Abstract

This study examines the mentalities and sensibilities of government that get (re)produced in one programmatic narrative about ‘child abuse’ and child homicide. It shows how a perspective of governance takes shape through the lens and language of risk, and how a discourse of risk can take very different forms even within one governmental programme. Empirically the study examines the major report released from the Public Inquiry into Pediatric Forensic Pathology in Ontario (known after its chairperson as the Goudge Inquiry/Report). The Goudge Inquiry (2008) was commissioned by the Ontario government in the wake of a Chief Coroner’s Review into the problematic practices of Dr. Charles Smith, the province’s most trusted paediatric forensic pathologist for nearly 15 years. The resultant Goudge Report presents a rationalization of Ontario’s paediatric death investigation system and its failures. It presents an ideal-typical narrative that carves out the image of a fully formed and perfected risk management complex for combatting ‘child abuse’. To understand the mentalities and sensibilities of government that shape and get shaped by the Report’s risk management narrative, this study probes what ‘risk’ does in the Goudge Report. Risk discourse in this case proves to be entangled in a ‘volatile and contradictory’ set of ‘superficial’ connections, associations and activities, one that operates at the nexus of ‘common sense’ mentalities and populist sensibilities. That the Report depends for its rhetorical power on the silencing of alternative claims, discourses and rationales is central to this analysis.
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As the second reader, Professor Martin Hand delivered on his promise to provide a sober second assessment of this study, its intelligibility, accessibility and felicity of expression—this despite his being the victim of a ‘document dump’ only weeks before the defense date (and I, the victimizer). To the extent that I might one day be able to temper the (ab)use of clauses, caveats and verbalized nouns in my written work (hallmarks of an aspiring ‘governmentalist’), I will have heeded the lasting advice of my second reader.

Professor Laureen Snider supervised this thesis and was irreplaceable as an advisor. She was extremely generous with her time, patience(!), brilliance, warmth and counsel, and particularly tolerant of my generalized disorganization disorder. I am very indebted to her for my growth as a thinker and writer over the last three years; I cannot imagine receiving more sensitive and sensible guidance as an MA candidate. As I suspect is the case with many of the theses Professor Snider has supervised (though there is never an ‘ask’), this study seeks to emulate the ethos or style of analysis for which her own work on governance has become revered. If, in the
most modest of ways, that ethos can be discerned in the following study by its readers, then the purchase of this thesis far outweighs what could have been ‘thought’ by me three years ago.
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Chapter One

Introduction

This is a study about risk and government. It is a study of the mentalities and sensibilities that get (re)produced in one programmatic narrative about ‘child abuse’ and child homicide, and the governmental means with which they ‘ought to be’ addressed. The Goudge Report is a deliberate, careful and thoughtful document, liberal in its most apparent bias. It is the major report released from the Public Inquiry into Pediatric Forensic Pathology in Ontario (2008). The historical and social context for this Inquiry is most often framed around the practices of Dr.

Charles Smith, as they were reconstructed, problematized and made visible by an earlier Chief Coroner’s Review (2007) of his involvement in criminally suspicious paediatric death cases from 1991 to 2001. Trained formally as a paediatric pathologist, Dr. Smith, by virtue of both personal interest and tremendous exogenous pressure, emerged in the late 1980s as the leading paediatric forensic pathologist in Ontario, a de facto designation which had no (formal) educational foundation in Canada at the time.¹ In this capacity Dr. Smith performed post-mortem examinations (autopsies) in many, if not most, criminally suspicious cases of paediatric death in Ontario between 1991 and 2001. He opined on causes of death in the most complex and controversial paediatric cases during his tenure (e.g., cases of Sudden Infant Death Syndrome and

¹ The normal route to becoming a forensic pathologist in Canada goes like this: First, one must complete an undergraduate degree in medicine (‘medical school’); next, a four- or five-year residency (or ‘specialization’) in clinical pathology is undertaken; after residency, a year or two of sub-specialization in forensic pathology is necessary. This last component is not yet available in Canada. Dr. Smith, thus, did not formally sub-specialize in forensic pathology. Rather, his training was in clinical (paediatric) pathology: the study of disease, its causes and mechanisms in living patients (Goudge 2008:66-69). The subsets of paediatric cases in both clinical and forensic pathology are considered more complex than cases involving adults (p. 75). No formal post-graduate training in paediatric cases of either sub-speciality exists in Canada today (p. 284).
Shaken Baby Syndrome), often appearing as an expert witness for the Crown in criminal proceedings where parents or caregivers were accused of murder.

