control impaired driving behaviour as the product of a successful moral panic, chronotopes facilitate more informed governmentality analyses while not diminishing the plight of those killed in impaired driving incidents (see Garland, 2008; Moore and Valverde, 2000).

Fundamental to the notion of the chronotope is both the construction of a space/time unit that employs moralistic melodrama as well as the use of semi-scientific knowledge discourses. First, central to MADD Canada's public awareness efforts are the use of melodramatic stories in which the risk to the normative order of society is threatened by the violent actions of impaired drivers. MADD Canada's annual reports from 2005 and 2007 present two such instances of melodrama which create a space/time amalgam that shapes the risk of impaired driving.

It's Saturday September 9, 1995... Just after 1:00 am ... Andrew Westlake and a crowd of about a hundred fellow students gathered outside a rural bar near St. Catharine's, where a Brock University's annual freshman party had just wrapped up. They were talking, laughing, waiting for rides and stepping into taxis lined up across the quiet two lane road. Some of the students heard an engine revving through the darkness, but no one was prepared for the Dodge Neon that so suddenly sped around the corner and then began to strike one student after another, after another, after another... (MADD, 2005: 2).

My husband Alfred was always a night hawk. Our day was his night. That's why on November 3, 2002, it wasn't unusual for him to be heading out to a coffee shop in the middle of the night. Tragically, he never made it. An impaired driver who had just hit a taxi and was speeding up to escape the scene ended up t-boning my husband's car in the middle of an intersection (MADD, 2007: 2).

These two stories employ a mixed knowledge format in which a unique composition of space and time creates a subject that necessitates swift state intervention. The fact that the stories occur late at night (when visibility is markedly reduced for all drivers) and affect innocent (sober) persons is a key reason for their inclusion. The banal nature of these actions, waiting for a taxi, socializing with friends, driving at night, and getting a coffee further amplifies the threat posed by the impaired driver. The focus on the impaired driver obscures the manner by which everyday social events such as driving at night are already imprinted by asymmetrical power relations. The production of large heavy cars which operate at all times of day on the same roadways as unprotected pedestrians represents one manner by which powerful social groups can

adversely affect the safety of all social interactions. However, the impaired driving chronotope unifies this assemblage of diverse issues and shapes the locus of governance around the crime of impaired driving. The havoc wrought by a dangerously impaired driver could easily occur at noon on any day of the week; however, especially in the first instance, the incident is stated as having occurred on a weekend late at night. These narratives are excellent examples of melodramatic story telling designed to compel emotional responses which call upon traditional moral discourses pertaining to alcohol and individual responsibility and govern populations in manners distinct from risk. This distinction is particularly stark in the second instance where the impaired driver caused a collision (presumably because of their impairment) and fled the scene only to mortally injure another driver a short distance away. The fact that these stories occur at night and on public roadways creates a space/time unit in which the problem of impaired driving is given shape. The dangers of roadways at night, of the widespread adoption of auto centered transportation, and the dangers of the over use of alcohol are fused together to create a governable subject that gains ascendancy through its pairing with scientific discourse of blood alcohol concentration and neoliberal technologies of risk. The simultaneous employment of moralizing melodrama alongside scientific discourse creates a powerful governable subject in the form of the impaired driver that relies on the individualized logic of neoliberal governmentality as well as moral discourses emblematic of neoconservative mentalities. Clearly, risk management techniques emblematic of neoliberal governmentality cannot be said to be the sole governmental technology used in the governance of impaired driving behaviours. Also present are moral discourses indicative of neoconservative mentalities which structure the problem of impaired driving using moral discourses and emotionally compelling melodrama.

Precautionary Logic

Among the many facets of the impaired driving movement, governmental technologies such as risk assessment vary as methods for organizing reality in manners conducive to controlling impaired driving behaviours (Ericson and Leslie, 2005). Whereas risk as a technology of governance under social liberal governmentality sees an increasing collectivization of risks as demonstrated by the Columbia Plan, neoliberal risk management stipulates individual entrepreneurial management. However, as deaths and injuries believed to be caused by alcohol impaired driving continue, precautionary logic develops with a specific focus on the governance of disasters. Precautionary logic confronts risk at its limits. Whereas “risk management is a family of ways of thinking and acting involving calculations about probable futures” (Rose, 2001: 7), precautionary logic moves beyond this and stipulates that the pursuit of security must encompass *all* possibilities. This is in spite of the fact that doing so is both an actual and epistemological impossibility (see Boyle and Haggerty, 2012). Precautionary logic therefore necessitates embracing the omnipresent threat of calamity in spite of the improbability of these events. In light of the constant possibility of catastrophe, precautionary logic embraces “zero-risk”, or risk against risk whereby threats are categorized on the inability to assign values to them (Dean, 2010b: 472).

However, precautionary logic does not apply to all potential risks that may face specific populations. Rather as Ewald (2000) states, the precautionary principle targets risks marked by two key features. First, those which feature a context of scientific uncertainty on one hand, and second a possibility of serious and irreparable harm on the other. This leads to measures being enacted that may or may not relate to any actual harm. It is enough to assume that harm could have resulted to justify punishment. This logic has been

documented by governmentality scholars extensively in the wake of the terrorist attacks of September 2001. As McCulloch and Pickering (2009: 636) note, much behaviour prosecuted under anti-terrorism legislation in the United States is “entirely unconnected to actual violence”. The word terrorism has become a cultural trope permeated with the imagery of mass calamity and apocalyptic violence. Where there is ambiguity over specific behaviour and the potential for irreparable harm, the fact that there is uncertainty regarding measures employed is not used as an excuse for failure to act (Ericson, 2007). Where uncertainty had previously been used as a criterion for innocence, current neoliberal governmentalities punish not solely on the basis of what harm actually occurred, but on what could have been expected to occur. This is seen in initiatives designed to control terrorism (see McCulloch and Pickering, 2009, Ericson, 2007), ‘anti-social behaviour’ (see Crawford, 2009) and also in the impaired driving movement.

Increasingly, efforts to move beyond risk management in the face of irreparable harm are present in the governance of impaired driving behaviours. Legislative efforts are progressively being directed at abating “the painful loss of a loved one whose life was taken due to a collision” (Legislative Assembly of Ontario, 2008: 4031). In keeping with the precautionary logic of Ericson’s (2007) analytic, governmental action is increasingly conceived in response to genuine tragedies (Legislative Assembly of Ontario, 2008e). Collisions believed to stem from alcohol impaired driving are not viewed as accidents but instead as “violent criminal acts that destroy innocent lives” (MADD Canada, 2006: 4). Therefore every person killed in an alcohol-related collision serves as an occasion for legislators to turn their loss “into an opportunity to prevent further tragedies on our roads so that others will not have to go through their tragic experience (Legislative Assembly of

Ontario, 2008: 4031). The focus on calamities related to impaired driving is noteworthy due to the fact that the province of Ontario's "roads are among the safest in North America and have been every year for more than a decade" (Legislative Assembly of Ontario, 2008: 4030).

