SIMULATED JUSTICE

Risk, Money and Telemetric Policing

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New forms of ‘simulated’ justice and policing are emerging at the convergence of telemetric regulation with two linked trends: the monetization of justice and the development of risk-based technologies of governance. A definitive example is the traffic fine, where, increasingly, the offence is electronically monitored, calibrated, monetized into a fine, the fine issued and expiated in simulated space—that point at which the real and the virtual converge. While all of this is very ‘real’ (real money is primarily electronic and digitized), binary codes rather than liberal individuals are focal. Key forms of simulated justice operate beyond the reach of ‘individual rights’ as liberal individuals are fragmented into simulated ‘dividuals’ and commodified privileges rather than rights become critical to everyday life.

Keywords: simulation, risk, fines, justice, telemetry, money, traffic

Introduction

In many jurisdictions, I may be fined for speeding, or illegally parking, or being on a freeway without a pass, or running a red light—by nobody. The infringement may be registered by a police officer, but even that is becoming less common. Increasingly, infringements are registered electronically either from a bar code implanted in my vehicle or from a digital photograph of the vehicle registration number. Significantly, I have paid for both of these recognition tags. I have purchased the privilege of being governed in a certain way. The infringement is transmitted from the sensing device to a computer, where it is calibrated against a tariff. So much money for so many kilometres per hour in excess of the speed limit, so many dollars for so many minutes overstayed at the parking meter, so much for running a red light and so on. It is literally a price, calculated and issued electronically. In many jurisdictions, the fine can now be paid online.

I am policed, judged and sanctioned but no one has seen me, nor have I been ‘sensed’ in any human way. In key respects, I have not been there: my electronic trace has been there and that is what registers for the purposes of governance. This is simulated justice, in which the real and the virtual converge (Bogart 1996; 2009). Even the money demanded and paid is electronically simulated. It need never be translated into hard cash and, indeed, simulated justice relies for its speed and cost-effectiveness on the fact that it comparatively rarely has to be. Even rapidly disappearing bank cheques are digitally coded. Despite this, there is nothing unreal about my electronic code, or about the simulation of money, or about the consequences for me. Most frequently, it is just my virtually encoded presence and payment that matters. Only when I persist in challenging this simulated justice will ‘I’—rather than my code—come to be engaged with by law.

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Of course, when I refer to the absence of ‘me’ and ‘I’ in these processes, I refer to constructs at the intersection of liberalism and disciplinary power: the unique individual with its complex interior life referred to as ‘the soul’ by Foucault (1977). Through discipline’s dividing practices—confinement, examination, comparison with the norm and normalization—the unique individual became more than the ethereal idea of previous centuries: it became the technical object of governance. Perhaps nowhere was this more clearly so than in the individualized justice of the twentieth century.

In place of this governable individual, simulated justice creates and deploys what Deleuze (1995) refers to as ‘dividuals’. The infringement notice is delivered to a driver, an owner, a proprietor, an operator, a licensee. These are the ‘dividuals’ identified by codes. They are anonymous while at the same time specific. The code designates a specific, licensed driver, but nothing more: in humanist terms, it is empty of content. Yet, if we recognize that the governance of traffic constitutes the bulk of the business of the institutions of law and regulation, and almost certainly is the point at which most members of the public become the subjects of law enforcement, dividuals are substantially what ‘justice’ governs.¹

More frequently than not, this simulated governance (which is not at all only an imitation of governance) works outside the confined institutional spaces associated with discipline, such as the hospital and the school, the prison and the factory. Simulated governance exists primarily not to govern fixities such as individuals, but to modulate mobile and contingent life—flows and circulations (Deleuze 1995; Haggerty and Ericson 2000; Savat 2009). In the case of the traffic fine, for example, only if I disturb the ether by demanding to be looked at, by exercising my ‘choice’ to opt in to contestation, will a human observe me or require my presence in a disciplinary space. Even then, the designers of this control assemblage don’t want me to do this. The entire apparatus has been designed in detail to keep individuals out (Fox 1995). Individuals are expensive, whether as enforcers or as infringers. So I will pay more money for the right to become an individual and to demand ‘justice’ than I will pay to remain a coded dividual. Individuals have to be examined and maybe normalized, individuals are the bearers of rights and create political costs; dividuals simply have to be registered and coded (Bogart 2009). For simulated governance, my primary importance is as part of a risky flow, a moving distribution—a circulation—for it is this distribution and its risky properties that are the principal objects of governance. It is risk that is governed ‘through’ the policing of my dividual, appropriately enough because as a property of distributions, risk does not apply to individuals so much as to dividuals in the form of those statistical properties of individuals that are aggregated to form risk pools.