By the early 2000s, a myriad of concerns about Dr. Smith’s work and his professionalism had calcified; everything from his personal work habits to the integrity of his communications with other death investigation team members had come under sustained attack (Goudge 2008:197). From the perspective of senior administrators at the Office of the Chief Coroner for Ontario (OCCO), Dr. Smith had become a “lightning rod” for undue public scrutiny (p. 234). In 2001, at the urging of Drs. James Young and James Cairns, the Chief Coroner and Deputy Chief Coroner for Ontario respectively, Dr. Smith asked to be removed from the roster of pathologists performing forensic autopsies (p. 234). Concerns with his work, however, were only mildly abated by this move. In 2003, counsel working for the Association in Defence of the Wrongly Convicted (AIDWYC) requested access to a series of microscopic slides and tissue blocks upon which Dr. Smith had formed and provided an expert opinion in a criminally suspicious paediatric death case in 1994. In this case, Dr. Smith’s testimony had been pivotal in securing a conviction of first-degree murder against an individual accused of sexually abusing and killing his four year-old niece (pp. 27-28). For many months Dr. Smith did not respond to the request of the AIDWYC, eventually insisting that he did not have the materials in question, that he had mailed them personally to the referring pathologist in the case. A subsequent search of his office by administrative staff revealed that, knowingly or unknowingly, Dr. Smith was indeed in possession of the microscopic slides from the 1994 case. (18 months had elapsed since the AIDWYC request was made). These slides were re-examined, first, by government pathologists, then by a team of external reviewers. Both groups agreed that the inculpatory conclusions drawn by Dr. Smith in
the 1994 case were unfounded. On 19 October 2007 the accused party was acquitted of all
criminal wrongdoing, after having already served 12 years in prison (p. 32).¹

This sequence of events led to a Chief Coroner’s Review (2007) into Dr. Smith's work,
the results of which form the most proximate context for the eventual Goudge Inquiry. In the
Chief’s review of 45 cases, “five world-renowned experts all took serious issue with Dr. Smith's
work in 20 of his cases” (p. 42), identifying problems with “Dr. Smith’s opinion in either his
report or his testimony, or both” (p. 41). And, “In 12 of those 20 cases, there had been findings of
guilt by the courts” (ibid.).² Six days subsequent to the troubling results of the Coroner's Review
going public, the Province of Ontario established the Commission of Inquiry into Pediatric
Forensic Pathology in Ontario, whose final report is the subject of the study at hand: the Goudge
Report.

Headed by the Honourable Stephen T. Goudge, a senior judge on the Court of Appeal for
Ontario, the (Goudge) Inquiry began its work in April 2007, conducted public hearings between
mandate, handed down to Justice Goudge by the provincial Attorney-General, was to “conduct a
systemic review and assessment and report on the policies, procedures, practices, accountability
and oversight mechanisms, quality control measures and institutional arrangements of pediatric
forensic pathology in Ontario from 1981 to 2001 as they related to its practice and use in
investigations and criminal proceedings” (pp. 44-45). Although the mandate of the Inquiry was
systemic in focus, the Report often provides colourful accounts of Dr. Smith’s professional

¹ William Mullins-Johnson spent 12 years in prison, wrongfully convicted of sexually abusing and
murdering his four-year-old niece, Valin Johnson.
² The inclusion criteria for the cases examined in the Review were: (i) they were criminally suspicious or
homicide cases; (ii) they dated from 1991 to 2001, the year in which Dr. Smith stopped performing
criminally suspicious autopsies; and, (iii) they were cases in which Dr. Smith had performed the autopsy or
had been consulted.
practices, positing them as indicative of larger failings in the “institutional arrangements and organizational structures” (p.115) of the paediatric death investigation system in Ontario: “The tragic story of pediatric forensic pathology in Ontario from 1981 to 2001 is not just the story of Dr. Charles Smith. It is equally the story of failed oversight” (p. 205). And along with its assessment of ‘what went wrong’, the Report provides an equally robust collection of recommendations for ‘what ought to be’.