As a form of behaviour engaged in by actors in a society characterized by a dependence on auto centric transportation, impaired driving is a significant source of uncertainty in liberal social imaginaries. This is partially due to the long history of regulation of alcohol problems (see Levine, 1984; Valverde, 1998) but also to how the offence of impaired driving is criminalized. The Criminal Code of Canada states:

253. Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not, (a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or (b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

Firstly, article 253(a) of the Criminal Code of Canada allows for subjective determinants of impairment to become legal standards. In instances where impairment is not determined from blood alcohol concentrations, law enforcement officials determine a suspect's level of intoxication from a series of field sobriety tests believed to indicate impairment. These can include a horizontal nystagmus test⁵ or having the suspect walk a straight line and/or touch their hands to their nose with their eyes closed. These tests are qualitative and require no special expertise on the part of the person conducting them. Intoxication is not believed to be a condition whereby "special knowledge or training" (Levi and Valverde, 2001: 838) is needed to determine if the condition is present. Impairment and the degree to which a

⁵ This test involves having the subject visually track the movement of an object (i.e. a pen) and observe spontaneous eye movement as their eyes move horizontally.

person's faculties are compromised are instead believed to lie in the realm of common sense. Heuristic determinants such as being too "drunk" to walk a line become legal standards of impairment and justify governmental action. Scientific uncertainty pervades where impairment is able to be determined by lay individuals using qualitative tests.

While these qualitative standards possess legal authority in section 253(a) of the criminal code, the criminal charge of impaired driving is usually meted out differently. The most widely recognized evidence leading to individuals being charged with impaired driving is breathalyzer tests that are believed to determine the suspect's blood alcohol concentration. In determining the amount of alcohol in drivers' bodies, police officers typically ask that suspects provide a breath sample at roadside that registers a simple 'pass or fail' reading. This serves as the reasonable and probable grounds for police officers to request suspects provide another breath sample into an approved screening device. The approved device gives a chronometric reading of blood alcohol concentration. Section 253 (b) of the Criminal Code of Canada criminalizes the act of "having care or control" of a motor vehicle with a blood alcohol concentration of 80 milligrams or higher in 100 millilitres of blood. As determinants of impairment, blood alcohol tests have legal authority because blood alcohol is believed to be "fully isometric with behaviour" (Gusfield, 1981: 65). However, experience with alcohol, age and sex all influence how alcohol affects the faculties of drivers. It cannot be said resolutely that all drivers who register a blood alcohol concentration of .08g/dL or higher are impaired. The chronometric tests of impairment are instead what literary scholars term a 'synecdoche', where a part of a body is taken as the whole. Blood alcohol studies are most useful at determining impairment when taken in conjunction with other relevant factors such as time of day, conditions of roads and

automobiles, age, experience, and sex (Boorah, 2011). This is because breathalyzers suffer from a logical fallacy whereby the outcome of a test, positive or negative, is used to determine whether a condition exists. This confuses the probability that a person would test positive if they were driving under the influence with the probability that a person was driving under the influence if they tested positive. As such there is a degree of uncertainty in chronometric tests for blood alcohol which becomes paired with a perceived likelihood for irreversible harm and fosters the implementation of precautionary logic.

Where the legal system fails to prevent irreversible and catastrophic failures, precautionary logic is fostered and we are to expect that which is unlikely. The legal system acts as a form of risk management in its efforts to ensure the security of the population (see Levi and Valverde, 2001). It is expected that new laws will convince drivers not to drive after drinking and prevent the deaths and injuries from impaired driving. As it concerns the impaired driving movement, we have seen increasingly restrictive ideas proliferate in the governance of this behaviour. For example, Frank Klees of the Progressive Conservative Party of Ontario stated that “there should be not one ounce of alcohol on anyone that gets in front of a wheel” (Legislative Assembly of Ontario, 2008b: 4446). Clearly, where there is scientific uncertainty on one side and a threat of irreversible harm on the other, precautionary logic becomes instituted as a method of preventing catastrophic harms in an effort to provide security for liberal populations.

Counter-Law One

In neoliberal political cultures obsessed with uncertainty, counter-laws become the way reality is programmed in line with this governmentality. New forms of legislation, though not necessarily new *criminal* laws become enacted at the expense of traditional

standards of justice. This is done in the name of providing security for a society increasingly invested in governing behaviour in an a priori fashion (see Zedner, 2007). Legislation in Ontario has been especially oriented towards regulating the actions of young drivers with the recently passed Road Safety Act of 2009 serving as one prominent instance of this trend. The Road Safety Act creates a zero tolerance provision as it pertains to the blood alcohol concentration of drivers aged 21 and under. While possessing a blood alcohol concentration remains decriminalized, the Road Safety Act allows for the governance of specific populations using the legal system in a manner analogous to criminal sanctions. A record of the offence is maintained on the driver's performance record to which insurance companies have access (Legislative Assembly of Ontario, 2009). Therefore, while violations of this administrative offence do not carry criminal penalties, there remains the possibility for significant extrajudicial fines in the form of increased insurance premiums or greater restrictions in insurance policies.

The history of young driver regulation is replete with governmental initiatives and therefore several points of interest must be acknowledged when considering the counter-law characteristics of the Road Safety Act. First, prior to this legislation fully licensed drivers under the age of 22 were permitted to drive with blood alcohol concentrations beneath .05 g/dL before they could expect to incur sanction⁶. Second, the zero tolerance provision for young drivers is by no means novel to Ontario driving legislation. Since 1994, under the graduated licensing programme new drivers have been held to zero tolerance standards until they achieve their full license. Furthermore, individuals under the age of 19 are not legally

⁶ In Ontario, police are able to remove any motorist from the road who they suspect is incapable of driving safely, regardless of their blood alcohol concentration. However, drivers are typically not sanctioned for registering blood alcohol concentrations below .05 g/dL.

permitted to drink. In light of these pre-existing restrictions, this thesis examines the Road Safety Act as it pertains to controlling the behaviour of fully licensed drivers aged 19 to 21 inclusive.