As I will elaborate shortly, simulated governance has been designed in significant ways to cause as little disturbance as possible to the circulation of valued bodies, utilities and things. The bar code reader at the supermarket, the freeway, the passport gate, the ATM, the baggage carousel, all exist to govern and police without touch, and thus to maximize

¹By the early 1990s, it had become the case that for every summary charge coming before the magistrates’ courts in Australia, more than seven criminal matters were dealt with by infringement notices and ‘on-the-spot fines’—which have become the preferred legal form for delivering simulated justice (O’Malley 2009a). While this registers the importance of the infringement notices in criminal justice, some 123 other agencies outside the criminal justice arena were empowered to levy such fines in the state of Victoria alone. In Fox’s (1995: 89–94) study, police issued only about a third of such notices, with local government issuing about 60 per cent. In a single year, these agencies together issued nearly 2.5 million fines to a total state population of fewer than 4 million. Traffic offences constituted the vast bulk of matters subject to such regulatory fines (well in excess of 90 per cent).
‘good’—desired—circulation and interfere only with ‘bad’ circulation (Foucault 2008: 18). If the assemblage works according to plan, the electronic fabric will be ruptured, and individuals ‘realized’, only when risk passes a certain threshold. When the passport code triggers an alarm, or when my speed passes a risk threshold of ‘dangerousness’, then the individual rather than the dividual will be called into being and processed. Simulated governance and risk both work with distributions and flows rather than individuals, forming two species of what Foucault (1984) termed ‘regulation’—the orthogonal axis of biopower that governs distributions and complements individual discipline. While it may be that each owes its spectacular growth in degree to its synergies with the other, the historic convergence of risk and simulation has been vital to the emergence of simulated policing. Numerous other examples of policing exist at this point of convergence, including electronic monitoring of ‘pre-offenders’ and former offenders, security bar coding of property (often linked with GPS chips for location purposes), profiling of terrorists and others, computer modelling of crime prevention scenarios and so on. All of these represent ways in which simulated governance simultaneously expands the reach of policing while at the same time reducing its unit cost and visibility, and minimizing the friction imposed upon ‘good’ circulations.

Yet, there is another feature of simulated governance that is vital to understanding its implications: its nexus with money. Unlike other penalties such as imprisonment or corporal punishment, money sanctions can be digitized. It is this feature of money, especially in the form of fines, that makes possible virtual closure—the movement from simulated policing to simulated justice. As with the example of the traffic fines with which I began, apprehension, sentencing and punishment may all now be disposed within the domain of codes. Such justice, in its turn, is linked seamlessly with broader reaches of simulated governance. For example, through the credit card or the electronic banking that I probably use to pay the fine, justice is linked to an almost infinite network of simulated security operations. In a consumer society, the convergence of digitized (simulated) money with simulated governance and risk has created a regulatory system of almost infinite scale. It is inexpensive to operate, self-financing (often highly profitable) through revenues. It generates comparatively little political resistance, inflicting sanctions that have both a low political profile compared with loss of liberty, and are becoming just another price buried in the transactions of everyday life (O’Malley 2009a). Usually, political complaints focus on the exercise of governance as revenue-raising rather than as ‘real’ security—ironically illustrating the power of the money form to translate policing into a ‘mere’ market relation. Last, but not least, the integration of money, simulation and risk is completed by the fact that fines exist primarily as a risk-based sanction (O’Malley 2010). I will return to this point shortly.

As suggested, simulated policing takes many forms, including profiling, monitoring, modelling, predicting and so on, and is perhaps most familiar to criminologists through such developments as electronic bracelets and offender profiles (Haggerty and Ericson 2000). However, for the moment, I want to continue a focus on traffic policing and its nexus with simulated justice. In part, this is because governance of traffic has for a long time been the cutting edge of innovations in both simulated policing and justice. But, more pointedly, I would argue that like simulation itself, traffic policing has been mistaken for something marginal to criminology and police studies. As noted above, however, traffic is a site of policing and sanctioning, having a direct impact on far more of us, and far more often, than almost other branch of ‘justice’.
The emergence of simulated justice thus involves the convergence of these three elements—monetized justice, risk-based governance and simulation. The genealogy of each, in turn, is worthy of inspection for what else we may learn about this trajectory in justice and policing.