Now that we have glimpsed the empirical terrain of the study at hand, let us return to the broader problematic that was introduced earlier. This is a study of the mentalities and sensibilities that get (re)produced in the Goudge Report. It seeks to understand “the motivations and thought-processes of the authorities who select and implement [policies], and the cultural and political contexts in which their choices are validated” (Garland 2001:105). Because “language is the form through which government gives expression to how it envisions reality” (O'Malley 2004:15), this study attends to the dominant governmental and cultural code through which paediatric death investigation is ‘made sense of’ in the Report: the discourse of risk. The analytical questions pursued in this study, then, ask what the language of risk ‘does’ in the Report: “[W]hat components of thought it connects up, what linkages it disavows, what it enables humans to imagine, to diagram, to hallucinate into existence, to assemble together” (Rose 1998a:178); or, “[W]hat it functions with, in connection with what other things it does or does not transmit intensities, in which other multiplicities its own are inserted and metamorphosed” (Deleuze and Guattari 1998:4).

To interrogate the ‘effectivity’ (Derrida 1994) of risk discourse in the Report—it’s connections, associations, activities (Rose 1998a:178)—this study, first, probes one (not the!) significant set of silences in the programmatic narrative. For silences “are an integral part of the
strategies that underlie and permeate discourses”; they “function alongside the things said, with them and in relation to them within over-all strategies” (Foucault 1978:27). To understand what risk does in the Report, then, this analysis foregrounds a version of the reality of the paediatric death investigation system in Ontario that went ‘unheard’ in the programmatic account. Kramar (2005) provides for us a socio-legal investigation of criminal justice responses to infanticide, ‘child abuse’, and child murder in Canada, with a particular emphasis on the peculiarities of the paediatric death investigation system in Ontario. This genealogical and sociological inquiry, in its final book-length form, predated the Public Inquiry and the writing of the Report by more than two years. The claims and insights of Kramar (2005), however, receive neither consideration nor mere recognition in the Report1—this despite their mutual convergence on the same highly specific topic! By elevating the tension between these two readings of paediatric death investigation in Ontario—the ‘official version’ and an ‘unheard’ version; the ‘programmatic project’ and the ‘social scientific project’—and by interrogating the silences of the Report, we can try to understand how the language and problematic of risk evidenced in the Report enables and constrains, authorizes and subjugates.

The chapter breakdown for the remainder of this study looks like this:

Chapter two presents a genealogy of the perspective of governance as an analytical approach. It offers a rethinking and reworking of the intellectual framework used to animate and support a study in the ‘mentalities and sensibilities of government’ (envisioned first in Garland (1990)). This examination includes but is not reduced to a genealogy of the more programmatic or theoretical governmentality literatures. The importance of including non-instrumental

1 In the independent research studies prepared for the Inquiry, which were published separate from the Report itself, Kramar’s (2006) work is recognized by one contributor only (MacFarlane 2008:233-281, in Roach (ed.) 2008).
rationalities and contesting forces in an analytics of government is underlined by an interrogation of neo-Foucauldian critiques of studies in governmentality. Finally, materiality is revisited, as we look at ways of appraising ‘why things happen the way they do’ without compromising the epistemological modesty of a study in governmentality.

Chapter three is descriptive. It uses the claims and explanations of the Goudge Report to reconstruct the paediatric death investigation system as a risk management ideal-type (Weber 1985). The purpose of this chapter is two-fold. First, it provides a descriptive account or blueprint of what a paediatric death investigation system ‘done properly’ looks like. In this way, we are introduced to a deliberately under-theorized version of the categories and forms of action used by authorities to imagine and make sense of this inter-institutional complex. The second purpose of this chapter is to identify and establish that ‘risk’ is, indeed, the dominant discursive logic used by authoritative decision-makers in their rationalization of a paediatric death investigation system. This finding trains our analytical eyes on risk discourse and what it does.

Chapter four presents the silences of the Goudge Report. It uses Kramar’s (2005) study to assemble or manufacture these silences, superficially rearranging her claims, explanations and evidence along the way. Based on the picture that emerges from this examination, ‘that which is left absent’ in the Report is historical narrative, due consideration of social and structural factors in child welfare, and evidence of the mass-mediated moral panic about ‘child abuse’ in the early- to mid- 1990s.

Chapter five is the main analytical chapter of this study. It connects the practico-theoretical insights of chapter two to the empirical evidence of chapters three and four, and generates a set of explanatory claims for understanding what risk discourse does in the Report. The main analytical claim that takes shape in this chapter argues that risk discourse has multiple
forms and functions in the Goudge Report, reshaping and being reshaped by a ‘volatile and contradictory’ set of (political and social) rationalities and agendas. While analyzing these different species of risk discourses reveals the contradictory or incoherent aspects of the risk management narrative in the Report, it also demonstrates that the ‘slippage’ between the different meanings and understandings of risk maximizes the legitimacy, persuasiveness and popular appeal of the Report. That the Report depends for its rhetorical power on the silencing of alternative claims, discourses and rationales is central to this analysis.