The Road Safety Act brings into effect new measures that function to increase the capacity of the judicial apparatus to govern impaired driving behaviours. At its heart, the Road Safety Act comprises two initiatives pertaining to impaired driving. The first grants police the power to impound vehicles of drivers who register a blood alcohol concentration exceeding the legal limit as well as those who refuse to submit to a breath test. The second element and the one which is the focus of this thesis is what has been colloquially termed the “Under-21 Prohibition”. Whereas all new drivers in Ontario are prohibited from possessing a blood alcohol concentration while participating in the province’s graduated licensing programme, the zero tolerance provision of the Road Safety Act effectively extends this amount of time for young drivers from age 19 to 21 inclusive. Prior to this, fully licensed drivers aged 19 or older could register a blood alcohol concentration below .05 g/dL before they would reasonably expect to incur sanctions. It is noteworthy this zero tolerance extension does not apply to drivers who acquire licenses when they are older than 21. These drivers are subjected to the standard blood alcohol restrictions of the graduated licensing programme.

As Ericson (2007) employs the concept, the first form of counter-law is demarcated from initiatives that are simply restrictive. Counter-law one is enacted to pre-empt imagined sources of harm and are employed as “the strongest statement of the authoritative certainty by government” (Ericson, 2007: 24). It is this focus on imagined harm that differentiates counter-law one from what may be more restrictive or punitive programmes (see Levi,

2009). Crucial to this legislation embodying a form of counter-law one is its purpose in mitigating imagined and not necessarily empirical sources of harm (Ericson, 2007). The Road Safety Act embodies this preoccupation with harm and an inherent necessity to pre-empt these problems. This emphasis on pre-emption fundamentally differs from the disciplinary mechanisms of government that flourished under social liberalism and which focussed on reactive investigation (Deukmedjian, 2013). Key to the implementation of the Road Safety Act is the harm that results from automobiles as this excerpt from the Ontario Legislature details:

Every day, two people are killed and ten more are seriously injured on Ontario's roads. Many of these collisions are, in fact, preventable. To combat some of the most persistent and dangerous driver behaviours, we need to make drivers understand the consequences. Today I am introducing new legislation that will, if passed by the legislature, keep our young drivers safe and get drunk drivers off our roads (Legislative Assembly of Ontario, 2008: 4030).

The harms that result from drivers, and in particular, “drunk” drivers are believed to be such a danger that new measures must be enacted to make roads safer and ensure these harms are prevented. The question of whether or not these measures are necessary has to do with issues of safety and “keeping kids alive” (Legislative Assembly of Ontario, 2008: 4438). In fact, the need to pre-empt imaginary sources of harm has the effect of polarizing the debate as those who act against proposed measures are deemed to be in support of the adverse conditions that seemingly proliferate.

Another of counter-law's key traits is its focus on revoking legal safeguards and due process standards that may prevent ideal certainty of detection, apprehension, and punishment. Whereas prior to the establishment of the Road Safety Act young drivers between 19 and 21 were held to the same standards of justice as their older counterparts. These traditional standards of justice have been revoked to ensure that drivers believed to pose an increased threat of harm

are expedited by the judicial apparatus. Rather than ensuring the behaviour of these individuals is actually harmful, it is enough to suspect their behaviour could pose harm to justify sanctions against these individuals. It is no longer necessary to prove that young drivers have committed an affirmative action, or a failure to act. Nor is it necessary to prove intention to commit an offence. The traditional standards of prosecution in the form of *actus reus* and *mens rea* are suspended as only the counter-law “principle of *finus reus*: when criminalization is necessary for national security” (Ericson, 2007: 48), is necessary to justify governmental action in the prevention of imagined sources of harm. The necessity of preventing imagined sources of harm moves beyond actuarial assessments of harm to prevent imagined tragedies as this anecdote from the Ontario Legislature illustrates:

I remember a good friend of mine who was a baseball coach and recounted going to an accident with young people in the car and one of the kids who was killed was a kid he had coached. So it had a very profound effect as he was extracting that young man from a vehicle, and the person was unfortunately killed on that occasion. Police officers will tell you this and ambulance attendants will tell you this but here’s what OPP commander Bill Grodzinski had to say: “This legislation is extremely positive and it should go a long way to reducing the toll of tragedies we see on our highways and our roadways on a daily basis (Legislative Assembly of Ontario, 2008b: 4439).

To prevent these harms and others like them there is a perceived necessity to enact strict new regulations that ignore the traditional principles of justice as well as previous standards of due process. New drivers are not being held to the same due process standards as their older counterparts or those standards to which they were previously held. Nor are new drivers being held to traditional standards of justice that necessitate the commission of an illegal act. Rather, drivers under the age of 22 are being held to the counter-law principle of *finus reus* whereby the perceived risk of their action is deemed such a threat to the security of the population that governmental intervention is assumed to be obligatory.

In keeping with the preventative logic of counter-law, populations are conceptualized based on their imagined threat to social interaction. These groupings function as a governmental technology for shaping a segment of the population as targets for governmental programmes such as the Road Safety Act. In addition to revoking standards of due process for groups imagined to pose a significant risk of harm, there is also an increasing tendency to treat these imagined sources of harm as offences. This is an increasingly common practice in political cultures characterized by neoliberal governmental tendencies (see Ashworth and Zedner, 2008). One area where this trend is particularly evident is in counter-terrorism legislation passed in the wake of September 11th, 2001. As McCulloch and Pickering (2009: 631) state, there is an increasing tendency towards criminalization of conduct labelled “terrorist-related” even if there is no evidence to suggest harms have occurred or were intended. In a related vein, the Road Safety Act’s concern with the behaviours of impaired drivers and the necessity of removing this aberrational individual from highways fuels the collective drive for more restrictive initiatives.

The tendency to treat imagined sources of harm as offences is how Ericson’s (2007) conceptualization of counter-law differs from Foucault’s (1995). The task of governing is increasingly taken up with efforts to reduce imagined sources of harm through expansion of the judicial apparatus. As Garland (1996: 446) states: “[r]ates of property crime and violent crime... have become an acknowledged and commonplace feature of social experience” that have begun to “erode one of the foundational myths of modern societies: namely, the myth that the sovereign state is capable of providing security, law and order, and crime control within its territorial boundaries” (1996: 448). While in much of society legal infractions are governed at a distance (see O’Malley, 2010), contemporary impaired driving governmental efforts are specifically aimed at reasserting the state’s capacity to govern modern society that is deemed to be

threatened. Beginning in the 1980's "governments began to pass strict new laws and police forces tried hard to reduce drinking and driving" (Transport Canada, 2009: 7). As imagined sources of harm are believed to threaten the capacity of the state to provide security, counter-laws are enacted to prevent this from occurring. For impaired driving, this means certain segments of the population are believed to be in need of more authoritative governance (see Dean, 2002) due to their inability to practice their own 'ethical despotism' (Valverde, 1996) upon themselves. As Moore's (2000) study of university student life has found, imagined sources of harm are treated by university personnel as offences in need of interventionist programming most often when they are linked to the use, or over use of alcohol. Where there is a connection to a highly moralized substance such as alcohol which is believed to threaten the governability of specific populations, authoritative action is taken to manage these imagined sources of harm as offences.