**Monetizing Sanctions, Streamlining Justice**

While fines had existed historically, and even occupied the principal role as a sanction in criminal justice throughout the seventeenth and eighteenth centuries, the modern fine that came into being at the end of the nineteenth century was in some respects fundamentally new. The modern fine appeared as an alternative to the loss of liberty and corrections, being founded in the observation that short terms of imprisonment were counterproductive. (O’Malley 2009a; 2009b) The modern fine marked the limits of correctional discipline, especially given that at the same time, corporal punishment was being marginalized. In the twentieth century, fines began to function as part of the emerging governmental biopolitical technology of regulation. As Rusche and Kirchheimer (1939) observed in the 1930s, modern fines are deployed where the state intends only to ‘manage’ an action, to keep it within acceptable levels rather than to wipe it out or attempt to correct individuals into better ways.² In the twentieth century, fines in this sense became a distributive sanction—a sanction that primarily governs risks, distributions and circulations through the power to punish. In addition, the emergence of the modern fine brought an array of new and unstable potentialities into the institutions of justice. First, money is undifferentiated, as follows from its function as a universal medium of exchange. For day-to-day purposes, one parcel of money is identical to another (Simmel 1990). While law reformers and courts have from time to time regretted the fact, one consequence is that it is virtually impossible to tell who actually pays a fine.³ Consequently, courts rarely, if ever, attempt to establish this and in many cases—for example, juvenile justice—it is not assumed or even intended that the wrongdoer pay the fine. What is intended is that the payment of money directly or indirectly leads to reduction in the rate of unwanted behaviour. The consequence is that together with money damages in civil law, the fine is the only sanction that need not actually be paid by the offender. Anyone can pay a fine on behalf of another and, equally important and partly in consequence, the offender need not be present to pay the penalty of wrongdoing. On the one hand, the fact that what matters is that money is paid rather than who pays it indicates the underlying risk rationale: it is the aggregate effect that matters rather than the impact on the specific individual. As economists argue, fines, like prices, put friction into the system, making certain actions more expensive than others, and thus channelling flows of action away from risky courses (Becker 1974). On the other hand, while completely unanticipated, this established a vital precondition for simulated justice—for,

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²Foucault (2008: 6) made much the same point discussing the more general emergence of regulation and security as opposed to discipline: ‘... instead of a binary division between the permitted and the prohibited, one established an average considered optimal on the one hand, and on the other, a bandwidth of the acceptable that must not be exceeded.’

³In a rare exception, the English *Road Traffic Law Review Report* (Home Office 1988: 133) considered the question of whether to prohibit payment of fines for traffic infringements by a third party. The report expressed regret at this practice, especially with respect to situations in which corporations paid such fines on behalf of their employees. However, it could find no practicable means of enforcing such a rule.
now, punishment could be delivered and then resolved anonymously and remotely by anyone through the mail or online.

Second, as Simmel (1990) also remarked, money is depersonalized, again as an effect of its function as a universal medium of exchange. To the extent that money depersonalizes, to the extent that it is, in Simmel’s terms, ‘meaningless’, it raises few of the political and ideological liberal concerns associated with liberty and corporal punishment. This is marked in those practices of justice that, systematically, have stripped away procedural protections and ceremonial denunciation where the sanction of money alone is at stake. As Garton (1982) has shown, the effects of early-twentieth-century developments in this direction were diagnostic. Where fines came to be at stake in place of prison or corporal punishment, summary justice was streamlined. Ceremonial and denunciation, procedural safeguards and even the attendance of the offender in court were removed or watered down for an increasing number and range of offences (Freiberg and Ross 1999). The faster throughput this allowed resulted in an increase in the volume of inputs—arrests, summonses, notices and so on. Consequently, the pressure of court business increased and, in turn, this accentuated demand for further streamlining (O’Malley 2009a). Put another way, the practical lesson learned was that monetizing justice lowered unit costs and increased the volumes of behaviours that could be subjected to regulation. All the more so as fines provide revenue rather than simply create costs to government.