Chapter six presents the conclusion to this study. It examines ‘why this study matters’ for theory and research.
Chapter Two

Literature Review

2.1 Introduction

This is a study of the mentalities and sensibilities that get (re)produced in one programmatic text about ‘child abuse’ and child homicide. Although this study works on a definite empirical terrain (the Goudge Report), it engages the claims and currents of high-level theoretical debates concerning relations of (risk) governance. Or, to be more precise, this study is committed to a collective project that has coalesced around the reworking and revising of the way we investigate problematics of government (e.g., Miller and Rose [1992] 2008; O’Malley 2004; Valverde 2003; Dean 1999; Rose 1999; Smandych 1999; Dean and Hindness 1998; Barry, Osborne and Rose 1996; Garland 1990; Hunt and Wickham 1994; Burchell, Gordon and Miller 1991). This study is thus both an argument for and critical exposition of the perspective of governance as an analytical approach.

Since “language is the form through which government gives expression to how it envisions reality” (O’Malley 2004:15), the dominant discursive formation that emerges from the Goudge Report—risk discourse—is central to this study. But for now, our interrogation of ‘risk’ as the specific cultural and governmental code under review must be suspended. For the rationalization of the study at hand makes evident certain theoretical assumptions and claims, and an entire ethos of investigation, which are indebted to an analytics of modern rule that works on the broadest explanatory level.¹

¹ An analytics is a “type of study concerned with an analysis of the specific conditions under which particular entities emerge, exist and change . . . [It] attempts to show that our taken-for-granted ways of
To say that this is a study of the ‘mentalties and sensibilities’ of governmental authorities
is to betray the profound influence of the work of David Garland (2001, 1990) on the course
charted here. We can locate a condensed but sufficient version of the theoretical and analytical
approach that Garland etches out in *Punishment and Modern Society* (1990) and applies
substantively in *The Culture of Control* (2001) in his counsel here: “We must . . . inspect the
motivations and thought-processes of the authorities who select and implement [policies], and the
cultural and political contexts in which their choices are validated” (Garland 2001:105). His, then,
is an analysis of the perspective of governance which seeks to map out both the ‘structures of
thought’ (mentalties) and ‘structures of affect’ (sensibilities) used by authorities to “construe
their world and render it orderly and meaningful” (Garland 1990:195).¹ What the coming
literature review and theoretical discussion sets out to do is develop a pool of theoretical and
analytical resources that enables us to heed the insights of Garland, to ‘do’ the mentalties and
sensibilities of government, but to support, rethink and ‘make sense’ of this approach using a
reworked intellectual framework. After all, “It is in the nature of theory to be dynamic, adaptive,
pragmatic: one needs continuously to revise concepts and adjust frameworks to fit the research
problem being addressed” (Garland 2004:163).

What follows here, then, is a mini-study in social theory. It can perhaps be best thought
of as a (and not ‘the’, to be sure!) genealogy of the perspective of governance as an analytical
approach. This review encompasses—but is not reduced to—a genealogy of governmentality
literatures, beginning with the development of governmentality in Michel Foucault’s ([1979]
2008, 1991) work and moving on to its development in Anglo-Foucauldian scholarship thereafter

¹ For Garland (1990:195-196), the distinction between mentalties and sensibilities is only ever an artificial
separation, or “two sides of the same coin”. That claim is adopted in this study.
We shall see that neo-Foucauldian governmentality analyses have particular purchase for this current study because of the painstaking detail with which they anatomize neo-liberal knowledge claims and practices. Certain neo-Foucauldian literatures also offer important reflexive critiques of governmentality studies, identifying a problematic trend dating back to Foucault (1979) whereby, so the claim goes, the instrumental rationalities of political and governmental authorities are emphasized to the exclusion of the cultural sentiments and sensibilities that also animate decision-making (e.g., Garland 2006, 2001; O’Malley 2004, 1999, 1997; Weir, O’Malley and Shearing 1997). The insights offered by those studies direct this author to establish an analytical approach encompassing both the distinctively neo-liberal mentalities of government and the cultural dynamics and non-instrumental rationalities that compliment, contradict, limit and (re)shape neo-liberal thought-forms.