The tendency to treat imagined sources of harm as offences is particularly noticeable in the disturbing tendency to treat uncertainty in a manner analogous to crime. Individuals are increasingly being penalized based not simply on what they could have known or should have reasonably known (see Levi and Valverde, 2001) but instead based on what they should have expected. Uncertainty is increasingly being treated as an offense and exceptions are progressively being muddled. This is particularly evident in this selection from the December 4th meeting of the Legislative Assembly of Ontario where the necessity of the zero tolerance provision is debated:

As has been pointed out, .0 could be problematic from the perspective that if you're taking cough medicine- some of the liquid ones you can take- you're going to be blowing over .0 and you're not even taking alcohol, so you could technically be charged for driving under the influence because you have a cold and you're taking medication (Legislative Assembly of Ontario, 2008c: 4454).

Due to the highly moralized involvement of substances such as alcohol, uncertainty as to how regulations should apply, which may have served as a vindicating factor previously, are being increasingly ignored in the pursuit of certainty. The act of driving with very low blood alcohol concentrations had previously not been a focus of legislators. However, we are currently seeing this behaviour being lumped in with the dangerously impaired as the efforts to govern drinking and driving increasingly disregard uncertainty as a vindicating factor. The necessity of the zero tolerance provision of the Road Safety Act is deemed necessary because “drinking drivers aged 19, 20, and 21 have the highest rates of involvement in both fatal collisions and collisions overall” (Legislative Assembly of Ontario, 2008b: 4442). What are seldom considered within the legislature are the ulterior ways blood alcohol concentrations can manifest themselves. Not all who register blood alcohol concentration levels fit the traditional archetype of the drinking driver. However, as past studies by Moore (2000) and Levi and Valverde (2001) have shown, when alcohol is correlated with harm the link is often taken to be causal. In cases where alcohol is involved in social problems authorities may be expected to assume “based on their common sense knowledge that alcohol is a causal factor in the impugned incident” (Moore, 2000: 418). Because their behaviour matches others believed to be harmful the fact that there is uncertainty over the efficacy of measures proposed does not prohibit use of measures as a way to ensure certainty and prevention of harm (Ericson, 2007).

Through its attempts to pre-empt imagined sources of harm and by removing traditional legal safeguards and standards of due process the Road Safety Act 2009 fits Ericson’s (2007) notion of counter-law one. Where there are believed to be increased threats to the security of the population, traditional standards of law are revoked and imagined sources of harm are treated as offences in preventative efforts. As Gusfield (1981: 65) states, where legal limits had previously

been set high to account “for many people and many situations” and the continued uncertainty of alcohol’s effects on individual drivers, they are now being set low in an effort to pre-empt imagined sources of harm. The fact that there is uncertainty over the risk these drivers pose is not a significant obstacle to the implementation of these measures designed to pre-empt the imagined sources of harm at the expense of traditional standards of justice.

Counter-Law Two

The study of social problems via the governmentality analytic is primarily concerned with “regimes of truth” that define legitimate governmental efforts throughout history (Cotoi, 2011: 111). As Ericson (2007) assumes that the neoliberal goals of downloading responsibility and encouragement of entrepreneurship have become the new logic of legitimate governmental action, it follows that this centrifugal logic would promote securitization and not discipline as under centripetal social liberalism. In an examination of impaired driving surveillance programmes, this thesis differentiates between securitizing and disciplinary surveillance. Contemporary programmes adhering to both securitizing and disciplinary logics continue under neoliberal governmentality. As such, any attempts to move beyond discipline and into a “post-disciplinary order” (see Castel, 1991: 293) may run the risk of muddling important distinctions between these two logics. As it pertains to controlling impaired driving in Ontario, sobriety checkpoints and report impaired driver initiatives seem to have become the primary methods for detecting and apprehending impaired drivers. Each of these is elaborated in turn to determine how and to what extent they fit Ericson’s (2007) notion of counter-law two.

Sobriety Checkpoints and Surveillance

While not a particularly novel approach to controlling impaired driving in Ontario, sobriety checkpoints have grown in prominence since 2008 when the Liberal government

committed to doubling the provincial budget for such programmes (Government of Ontario, 2012). Originally begun in 1977 as Reduce Impaired Driving in Etobicoke (though later changed from Etobicoke to Everywhere (RIDE)), RIDE programs serve as Ontario's main provincially funded sobriety checkpoint. As detailed by the Traffic Injury Research Foundation (TIRF: 2011: 1), RIDE programs involve police officers stopping all passing vehicles or a predetermined systematic selection of automobiles (i.e. every fifth is stopped, etc.) for inspection at roadblocks whose location is typically determined by a high prevalence of 'alcohol related accidents' (The Globe and Mail, 1979, May 8: TIRF, 2011). Officers approach the driver and identify themselves while simultaneously explaining the purpose of the stop and determining whether or not the driver had consumed alcohol and/or shows signs of intoxication (TIRF, 2011). Drivers that show signs of impairment are detained in a safe area where they are asked additional questions and where they may be required to take a preliminary breath and/or field sobriety test. Those who fail a preliminary breath test are then required to perform another test on an approved screening device that gives a chronometric reading of blood alcohol concentration. These data are used as the primary source of evidence for charging instances of impaired driving behaviour. As reported in the *Globe and Mail*, sobriety checkpoints are believed to be a necessary form of surveillance because "when motorists are convinced that the chances of getting caught are high, there will be a dramatic reduction in impaired driving" (Katz, 1984: L8). The increased chance of impaired driving being detected is believed to deter the driver from driving after drinking.

To determine how and to what extent RIDE programmes are instances of counter-law two it is necessary to determine if these programmes, as they have been conceived to control impaired driving, are oriented towards governing in a centripetal or centrifugal manner. To accomplish this, it is useful in this instance to perceive sobriety checkpoints as analogous to

borders between nations. As traditional markers of sovereignty there is little per se disciplinary in the surveillance apparatuses employed at borders (Walters, 2006). Rather, there is a distinctive attempt to determine the level of threat posed by individuals as they attempt to cross from one sovereign region to another. Borders primarily govern issues of access and have “always been in the business of distinguishing the wanted from the unwanted, the safe from the dangerous, the national from the foreigner” (Walters, 2006: 198). As such, individuals are subjected to surveillance to determine if they are allowed to cross into another sovereign jurisdiction. Those who exceed a predetermined threshold of tolerance are selected for additional screening and allowed to pass or rejected. Borders distinguish between the wanted and the unwanted, the benevolent and the malevolent, and therefore operate according to the securitizing logic of war and defense (Deukmedjian, 2013) where “fixed standards and norms are made to float” (Walters, 2006: 191). There is no distinguishable attempt at reform and retraining but rather a determination of acceptance or rejection based on allowable thresholds of tolerance.