The scene was now set for a revolution in policing that was most quickly developed with respect to traffic regulation. Both speeding and parking offences appeared early on as difficult issues for the judicial system. In part, this was because the offenders, for the most part, were middle-class and courts were reluctant to convict ‘respectable’ citizens if the punishment were anything more consequential than a fine—as had also happened with early factory, food and drug regulation (Paulus 1976; Carson 1974). Sympathetic courts tended to define such offences as ‘technical’, as often resulting from a moment’s oversight or an uncharacteristic lapse by otherwise respectable citizens who were not thought of as the courts’ usual clientele (Plowden 1971). Yet, there was nothing obvious about this ‘technical’ definition, for as was later to become the case, speeding would be linked to risk and at that point, its merely ‘technical’ nomenclature would evaporate (O’Malley 2009a).

What is fascinating about this early development is that at the same time, debates were raging about new innovations intended to ensure that those who were fined in relation to ‘proper’ criminal offences (assault, theft, burglary, affray, etc.) did not end up imprisoned in default of payment (Bottoms 1983). This would have defeated the purpose for which the modern fine was created. Time to pay, payment by instalments, taking the means of offenders into account when setting the quantum of a fine were all developed in the first quarter of the twentieth century. Yet, almost certainly because of the relative

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Footnote:
Viviana Zelizer (1994) has argued convincingly that money always has meanings and is never meaningless. She points to a wide array of settings in which money is bestowed meanings, such as by ‘earmarking’ rent money, housekeeping money, spending money, etc. But this overlooks the fact that one of the meanings bestowed on money is precisely that it is ‘meaningless’—an idea that Simmel himself reproduces from existing ‘common sense’. Some of the objections to using fines in relation to egregious offences have made the point that money does not carry the (moral) meanings participants in justice require of sanctioning (Marinos 2005; Young 1989). What is referred to as the ‘meaninglessness’ of money also often refers to its function in commodity exchange (O’Malley 2009a). Here, the point seems to be that the ‘real’ meaning of some aspect of life is reduced to a ‘meaningless’ commodity by the use of a fine to punish crimes against it (Marinos 2005). Paradoxically, ‘meaningless’ is a very potent meaning in such contexts.
wealth of traffic offenders, this historically contemporaneous issue was virtually ignored with respect to traffic offences. The issue appears to have been overlooked, regarded as irrelevant or as inappropriate. Fines were in this fashion cut away from the likelihood of imprisonment—as Bottoms (1983) indicates, a course of action taken in far fewer than 1 per cent of such cases. Indeed, later, for example in Australia, this disconnection of fines from the possibility of imprisonment in default of payment became the case for virtually all fines, not just those relating to non-dangerous traffic offences and infringements.5

In many jurisdictions, the ‘it's only money’ effect led to the transfer of routine traffic cases to traffic courts, where ceremonial and procedure were still further stripped down. Enforcement frequently became the task of special traffic wardens and civil debt collection offices rather than courts. But even this was just the thin end of the wedge. In the 1960s, the ‘on-the-spot’ fine—or the ‘infringement notice’—was invented. What distinguished the on-the-spot fine was that a fixed penalty—literally rather than figuratively a price—was assigned to an offence. Issues of mitigation or aggravation were virtually dispensed with. Attendance at court was discouraged by requiring those in receipt of notices to opt in to judicial proceedings if they wished to take the matter further.

At the same time, obstacles in the form of additional administrative fees and the risk of higher penalties were placed in the way of those who might seek to ‘opt in’ and challenge the infringement notice (Fox 1994). Discounts were applied for early payment or, what amounted to the same thing, additional fees applied where payment was not made by a certain date. Initially deployed in relation to parking offences, the technique was rapidly adapted to deal with ‘moving violations’. More recently, a large and increasing number of ‘minor offences’—including drug offences—have been subject to infringement notices, creating various concerns among law reformers who nevertheless seem content that this apply to traffic offending.6

Subsequently, ‘deeming’ provisions—that place the burden of proof on the offender—effectively created strict liability, reverse onus offences. Because of the costs involved in identifying the actual driver of a vehicle—a matter that had plagued the first generation of infringement notices (Fox 1995: 121)—the offender was now re-inscribed as ‘the driver’ or ‘the owner’ of a vehicle, as this corresponded with coded databanks. It now became necessary for the target of the notice to demonstrate either that the vehicle was not speeding or that another dividual owned or drove it at the time of the offence.