The final section of this chapter takes on the delicate task of “revisiting materiality”, theorizing how it is that material relations of power and clusters of interests shape local practices of political and governmental decision-making. This theoretical and substantive ‘risk taking’—as it might be viewed through the lens of the ‘faithfully Foucauldian’—is examined through Laureen Snider’s work on what will be characterized as the ‘political economy of knowledge claims’ (2009, 2006 (with Bittle), 2004a, 2004b, 2003, 2002, 2000). As we shall see, this work carefully interrogates local mentalities and sensibilities of government (à la Foucault, Garland and later governmentality studies) in light of (neo-liberal) political economic pressures and state restructuring, never compromising its epistemological modesty along the way. Theoretical

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1 Most of the studies grouped loosely here as ‘governmentality studies’ do not and would not self-identity as such, the authors eschewing—as they so often do—any (totalizing) label or classification. This same observation can be applied to the ‘neo-Foucauldian’ label, as it is used in this study.
concepts for introducing political economic considerations into an analytics of government are weighed in this section, specifically for their suitability in this study.

2.2 Foucauldian Roots

Much of the way the research problem of this study has taken shape and come to be understood is indebted to the thinking, writing and analyses of Michel Foucault. Framing this inquiry as a study in governance promotes certain theoretical and analytical ‘taken-for-granteds’ that spawn from a very fertile body of theorizing most apparent in Foucault’s post-1970s lectures and literatures. Indeed, Foucault’s work in political theorizing is often remembered by reference to his articulation of the rationale and materializations of contemporary social ordering discourses and practices, or governmentality ([1978] 2007, 1991). Foucault’s later work thus constitutes a baseline, of sorts, for a distinct (but loosely connected) stream of studies in contemporary rule and the exercise of political power. However, the concepts and claims explored in his influential ‘Security, Territory, Population’ ([1977-1978] 2007) lectures delivered at the Collège de France, wherein Foucault delivered what has come to be known as the famed ‘governmentality lecture’ ([1978] 2008, 1991), both provoke and extend many of the dominant themes, subjects and concentrations implicated in Foucault’s broader and earlier ambitions. Therefore, a fruitful surveying of Foucauldian governmentality theorizing must necessarily consider continuities in Foucault’s materials, both theoretical and substantive. It is to this Foucauldian pool of theoretical resources and the conceptual tools for analyzing government developed and refined therein that this review now attends.

2.2.1 A Word on the ‘Banalities’ – Crisis and Critique of the Welfare State.

In the late 1970s Foucault had his finger on the pulse of a growing antipathy that would become central to the conditions of existence for the forthcoming transformative shifts to neo-
liberal political objectives in many advanced liberal democratic countries: a growing cultural and political mistrust of the state ([1979] 2008:117). This mistrust was fostered and cultivated by widespread and influential negative evaluations of the effects of increased state interventionism in economic and social domains (p. 216). To be sure, this sentiment, according to Foucault (pp. 215-218), was largely articulated through a pervasive critique of the post-war structures, policies and programmes associated with the Keynesian formula of government. By the late 1970s this line of Keynesian welfare state critique amassed enough support from both the Right and the Left to produce a virtual consensus in public opinion and political theory that a ‘crisis of the welfare state’ was well under way in advanced liberal democracies (Foucault [1979] 2008:117; see also, Donzelot 1991:174).

Foucault engages with this descriptive discussion of context—what he often refers to as discussing the ‘banalities’ ([1979] 2008:216)—and establishes a nuanced comparison of the new forms of political critique in Western European and North American contexts respectively. These critiques, advanced and sustained as they were by well-situated actors with the requisite political, economic and social clout to make things happen, were central conditions of possibility for the popular resonance of neo-liberal knowledge claims and practices in Western Europe and North America a few years later. Indeed, Foucault (pp. 215-217) identifies similar contextual elements that describe the political and cultural unrest in Western Europe and North America, mutually, in the late 1970s: opposition to entrenched Keynesian mentalities; ill-feeling towards ‘overextended’ social and economic interventionism; and, hostility towards the concomitant swelling of government bureaucracies. The terrain for the reception of neo-liberal knowledge claims was shaped in this political, social and economic context.
The point of contextualizing Foucault’s theorizing of governmentality within a perception of welfare state crisis is, first, to establish the suitability of Foucauldian thought for situating the neo-liberal reconfiguration of political objectives in Canada in its historical conditions of existence. The contextual elements Foucault describes did play out in the Canadian setting (especially in the province of Ontario), albeit at a slower rate than in the United States (O’Malley 2004:135; Snider 2004a:281). Nonetheless, we can identify an institutionalized disdain for and mistrust of the welfare state giving rise to new forms of government and new political realities in the Canadian context in the 1980s and 1990s (Comack and Balfour 2004:40; Cossman and Fudge 2002). Second, reviewing Foucault’s discussion of the context from which contemporary forms of government emerged gives us a sense of their contingency or non-necessity; indeed, it allows us to appreciate—to invoke a well-worn expression—that “things might have been otherwise, and thus . . . they could be different in the future” (O’Malley 2008:54, italics in original)!