In a manner analogous to borders, sobriety checkpoints abandon attempts at disciplinary reform. Drivers exceeding the allowable threshold of tolerance for intoxication are removed from the road and penalized. There is a distinctive orientation towards the removal of threats to public safety that manifest themselves as impaired drivers. It is important to realize that all impaired driving is not targeted by sobriety checkpoints. RIDE programmes often catch and release drivers who have been drinking as evidenced by the following anecdote in the December 20th, 1993 issue of the *Globe and Mail*:

About two hours into his shift, Constable Parsons approaches a brown Hyundai sedan. The 62 year old driver rolls down his window and Constable Parsons asks him, ‘Have you had anything to drink this evening?’ ‘No’ says the driver. But the policeman is skeptical. He can smell traces of alcohol on the driver’s breath. He moves his head a little closer to the driver to confirm his suspicion. He repeats the question: ‘Have you had anything to drink tonight?’

‘No’, repeats the driver.

‘Well you had something to drink tonight, Sir. I can smell it on your breath.’

A few seconds later the driver admits: ‘I had a beer.’

Constable Parsons orders the driver to pull his car over to the side where he administers a breathalyzer test. The driver passes so he’s free to go (Viera, 1993: A10).

As this example illustrates, sobriety checkpoints concern themselves primarily with drivers who exceed an allowable threshold of tolerance. Minor deviations characterized by slight drinking and driving are allowed while threshold violations become the primary locus of governmental control in accordance with a centrifugal logic of war and defense. Drivers are sanctioned for their violations of thresholds and not their adherence to a specified norm. As Levi and Valverde (2001: 826-827) remark, “a common knowledge has been deployed to responsabilize drinkers in drunk-driving cases despite whatever knowledge they may have of their own capacity or ability to drive”. Drivers who are believed to exceed an allowable threshold of conduct are targeted for governmental control whether or not their current state actually prevents them from driving in a normal manner. Police may stop and eventually charge drivers with the criminal offence of impaired driving even if “there was nothing improper about [their] driving or the condition of [their] car” (*Dedman v. The Queen*, 1985: 10). The norm as the measure for policing impaired driving behaviour is abandoned in an effort to pre-empt imagined sources of harm. Thresholds of tolerance are enacted beyond which drivers are believed to pose undue risk to the security of the population whether or not this matches the empirical reality. As the case of *Dedman v. The Queen* (1985) illustrates, adhering to normative driving behaviour will not allow suspected impaired drivers to avoid sanction if they are found to violate acceptable thresholds of tolerance. The centrifugal governmental logic of RIDE abandons attempts at reform and retraining and therefore adheres more closely to the centrifugal securitizing logic characteristic of neoliberal governmentality.

Report Impaired Drivers and Surveillance

In addition to sobriety checkpoints, a new and innovative surveillance apparatus called report impaired drivers (RID) has been introduced in Ontario. Taking advantage of the near ubiquitous presence of cell phones within the general population, RID initiatives encourage individuals to call 911 if they suspect someone is driving while impaired. RID initiatives are mobilized by individual communities who set up their own ‘franchises’ as limbs of larger organizations. These larger impaired driving organizations include groups such as MADD, Report All Impaired Drivers, and the Ontario Community Council on Impaired Driving (OCCID). These groups provide guidance and recommendations for fledgling community programmes as they coordinate their efforts with volunteers and government personnel. Several of these groups provide specific advice about how to effectively have impaired drivers removed from roadways. For example, in their *Operation Lookout: Best Practices Manual*, OCCID (2008: 6) suggests citizens who believe someone is driving while impaired should contact police and state:

- (1) That they have seen an impaired driver.
- (2) The location.
- (3) Vehicle description (i.e. licence plate number, colour, make and model).
- (4) Description of travel.
- (5) Description of driver.

The necessity of reporting suspected impaired drivers is believed so dire that citizens are encouraged call the police even if they themselves are driving and leaving the road would cause them to lose sight of the suspected impaired driver. This is in spite of recent legislation prohibiting the use of handheld devices while driving (see Babbage, 2009). Programmes such as Operation Lookout are designed to encourage ordinary people to look out for and report impaired

drivers. As such they have a democratizing effect on the judicial apparatus. No expertise is necessary and anyone can report another driver.

As a governmental programme meant to control instances of impaired driving behaviour, RID initiatives govern drivers using apparatuses of security distinct from those of sobriety checkpoints. Through a partnership between community members and police officials, the Operation Lookout RID programme employs a checklist of driver behaviours believed to be indicative of potentially harmful conduct. Under the section for ‘How to Spot’ impaired drivers Operation Lookout’s (OCCID: 2008: 6) ‘Best Practices Manual’ lists ten behaviours that are indicative of someone driving while impaired. These behaviours include:

- 1) Driving unreasonably fast, slow or at inconsistent speeds.
- 2) Slowly drifting in and out of lanes.
- 3) Driving without headlights, failing to lower high beams, leaving turn signals on.
- 4) Tailgating and changing lanes frequently at excessive speeds.
- 5) Making wide turns, changing lanes or passing without sufficient clearance.
- 6) Overshooting, stopping well before or disregarding signals and signs.
- 7) Approaching signals or leaving intersections too quickly or very slowly.
- 8) Driving with windows open in cold or inclement weather.
- 9) Stopping without cause in a live traffic lane.
- 10) Driving in low gear for no apparent reason or frequently grinding gears.

Clear from even a cursory reading of this list is how minor deviations are meant to convey concern that a driver may be impaired but are not themselves the target of governmental power.