5Bottoms (1983) estimated that fewer than 1 per cent of modern fines ended with offenders being imprisoned in default of payment. However, since then, many jurisdictions have severed the nexus between fines and imprisonment. In Scotland, Duff (1993) reports that the fiscal fine was borrowed from Continental practice with the aim of reducing pressure on the courts. Those who accept the offer of a fiscal fine no longer become subject to criminal proceedings, even in the event of non-payment. In several states of Australia, Victoria and NSW, for example, imprisonment is only available as an option in default of payment where the offender refuses to pay rather than is unable to pay. In NSW, for example, enforcement of payment of fines is at the discretion of the State Debt Recovery Service, a branch of Treasury rather than Justice. It has a variety of sanctions at its disposal, including confiscation of assets, liens on income, work orders, and simply writing off the ‘debt’.

6In Australia, for example, Fox (1995: 1–6) notes that in 1965, on-the-spot fines applied to some 11 traffic offences and that penalties were generally for amounts of a few dollars. By 1992, the number of such traffic offences had increased to more than 200—a substantial proportion of the total of 385 traffic offences at the time, while maximum penalties were no longer trifling, but ranged up to $900. Over this period, too, on-the-spot fines were adopted as a sanction by a wide range of government and semi-government departments and particularly by local governments, as penalties relating to by-laws. Fox maps out the on-the-spot fine’s application to such matters as environment protection, building and housing, food, litter, taxation, public safety, noise and nuisance, customs, mineral resources, shares and securities, gambling, weights and measures, dangerous goods, occupational health and safety, and many others, including labour law (Fox 1995: 39–47). While stressing that his estimation understated the total number of offences subject to these fines, Fox counted nearly 800 offences dealt with by infringement notices. In short, it is hard to imagine an area of life that now is not in some way governed through this form of sanction.
Whichever applied, it was in this electronically coded-role (‘dividualized’) capacity that liability existed—the dividual was deemed to have created the infringement.

Thus, well before governance through electronically based remote sensing began to emerge in scale during the 1980s, the monetization of justice had created a form of policing and justice that had almost infinite potential for the expansion of depersonalized, anonymous and remotely administered policing and justice. Administrative costs had been reduced dramatically, not least by the virtual exclusion of participation by those policed. Sentencing had been collapsed into a tariff that could be calculated by a machine. ‘Telematic’ governance (Bogart 1996)—governance through digital cameras, bar code readers, key fobs, bracelets, movement sensors and so on, linked to computers networked with other computers—later would serve to foster such developments still further by cutting labour costs virtually to zero. In effect, courts, police and even the policed are made marginal: what matters is that money prices are introduced into a circulation and paid, in order to reduce the flow of risks.

Risk, Regulation and Risky Dividuals

Offences such as ‘drink driving’ and ‘dangerous driving’ have been in existence almost from the start of auto mobility. Their existence had been important to the definition of other traffic offences and infringements as merely ‘technical’. But the divide between the technical and ‘real’ offences had always been fraught with problems and politics of measurement. How could ‘danger’ be measured objectively? As Robert Castel (1991) has argued, dangerousness, as an imputed characteristic of individuals, was always open to challenge. Dangerousness is whatever a court agreed it is. Also, tests such as walking the white line or unsophisticated measures of speeding (ranging from subjective judgment to the stopwatch) also raised the problems of labour costs and political difficulties: police were frequently tied up in lengthy court work over a rapidly growing volume of cases (Fogelson 2001: 296–303). This also was entangled with struggles—current since the turn of the twentieth century—over whether speeding should be an offence at all. For many, especially wealthy motoring organizations and interests, the existence of offences such as dangerous driving meant that speeding without dangerousness or recklessness appeared an unjustifiable restriction on freedom. Some even regarded it as a ‘tax on progress’ (Plowden 1971). A groundbreaking solution to this problem of governing ‘bad’ circulations came from an unexpected angle.