Understanding that possibilities for change exist gives rise to the sense of urgency with which contemporary relations of government (or governance, as we will soon see) must be theorized and mapped out empirically in order to create political and pragmatic spaces for resistance.

2.2.2 New Ways of Thinking about Social Order – Government, Governance and a New Conceptual Architecture of Power.

The questions of political philosophy provoked in Foucault’s post-1970s work are largely directed towards overcoming problematic tendencies in scholarly thought about power and authority. Foucault takes aim at the ‘juridical schematism’ (1980:120) of those characterizations and analyses of power and authority that are predominately framed around questions of the problem of the State and the problem of sovereignty, respectively and mutually (p. 122). He attributes the overvaluation of the problem of the State to ‘conventional’ analyses of governing in the 1970s, often Marxist-inspired and social control oriented (Foucault [1978] 2007:243). In these
studies Foucault locates evidence of a broader, persistent ‘obsession’ in political theory with a
monstre froid (cold monster): “We know the fascination that the love or horror of the state
exercises today; we know our attachment to the birth of the state, to its history, advance, power
and abuses” (p. 109). The philosophical direction of his governmentality programme takes shape
against such state-centered analytical approaches: “What we need, however, is a political
philosophy that isn’t erected around the problem of sovereignty, nor therefore around the
problems of law and prohibition. We need to cut off the King’s head: in political theory that has
still to be done” (Foucault 1980:121). The key Foucauldian claim that understanding and
analyzing contemporary relations of authority needs to extend ‘beyond the limits of the State’ (p.
122) will be explicated here, for it is a central premise of studies in governmentality.

In his post-1970s work, Foucault provides a genealogical account of the modern state and
a history of governmental reason designed to illustrate a gap between conventional political
theory and analyses and the empirical realities of how governing is actually accomplished in the
present. He argues that analyses need to move beyond the juridical framework of sovereignty
because government itself “finally came to be thought, reflected and calculated outside of the
juridical framework of sovereignty” (Foucault [1978] 1991:99). What is important when
examining these genealogical and historical accounts is not necessarily to take inventory of
Foucault’s entire reconstruction of the particulars of the history of governmentality, but to attend
to what he describes as the “subtle process” (known as the ‘governmentalization of the state’) (p.
99) by which the elements of the ‘new’ governmentality emerged in the late eighteenth century.
Society, economy, population, security and freedom: these are the elements whose forms are,
according to Foucault, enduring and recognizable in contemporary relations of governance
In advancing his claim that political theory needs to be reworked to account for the 'governmentalization of the state' and the emergence of a contemporary art of governing, Foucault speaks in terms of 'problematics', or categories of problems and themes around which the arts and ends of government have crystallized ([1978] 1991:97). Problematics are thus discursive spaces or matrices within which governmental ends and the techniques or instruments used to meet these ends are imagined. In this way Foucault’s analytical approach to the study of governance is perspectivist: it is concerned to understand the questions that political and governmental authorities ask of themselves, their computations on how to govern. Foucault takes historical inventory of the ‘problem of government’ from this departure point.