What is most notable from points one, three, six, seven, eight, and ten is that these all include behaviours that are not themselves do not seem to be harmful themselves but rather are believed to be indicators to harmful behaviour. This differentiates the governmental logic of RID initiatives from disciplinary mechanisms which concentrate on the smallest of infractions (Caluya, 2010). In fact, “the smallest of infractions must be taken up with all the more care for it being small” (Foucault, 2007: 45). This is done in the hope of preventing larger unwanted

behaviour and ensuring the continued governance of docile subjects. However, RID programmes operate not according to a disciplinary logic of order maintenance and prevention, but rather to a securitizing logic of war and defense. Disciplinary mechanisms categorize social behaviour into dichotomous categories of permitted and forbidden, good and evil (Caluya, 2010); however, apparatuses of security allow both to occur within predetermined thresholds to determine how they will function in relation to another. RID programmes allow minor deviations in driving behaviour to occur and use these as the basis for intervention to determine if the suspected harmful behaviour is exceeding the predetermined threshold. For example, drivers who are “driving with the windows down in cold or inclement weather” (OCCID, 2007: 6) may be made the subjects of governmental intervention but will not likely garner punishment unless they are proven to exceed the threshold of tolerance for drinking and driving. Whereas disciplinary mechanisms of governance would correct small deviations in driving behaviour solely for their being deviations, apparatuses of security allow these minor behaviours to occur below thresholds of tolerance but use these as indicators of potential security risks.

Although both RID initiatives and sobriety checkpoints operate according to security logics, RID programmes operate by submitting drivers to surveillance apparatuses unwittingly. Whereas police in Ontario filter drivers through highly visible sobriety checkpoints, RID initiatives monitor driver behaviours without their knowledge and thereby seek to govern their conduct in a unique manner. By using potential indicators of harmful behaviour as the primary impetus for governmental intervention, RID initiatives function in a similar vein as the special investigations units (SIU) Ericson (2007: 106) analyzes and that are increasingly employed by many disability insurers. To ensure that fraudulent claimants are not permitted to receive continued benefits and therefore risk the viability of the insurance system for all claimants,

disability insurers are increasingly investing in surveillance initiatives that monitor those who are receiving disability benefits. The surveillance carried out by SIU's depends in large part on physical monitoring of claimants by undercover operatives who try and capture suspects on camera doing things that negate their claims of injury. For example, Ericson (2007: 106) documents one claimant who stated that their injury was exacerbated by medical testing although in the days prior they had been photographed participating in a "Rambo-esque archery tournament, in which [they] traveled in camouflage fatigues and crawled across all kinds of terrain". This evidence was then used to justify their exclusion from continued coverage. Both disability insurers' SIU operations and RID initiatives monitor the behaviour of persons of interest to determine if their actions justify their exclusion from either insurance coverage or driving, respectively. Both seek to monitor and target behaviour that would indicate a security risk is occurring. However, neither of these types of monitoring are particularly concerned with ensuring that the power of 'the gaze' is internalized within the object of surveillance. In contradistinction to Orwell, "today's Big Brother is not about keeping people in and making them stick to the line but about kicking people out and making sure that when they are kicked out that they will duly go and not come back" (Bauman, 2006: 25). The increased focus on securitization over discipline creates an interesting problem within Ericson's (2007) analytic and it is to this issue that I now turn.

Impaired Driving Surveillance as Counter-Law Two

While his approach to advancing surveillance studies in the 21st century is novel in its attempt to marginalize the importance of the panoptic metaphor, Ericson's (2007) analytic suffers due to a lack of distinction between disciplinary and securitizing surveillance practices. While we are not living within an 'electronic' (Gordon, 1987) or 'super' panopticon (Poster,

1990) as some have suggested, Ericson (2007) states that we are situated beneath a series of diverse, discrete institutions that contain the potential for interconnectedness and which break down the population into discrete units for monitoring and comparison (Haggerty and Ericson, 2000). This approach is more appropriate than those that suggest the existence of an ever expanding panopticon but it does not differentiate between disciplinary and securitizing mechanisms of government which causes it to muddle important distinctions in governmental programmes.

The most prominent understanding of disciplinary governmental mechanisms used in sociological studies today was presented to the field via Foucault's (1995) 1975 book, *Discipline and Punish: The Birth of the Prison*. In what may be the most widely disseminated part of any of his works, Foucault's (1995) examination of panopticism analyzes the manner in which surveillance is applied to subjects via the hierarchical organization of centralized institutions. In developing the notion of the surveillant assemblage, Haggerty and Ericson (2000) sought to expand understandings of surveillance by focussing on the ways that surveillance institutions operate horizontally as part of a multiplicity. While it was developed to displace the central dominance of Foucault's panopticon in contemporary surveillance studies (see Haggerty, 2006), the surveillant assemblage instead mistakenly focusses on the ways in which many different panopticons can work together horizontally. For instance, the idea of the surveillant assemblage assumes that various centres of calculation (i.e. police stations, military, and financial institutions) may work together to form a unique aggregation of data which can structure governmental efforts. This approach fails to differentiate between the internal governmental logics of these centres of calculation. The surveillant assemblage requires we assume that police forces and military headquarters operate according to the same disciplinary or securitizing logic

in their respective governmental approaches. It seems that the surveillant assemblage moves to describe modern surveillance practices before a coherent understanding of surveillance is present.

While Ericson's (2007) counter-law two differs from the panoptic metaphor it shares with it its disciplinary nature and centripetal governmental logic. The goal of counter-law two is to introduce breaks and striations into otherwise free flowing phenomena in order to monitor the population in relation to normative patterns of behaviour (Haggerty and Ericson, 2000) and ensure disciplinary self-governance (Ericson, 2007). Through the surveillant assemblage's focus on counter-normative behaviour, individuals will become aware that they are being monitored and seek to discipline themselves in the future. As conceptualized by Foucault (2007), this is indicative of centripetal governmental tendencies as discipline governs inward and monitors the smallest elements of social interaction to determine their relation to norms of social behaviour and target specific individuals in the interest of "order maintenance, order reproduction, and so on" (Deukmedjian, 2013: 55). Actions that do not adhere to the acceptable behavioural norms are targeted for intervention and correction no matter the degree of deviation. This governmental logic starts from the "greatest common divisor... and programmatic action becomes directed at the lowest common structure" (Deukmedjian, 2013: 60). Centripetal governance is perpetually bound up with the central doctrine of liberalism; that is, "that one always governs too much" (Dean, 2010: 144). Therefore, there must be a balance between regulation and freedom on one hand and socialism and individualism on the other (Deukmedjian, 2013). This was essentially the problem Durkheim (1997) sought to illuminate in his famous work on suicide. Durkheim (1997) found that suicide rates could be attributed to issues of governance. Without proper attention to the balance between equilibrium (fatalist) vs. disequilibrium (anomic) and individualism (egoist)

vs. socialism (altruist), there would be a rise in social problems such as suicide. By maintaining equilibrium within the population, social problems such as suicide (though there are obviously countless others) can be minimized.