From the 1950s—when car ownership was being democratized by the consumer revolution and the volume of traffic was increasing exponentially—the ‘road toll’ began to emerge as a prominent political issue (Plowden 1971). By the 1970s, this was being linked to measurable risk in a variety of new ways. Statistical studies that ‘objectively’ correlated traffic behaviour with road injuries and deaths began to achieve prominence (Adams 1995). One of the first subjects of this analysis was the seat belt—soon to become almost globally mandatory. The second was alcohol consumption—already governed crudely through behavioural observations such as walking the white line. The emergence of risk was directly linked to more sensitive, sub-behavioural and ‘objective’ metrification—in the form of blood alcohol content and breathalyser readings. The third was speed. In particular—associated with the impact of the 1974 Arab oil embargo—national reductions in speed limits correlated with significant falls in road deaths and injuries (Adams 1995). This was seen to illustrate dramatically the direct link
between speed and injury. A critical watershed had been reached. A utilitarian morality of the public good was now statistically demonstrable and, equally significantly, measurable in the kilometres per hour that corresponded with risk levels. No longer could speed be seen as a tax on progress or a way of raising revenues alone. No longer would speeding be a subjective estimate made by a fallible or biased police officer. Speed now was re-invented as a precisely measurable and technologically calculable objective risk. Thereby, another condition was established upon which simulated justice could be imagined and developed. Once technological innovations appeared based on this development—speed cameras, bar code readers and the like—speed and risk, in effect, became identical, rendered observable and calculable by telemetry.7 Offending behaviour itself became subject to precise and remote recognition and measurement. Speed and risk could now be calibrated together and the level of the fine could be calculated and justified simultaneously.

More than this, risk provided the objective demarcation of dangerousness from merely ‘technical’ speeding offences that, for the time being at least, were sanctioned solely by fines. Once established, however, technocratic jurisprudence of this kind proliferated. Dividing lines demarcating dangerousness could be drawn readily enough, but a second facet of risk—its cumulativeness—was soon taken to be relevant. Any one instance of non-dangerous speeding could be discounted as low-risk; but the aggregate risk of accidents increases to the extent that speeding above the limit but below the threshold of dangerous driving becomes a frequent practice. A driver-dividual becomes high-risk where low levels of excess speed are identified as its norm.

As Bentham (1789/1962) famously declared, a fine is a licence paid in arrears. By direct implication, fines appear as both licenses and prices: if we are willing and able to pay the price, then there is nothing to restrict repeat offending. Parking fines appear as a premium price for the privilege of unrestricted parking. Speeding fines likewise may appear as a purchased license to speed below the high-risk threshold. Where risk is cumulative, and the risk is regarded as consequential, pricing alone becomes an inadequate risk-reducing regulatory tool. But how could regulation recognize and sanction cumulative risk? The answer was found in the invention of demerit points. If the number of demerit points could be calibrated to correspond to the quantified and measurable magnitude of each single risky event, then demerit points could be accumulated for serial risks. A specific quantum of measurable risk accumulated over a specified time period, in the form of its corresponding tally of demerit points, results in automatic license suspension or cancellation.8 And this cancellation is also effected remotely, for what counts is not the physical license, but the electronic code that is recorded on it as a bar code or magnetic strip. The validity of this license can be changed remotely on the central computer the moment demerit points pass the risk threshold. Again, there is no need for the individual to be brought into being; no presence is required. Also, merely ‘showing’ the licence itself becomes an anachronism as sight is displaced by digital code: the validity of the (now cancelled) licence is determined not so

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7Much the same occurred, perhaps more strikingly, with respect to alcohol consumption. Once a certain BAC reading was set as correlating with unacceptable risk, in many jurisdictions, the offence shifted from creating a danger—or even creating a risk—to simply having a BAC reading of a certain level. The recorded measure of risk now became the offence in its own right.

8Of course, this generates new forms of resistance. Spouses may ‘spread’ their risk by allocating responsibility to the other (by reporting the other as the actual driver at the time of the offence) where one has fewer accumulated demerit points. In some workplaces, fellow workers will buy risk, offering several hundred dollars per point to take over the demerit points of another.
much by sight, but by swiping it through the police cruiser’s card reader. Licence cancellation, as well as money fines, may now also be delivered through simulated justice, within the domain of the virtual: the offence observed and the sanction calculated and delivered by a machine.

Note, however, that—unlike dangerous driving—we are still dealing with individuals. It is not the individual or its right to liberty that is at stake. The licensed dividual—the driver, the owner and so on—the unit of the risk pool—is removed from circulation by having the specific risk-producing capacity neutralized. Like the fine, perhaps more so, license cancellation becomes a ‘smart’ risk-focused sanction. Of course, unlicensed drivers may continue to drive. But at this point, they stray into the domain of high-risk and flirt with the possibility of being hailed as individuals and subjected to the expensive, consequential but statistically rare form of justice that occurs in courts and puts liberty under threat (O’Malley 2009a).