Foucault argues that it is not until the late eighteenth century that political authorities begin to think about and exercise rule within the framework of the problematic of government, a way of viewing problems that dominates political thought and action to this day ([1979] 2008:104-106, 348). Until this time, Foucault contends, the problems of governing were primarily posed in terms of the sovereign and sovereignty— in terms of submission to law (pp. 96-99). The process of the receding, if not disqualification, of the political sovereign is characterized by Foucault as the ‘governmentalization of the state’, an occurrence entailing the interplay between: (i) the birth of a specific knowledge of government (political science); (ii) the constitution of the population as a discursive reality; and, (iii) the re-centering of the economy on the plane of population (p. 99). Through these new thought-forms and expert claims, specific knowledges of the desires and anxieties of governable subjects (Foucault [1978] 2007:73) and the ‘natural’ processes of the discursive fields they inhabit (namely ‘population’ and ‘economy’) attain the status of truth ([1979] 2008:17) and the quality of ‘scientificity’ (1980:85).
This process—this emergence of the problem of government as central to the formula for political and governmental decision-making—implies a new configuration of relations of authority, or relations between ‘governors’ and ‘the governed’. It implies a new conception of the governable subject, a new end (‘telos’) of government and, thus, the reconfiguration of the instruments and techniques employed to achieve governmental aims and their extension ‘beyond the State’. Armed with the claims to knowledge (and truth) of political economy, governable subjects are constituted through the visibility of their desires (versus their rights) in the minds of political authorities as economic subjects (*homo economicus*) (Foucault [1979] 2008:283); thus, conceived through an economic grid of intelligibility (p. 240), the social relations of modern subjects, co-existing in a population, are appreciated for their opaqueness and complexity ([1978] 2007:71). This has resulted in a change in the structure of relations between governors and the governed in the following way. Since the natural processes of the population and its economic subjects cannot be transparent to the action of the sovereign, “the relation between the population and sovereign cannot simply be one of obedience or the refusal of obedience, of obedience or revolt” (Foucault [1978] 2007:71). Thus, the economic subject undermines the sovereign of power, “inasmuch as he reveals an essential, fundamental, and major incapacity of the sovereign, that is to say, the inability to master the totality of the economic field” (Foucault [1979] 2008:292).

However, particularly urgent for the research problem of this study is Foucault’s caution that the constitution of the economic subject in contemporary governmental reason does not entail the complete displacement of the problem of sovereignty by the problem of government. As Foucault claims, “[T]here is no elimination of the problem of sovereignty; on the contrary, it is made more acute than ever” ([1978] 2007:107). Foucault explores the tension between the
economic conception of the governable subject and the juridical structures of the sovereign in his lectures on ‘The Birth of Biopolitics’ ([1979] 2008). He argues that the economic subject is irreducible to the ‘sphere of right’ (p. 294), indicating that a new logic underlies the relationship between contemporary governable subjects and juridical structures (e.g., the law). Indeed, Foucault claims, juridico-legal structures and State apparatuses do not disappear; rather, they proliferate through laws and decrees, but ultimately rest on dispersed techniques and mechanisms for normalizing (discipline) and shaping the desires and arrangements of economic subjects (security) ([1979] 2008:7; 1980:72). Thus, while contemporary governable subjects are constituted as subjects of interest, they nonetheless remain governed through (often unbalanced) permutations of sovereignty-discipline-government mechanisms (Foucault [1979] 1991:102).

With a reconfiguration of the relationship between political authorities and the ‘governed’ comes a new ‘telos’ of governing that is markedly different from the interconnected ends pursued through the problem of sovereignty—“nothing other than submission to the law” (Foucault [1978] 2007:98)—and the problem of State: “. . . to arrange things so that the State becomes sturdy and permanent, so that it becomes wealthy, and so that it becomes strong in the face of everything that may destroy it” (Foucault [1979] 2008:4). Given the knowledge of the complexity and reality of the ‘natural’ processes of the population and the economy, the contemporary reason of government, its ‘telos’, is “. . . the welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health etc. . .” (Foucault [1978] 1991:100). Hence, a contemporary art of government, the tactics and techniques employed to secure the processes of the population, involves the indirect fostering and encouragement of natural desires (Foucault [1978] 2007:73), needs, interests and aspirations, without the full awareness of the population of what is being done to it (Foucault [1978] 1991:100). This shift to a
plurality of ends of government (Foucault [1978] 2007:98) bears the hallmarks of a broader shift in emphasis from *means of government* to *relations of governance*.

Given this schematic of the rationalities of contemporary political authorities and the new structure of relations between ‘governors’ and ‘the governed’ (now theorized as *governance*), we can tease out the ways the continuous theme of power in Foucault’s span of studies is implicated in, and provides explanations for, his governmentality work. Indeed, governmentality theorizing can be considered, ultimately, a new analytic for understanding relations of power and authority in contemporary government.¹ To characterize this as a ‘new’ conceptualization of power is to present it as different from the “purely juridical conception of power” (Foucault 1980:119), the latter of which is most identifiable by its repressive effects and applications in social-control oriented studies (p. 88). Foucault argues that studying contemporary relations of authority requires a “non-economic” analysis of power, which is posed neither in terms of the *right to possess* power nor in terms of the economic functionality of power (*ibid.*). Because relations of power extend ‘beyond the limits of the State’, Foucault contends, any analysis of these relations must therefore be conducted outside of the exclusive framework of the respective but interrelated problems of sovereignty and State as well (p. 122).