Conversely, logics of security allow things to happen within preordained thresholds of tolerance regardless of their adherence to normative values (Foucault, 2007). Instead of introducing breaks into flows of social interaction, securitization operates according to a logic of war and defense whereby deviations are permitted to occur while egregious infractions become targeted for intervention. In contradistinction to its centripetal forms, centrifugal governance is expansive. It begins with the lowest common divisor and expands outwards. As Foucault (2007: 45) conceived them, centrifugal apparatuses of security operate by allowing things to happen; they have the tendency to expand and “allow the development of ever wider networks”. The centrifugal governmental tendencies of neoliberalism are tied to mechanisms of security which function according to thresholds of tolerance. Whereas the social orientation of centripetal governmentality operates according to principles of order reproduction (Deukmedjian, 2013), apparatuses of security allow disequilibrium to occur in order to gauge that which is taking place. Instead of employing the binary of normative or counter-normative to determine the necessity of governmental intervention, apparatuses of security allow both these processes to occur and seek to establish ways that these processes can function in relation to each other (Foucault, 2007). The desire to maintain equilibrium in the governance of social issues is increasingly downplayed. This is because neoliberalism functions according to a separate governmental logic. This raises an interesting dilemma as Ericson’s (2007) counter-law two is believed to discipline the population despite being the product of intense governmental securitization. The lack of distinction between securitizing and disciplinary surveillance initiatives creates confusion in

analyses of governmental programmes. According to Ericson's (2007) analytic, neoliberal securitization is believed to foster disciplinary self-governance. However, as securitization is not meant to discipline populations, Ericson's (2007) analytic confuses two distinct governmental mechanisms which ought to be analyzed separately as the case of impaired driving surveillance demonstrates.

In light of this development there remains the task of determining how and to what extent sobriety checkpoints and RID programmes are emblematic of Ericson's (2007) counter-law two. There are two key standards that must be met to decide that contemporary impaired driving surveillance programmes are instances of counter-law two. First, in the face of imagined sources of harm, there must be an extension of surveillance apparatuses that foster the monitoring of populations beyond the legal, procedural, or traditional limits typically fixed on surveillance (Ericson, 2007). Second, there must be an attempt by these surveillance apparatuses to break down flows of populations (Ericson and Haggerty: 2000) to monitor their behaviours and discipline populations in relation to a norm (Ericson, 2007).

Using the first metric of this two-pronged approach it appears sobriety checkpoints act beyond the traditional limits placed on surveillance practices in their efforts to pre-empt imagined sources of harm consistent with a neoliberal governmentality. The use of sobriety checkpoints by law enforcement officials in Ontario appears to violate section 8 of the Charter of Rights and Freedoms that states that everyone has the right to be secure against unreasonable search or seizure. RIDE checkpoints enable police officers to stop and charge drivers "without reasonable and probable grounds for believing [they] had committed or [were] committing a criminal offense under any statute, either provincial or federal" (*Dedman v. The Queen*, 1985: 30). In the absence of observable deterioration of driving ability, there are no reasonable or

probable grounds to believe an offence has been committed. Sobriety checkpoints therefore constitute a random and arbitrary stop that could be deemed unreasonable.

Throughout their history, the use of sobriety checkpoints in North America has been met with significant challenges. As of 2011, eleven American states prohibited the use of sobriety checkpoints because they are either illegal under state law (i.e. Idaho) or violate the state's constitution (i.e. Michigan) (TIRF, 2011: 2). Sobriety Checkpoints in Ontario have undergone similar legal challenges but have since obtained common law authority. Initial attempts to expand RIDE checkpoints throughout Ontario saw constitutional challenges levied against the provincial government. As detailed by *Globe and Mail* articles from 1980/81, RIDE programmes were initially ruled unlawful after constitutional challenges were brought forward from drivers charged under the programme. In a May 23, 1980 article entitled "RIDE ruled unlawful again, man who failed test cleared" it was stated that "police may stop drivers for spot checks only if there are reasonable and probable grounds to believe an offence has been committed" (Yonson, 1980: A5). Using the same principle, another man, Robert Dedman was acquitted (although later convicted upon appeal) of refusing to provide a breath sample as he was under no legal requirement to provide it as there was no reason to stop him in the spot check (Yonson, 1980). After this ruling, police departments throughout Ontario were ordered to halt the operation of RIDE programmes while awaiting a Crown appeal of these cases. At issue was "the timeless conflict between the right of the individual to peacefully go about his affairs free from needless and arbitrary interference on the one hand, and, on the other, the right of the state to intervene and carry out all actions necessary to the protection of society as a whole" (Carriere and Laver, 1980: A2).

As a result of the increased attention given to impaired driving behaviour since the late 1970's the necessity of new measures to control this behaviour is deemed common sense in popular discourse. In an article from the *Globe and Mail* which stresses the necessity of province wide sobriety checkpoints the perceived threat from impaired drivers is deemed so great a risk as to necessitate the imposition of intrusive police surveillance apparatuses. The article titled, *Some Never Get Home*, states that "impaired driving is a dangerous game. Statistics prove it. Police forces publicize it. Yet thousands of intoxicated drivers still pretend they are capable of weaving their way safely home" (The Globe and Mail, 1979). However, it is insufficient to simply acknowledge the risk posed by impaired driving; rather, "Ontario, with the cooperation of police forces across the province, should mount a determined fight to stop drunken drivers in their tracks; Or, better still, to deter drunks from driving" (The Globe and Mail, 1979). The risk posed by impaired driving is believed to be so severe as to necessitate new programmes to control it. And because of the seriousness of the problem of impaired driving, new programmes which seemingly constitute random and arbitrary stops of the manner prohibited by section 8 of the Charter, no longer meet the necessary criteria of 'unreasonable' (Ostberg, 2000). Finally, what can be observed is a pattern of social behaviour in the form of impaired driving gaining increased attention and stigma that leads to the revocation of traditional standards of due process and legal safeguards.

RID programmes also appear to violate traditional standards of law as they pertain to procedural limits placed on surveillance. The imagined source of harm posed by impaired driving behaviour justifies intrusive surveillance of populations to reduce the fear of crime and increase risk of apprehension. However, this is accomplished in the face of limits traditionally placed on the surveillance of populations. In employing the general population as a group of

mobilized security cameras, RID programmes foster the development of an all-encompassing surveillance infrastructure which could not be matched by other police surveillance practices (i.e. sobriety checkpoints). Sober drivers have a distinct advantage over surveillance arrangements such as cameras (Lippert and Wilkinson, 2010) as they can change their positions to better capture the information police require to most efficiently apprehend suspected impaired drivers.