Telematic Society

If we continue the genealogy of simulated governance with reference to traffic, perhaps the starting point for understanding the telemetry of justice is the parking meter, introduced to the streets of St Louis in 1935 and spreading rapidly thereafter (Fogelson 2001). While the original parking meter was mechanical rather than electronic, it introduced for the first time ‘remote’ recording of offences—offences that were more or less directly offences against good circulation. (Of course, traffic lights probably represent the first electronic governor of such circulations.) The invention and proliferation of parking meters were not so much to do with the production of revenues—although this soon became a primary purpose. Rather, they were aimed at reducing labour costs and increasing certainty of regulation. Formally, at least, the ulterior aim was to improve the effective circulation of traffic, to govern the optimal rate of turnover of consumers by regulating the flow of vehicles. Enforcement of parking restrictions had previously proven labour-intensive. Police officers had to visit and mark cars manually every hour or so. As with speeding, disputes over the accuracy of recording were frequent and much police time was taken up dealing with challenges in court. Also, the politics of parking space—regarded by many as an unwarranted tax on public space—meant that courts were not always disposed to enforce fines against middle-class citizens (Fogelson 2001).

By objectifying offences, the parking meter had immediate effects that were to create a legacy of knowledge for the later development of electronic monitoring. Police labour was intensified, for where meters were installed, labour-intensive marking and inspection of tyres became redundant and court disputes fell away. Mechanization also resulted in a perceived need no longer to employ expensive sworn officers: cheaper traffic wardens made their appearance. More recently, even these human agents are being dispensed with by parking meters that digitally photograph registration numbers of violating vehicles and transmit the details directly to a computer that calibrates and issues the fine notice. Likewise, red light cameras (which may also be ‘speed-enabled’) and speed cameras operated by police and, more recently, by the cheaper operatives employed by private companies displaced the cumbersome and ‘subjective’ techniques of the stopwatch and the trained eye. As with speeding, visuality was being sidelined by telemetry and simulation. Within a decade of their developments, such ‘manned’
devices were partially being displaced by automated remote telemetry. Even the handheld speed radar of police cruisers has come to be directly linked with the onboard computer, which, in its turn, networked to a central computer that calibrates the fine, identifies the responsible individual, and despatches the infringement notice (cf. Ericson and Haggerty 1998).

In turn, these developments epitomized by traffic regulation are nevertheless only the more obtrusive innovations of telematic and telemetric governance. Today, we are more free to circulate than ever before: we have, in some measure, escaped the disciplinary archipelago—progress of sorts, even if it is a line of flight that likely has yet-to-be-discovered unpleasant implications (Deleuze 1995). Even the behavioural control of bodies by environmental modification—such as speed humps, detected by Shearing and Stenning (1985) as one of the first symptoms of governance through risk—would now appear unsophisticated, if still necessary.

Loaded with our various radio-enabled peripherals (mobile phones, key fobs, e-tags, contactless smart cards and remote keyless systems), our senses are becoming more diffuse. We beep unknowingly, register data, upload personal information, download encryption signals, or transmit passwords and identity codes. Our senses now engage with peripherals and systems of ‘dataveillance’ that have become essential to traversing urban networks and architectures—and these devices themselves are increasingly integrated into the hard and software of the city (Fuller and Harley forthcoming).

We are now tracked by an invisible and touchless wireless connectivity that operates, as Deleuze suggests, immanently within the circuits of daily life, modulating behaviours and thereby governing risks.

**Conclusion: Simulated Freedom**

Debates about ‘Big Brother’ surveillance generated by these developments have been extensively and often insightfully rehearsed (Bogart 1996; Goold and Neyland 2009; Lyon 2005). Yet, most of this analysis overlooks the fact that large swathes of such governance by simulated justice are optional. We can be said to subject ourselves voluntarily to this governance precisely because our exposure to it is purchased: our driver’s licence, vehicle registration, freeway pass and, more broadly, a plethora of access and credit cards are licenses to operate in a specified fashion, for a fee. It is possible to escape a good deal of the associated governance literally by not buying into it. However, this escape can be achieved only at the cost of jeopardizing all those licensed ‘freedoms’ or ‘privileges’ that expose us to the telemetric monitoring devices immanent in the transactions and circulations of consumer societies.