The second prong of Ericson's (2007) counter-law two is not a constitutive feature of either sobriety checkpoints or RID initiatives. These programmes do not operate in relation to a norm in the same manner counter-law two is believed to (Ericson, 2007). Instead, sobriety checkpoints and RID initiatives operate according to thresholds of tolerance. Behaviours imagined to pose harm to other people are investigated and targeted for governmental intervention. Conversely those behaviours which are not believed to pose harm, such as a fully licensed driver having a blood alcohol concentration within the threshold of tolerance⁷, are allowed to pass unpunished. As counter-law two is believed to foster increased linkages between diverse institutions with the purposes of disciplining the populations under surveillance, neither RID initiatives nor sobriety checkpoints can be said to be emblematic of counter-law two.

Conclusion

Recently, there has been a wide array of new programmes instituted in North American governments designed to control acts of impaired driving. The Government of Ontario has followed in this effort. To render these programmes more comprehensible, this thesis adopted a genealogical approach committed to de-compartmentalizing the present. This was done to expose the unique configurations of knowledge discourses which comprise contemporary governmental efforts. By examining the rationalities and technologies of governance which

⁷ This statement does not apply to drivers under the age of 22 after the passage of the Road Safety Act.

structure the implementation of governmental programmes, this thesis shows how current governmental efforts to control impaired driving are constituted by a unique assemblage of discourses specific to this historical era. Various understandings of risk categorize segments of the population using idiosyncratic methods and inform both neoliberal and neoconservative mentalities of governance. Furthermore, governmental programmes such as the Road Safety Act, sobriety checkpoints, and report impaired driver initiatives attempt to render reality in accordance with these rationalities and simultaneously marginalize alternative approaches towards governmental control. By approaching the study of governmental power in a manner that problematizes the unity of governmental programmes and by examining these programmes in relation to Ericson's (2007) analytic of uncertainty, this thesis exposes the historical contingency of impaired driving governance in a manner consistent with a Foucaultian genealogical approach.

To determine through what mentalities and technologies of governance impaired driving behaviour is currently being controlled as well as how and to what extent contemporary programmes reflect Ericson's (2007) analytic of uncertainty, this thesis has explored each aspect of this analytic to determine how contemporary impaired driving governance reflects these notions. First, governmental technologies in the form of both risk and moral discourses are used to organize populations. However, as detailed analysis of governmental and victims' rights literature has shown, when employed in coordination with neoliberal governmentality risk can be used as a technology meant to organize a collection of autonomous individuals, while simultaneously being employed as an actuarial technique meant to categorize a series of morally neutral actors. However, technologies of governance may also shape governmental subjects in manners inconsistent with neoliberal governmentality. In this sense, Ericson's (2007) analytic is

perhaps too simplistic in its claim that the obsession with uncertainty which fuels contemporary risk management initiatives is rooted solely in neoliberal political mentalities. As MADD Canada's annual reports show, neoconservative governmentalities also structure attempts at ordering the population and employ moral discourses to garner emotional responses and shape governmental efforts in manners inconsistent with neoliberal governmentality. Risk management can be said to compose several different approaches to governance and here functions as one of at least two governmental technologies that attempts to order the population in different although not necessarily inconsistent ways. The inability of these technologies to eliminate the deaths related to impaired driving results in the establishment of precautionary logic which leads to criminalization through counter-law.

Several contemporary governmental programmes fit Ericson's (2007) conception of counter-law. Among these, the Road Safety Act is a prominent example. The zero tolerance provision of this legislation governs in an a priori manner to pre-empt actual harms committed consistent with securitizing neoliberal governmentality. Traditional standards of law which aim to control harmful behaviour are suspended; instead, behaviours are now criminalized on the suspicion of their harm consistent with Ericson's counter-law one principles. The Road Safety Act removes legal safeguards and aims to govern impaired driving behaviour in a manner that treats uncertainty as analogous to crime. Therefore, the Road Safety Act is a form of counter-law as outlined by Ericson's (2007) analytic.

In addition to new legislations targeting impaired driving behaviour are new surveillance apparatuses designed to facilitate the detection of this conduct. These programmes are informed by various governmental tendencies. Both sobriety checkpoints and RID initiatives aim to monitor the flow of drivers on specific roadways and govern conduct in a centrifugal manner

characteristic of neoliberal governmentality. However, as they do not govern according to a norm and discipline those under surveillance, they do not fit Ericson's (2007) notion of counter-law two. As both of these programmes aim to monitor the population beyond the legal limits typically placed on surveillance practices, perhaps Ericson's (2007) notion of counter-law two is too restrictive.

In light of these findings, this thesis makes the following recommendations for further research using Ericson's (2007) analytic of uncertainty as well as governmentality scholars exploring surveillance in contemporary liberal democracies. First, thesis suggests revising Ericson's (2007) analytic to include increased attention on the forces that structure the implementation of counter-law but do not adhere to neoliberal governmentality. Ericson's (2007) work is lacking in its attention to neoconservative rationalities of governance; therefore, those using Ericson's (2007) analytic should consider not only neoliberal mentalities of rule but the neoconservative variants as well. This is most notable in cases where questions of how to govern involve moralized substances such as alcohol. New scientific determinations of risk are often employed to enforce old moral standards while being packaged in contemporary risk language (Moore and Valverde, 2000).

Second, scholars exploring contemporary programmes to determine if they reflect Ericson's (2007) notion of counter-law two should differentiate between disciplinary and securitizing surveillance practices. Ericson (2007) analytic assumes that neoliberal mentalities have fostered the development of increasingly intrusive surveillance apparatuses; however, we should not expect to see new programmes with the aim of disciplining those under surveillance. As Ericson (2007) failed to differentiate between securitizing and disciplinary programmes, centrifugally oriented initiatives such as sobriety checkpoints and RID initiatives fail to fit the

notion of counter-law two as they do not adhere to the disciplinary principles contained therein. To determine if new programmes represent instances of counter-law two, future research should abandon the claim that counter-law two is inherently disciplinary or securitizing and instead see new programmes in terms of how they exceed the legal limits traditionally placed on surveillance practices.

This thesis has attempted to problematize contemporary governmental approaches to controlling impaired driving. Many of the forums in which impaired driving control efforts are debated have become polarized due to the high degree of social stigma surrounding the act of driving after drinking. By exposing the present assemblage of historically contingent discourses that comprise our current understanding of impaired driving and its need of governmental control, it is hoped that further debates will acknowledge that the present drive to institute new, restrictive impaired driving programmes is at least partially the result of the present assemblage of motivating discourses, rather than the actual empirical harm caused by impaired driving. It will be interesting to determine if future governmental efforts to control impaired driving behaviour will continue to be more restrictive than those that precede them in a manner consistent with Ericson's (2007) analytic of uncertainty.

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