Perhaps this still may be read as technocratic bondage. Deleuze (1995) clearly saw this as a terrifying possibility. If so, this is at best a half truth. Telematic society—a society swept by codified electronic transmissions, registers and so on—is not only a technocratic environment that subjects us to immanent modulation rather than discipline. It is also a society of consumers, and consumers are governed in privileged ways. Rather than buying our way into bondage, it is also the case that as Deleuze (1995) suggests, we are buying our way out of bondage and into a certain kind of dangerous freedom.

In a large bulk of simulated justice, epitomized by the traffic fine, we buy freedom from the disciplinary apparatuses. It is as well to remember that pioneers of this form
of governance were the wealthy, especially the tiny minority of the population that were motorists at the turn of the twentieth century and whose money, influence and status disconnected most traffic offending from incarceration. The democratization of vehicle ownership has, to coin a phrase, driven a new kind of governance through societies—telemetric, monetized and risk-based—as the more intrusive forms of institutionally based discipline simply became unworkable in the face of the sheer scale of regulation it required.

In the resulting assemblage, we pay a fine and as a by-product, maintain our liberty and anonymity—for simulated justice is unseen. Most often—unless the risk switch is thrown—this kind of simulated justice is simply a matter of one machine ‘talking’ to another. We may, paralleling Marxists, invoke a ‘last instance’ in which ultimately personalized or individualized justice does lie at the bottom of it all. But this last instance comes statistically too rarely to be considered the touchstone of what justice ‘really is’. Rather, the judicial and disciplinary apparatuses need to be understood as just one part, and a small part, of the justice assemblage. The judicial–disciplinary apparatus is a sector of justice with a political, media and popular profile that dwarfs that of simulated justice, but statistically, in terms of the volumes of governance affected, things are quite the reverse.

Increasingly, the disciplinary and judicial sector comes into play when we cross a risk threshold, as the risk implications of offences more and more come to be critical issues in policing and sentencing (Ericson and Haggerty 1998; Feeley and Simon 1994; O’Malley 2004). Certainly, when considering the interface between judicial and disciplinary justice and what I have described thus far as simulated justice, we are revealed and hailed as individuals either when we choose to resist and demand to be treated as individuals or when we cross a risk threshold. At this point, we shift from the simulated anonymity of the world of machines and codes into the realm of living agents and disciplinary institutions.

Even so, tripping a risk switch will not usually take away our liberty—that is statistically rare, at least across the total population. Rather, purchased (licensed) freedoms are at stake. The practicable freedom to work, to travel, to privacy and so on are in many ways governed through telemetric commodities, granted by privileges or licenses that exist well inside the perimeter of rights. This is not at all to characterize such ‘privileged’ governance as inconsequential. Even if there is no ‘right to drive’, in practice, the removal of this license strikes at a ‘freedom’ vital to economic as well as social practices of everyday life. If not as politically consequential as the right to liberty, it is perhaps far more practically consequential to many individuals than removing their right to vote. It is a simulated freedom that seeks as far as possible to eschew mobilizing the very individuals, together with their rights and liberties, that are liberalisms’ shibboleth.

However, there is another simulated justice, much better explored by criminology. Mimicking the justice system of which it is part, simulated justice is bifurcated into ‘hard’ and ‘soft’ zones. This paper has explored the largely ignored soft ‘monetized’ zone, the tolerant domain of justice for those who prove they can be governed through commodities, licenses and privileges. The hard zone of simulation is the world of offender profiles on which risk-based policing is founded; of actuarial justice where lengthy prison sentences are matched to risk predictors; of offenders’ electronic bracelets and anklets that beep their warnings to monitors and mobilize police when movement strays too far. Here in the non-monetized zones of policing and justice, dividuals and individuals
morph from one to the other and back again as bodies are apprehended, rights are read out and taken away. The vagaries of actuarial ‘Megan’s’ laws take the merely risky and hurtle them from statistical anonymity into the target zone of vigilantism. It is a minority form of justice, reserved largely for those deemed ungovernable by the monetized risk that is the benign, largely invisible and—by criminologists at least—largely ignored face of simulated justice.

References