In articulating his claims, Foucault carves out a conceptualization of power that is multiple and dispersed, and while it can be integrated with other kinds of relations (race, class, gender, sexuality, and so on) and utilized in global strategies and conditions of domination (p. 142), there is no authoritarian-like source from which all power derives (p. 159). His is a conceptualization of power that is relational and productive (Foucault 1980:198), one which

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¹ Foucault’s sketching of a *new conceptual architecture of power* takes its most recognizable shape through his analysis in *Discipline and Punish* (1977) and a series of lectures and interviews delivered between 1972 and 1977 and published in the edited volume *Power/Knowledge* (1980).
“doesn’t only weigh on us as a force that says ‘no’, but . . . traverses and produces things, induces pleasure, forms knowledge, produces discourse” (p. 119). Foucault clarifies further his theorized relationship between power and knowledge (discourse):

What I mean is this: in a society such as ours, but basically in any society, there are manifold relations of power which permeate, characterize and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation, and functioning of a discourse. There can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association. We are subjected to the production of truth through power and we cannot exercise power except through the production of truth. (1980:93)

Several points need to be made on this outlined relationship between power, knowledge, and truth. First, the economy of discourses of truth to which Foucault alludes is implicated in a further set of claims he establishes regarding the nature (or archaeology) of the types of knowledge claims and discourses that achieve the status of ‘truth’ and, therefore, bear the “specific effects of power” (p. 93). Foucault argues that in contemporary Western societies discourses of truth equate to scientific discourses (p. 210).¹ Scientific discursive formations derive a certain strategically unified appearance from a series of interdiscursive and extradiscursive dependencies (Foucault [1978] 1991:58) that align these forms of knowledge with social, economic and cultural institutions of hegemony (Foucault 1980:133-133) to effectively diminish and disqualify other types of knowledge (p. 85). But, Foucault adds, the stabilized coherence of these discourses of truth is not merely the effect of a knowledge imparted ‘from above’; rather, a politics of knowledge (or politics of truth) entails struggles, resistance and competing claims, and the accommodation or appropriation of the latter by hegemonic discourses (p. 142; [1978] 2007:3).

¹ The explanation of this economy of truth merges Foucault’s earlier work on the archaeology of knowledge with his later genealogical programme.
To capture the process by which these discourses of truth (or truth claims) function as a form of power and disseminate the effects of power, it is helpful to refer back to Foucault’s governmentality theorizing. If the ‘telos’ of the contemporary rationality of government is the management of population (Foucault [1978] 1991:100), and if this is accomplished through arousing, facilitating and managing (Foucault [1978] 2007:353) the ‘naturally’ occurring desires and capacities of individuals (p. 73), then it follows that freedom is a necessary correlate of the deployment of technologies of government (pp. 48, 353). To govern properly is to govern through, and with respect for, freedom and agency. Thus, ‘governable’ subjects become active and willing participants in the management of their conduct and the conduct of others; however, and this is the pivotal point, they do so by reference to discourses of truth circulating through the social body via political and economic apparatuses of security (Foucault 1980:133)—discourses of truth that modern subjects themselves demand (ibid.). This individualized self-examination (or ‘ethics’, as Foucault prefers) and the examination of others, by reference to scientific claims to knowledge, demonstrates “the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned. . .” (p. 131). It is through this process of self-governance, the conduct of conduct, that the specific effects of political power are borne by knowledge.

2.2.3 ‘Doing’ Governmentality - A New Ethos of Investigation.

To characterize this analytical approach as new or novel is, again, to imply a notional and methodological distinction between the governmentality analytic and ‘conventional’ frameworks for analyzing relations of power and authority. Through his dialogue, it becomes apparent that Foucault articulates his position in opposition to state-centered analyses of rule (1980:121-122). Accordingly, in his approach power and the State become objects of micro-analysis: power as it

This positioning of governmentality has several immediate implications for studying governance. First, Foucault’s approach provokes a new set of analytical questions to be answered about governance as a process. Grounded in his conceptualizations of power and State, respectively, the questions guiding this perspective probe how governing is accomplished, without reducing these questions and their answers to ideas about the monopoly of the State over the ‘legitimate’ exercise of a repressive power. “How to govern oneself, how to be governed, how to govern others, by whom the people will accept being governed, how to become the best possible governor...” (Foucault [1978] 1991:88)—these questions form the basis of the problematic of government, and in interrogating how authorities pose and respond to these questions we are directed by a genealogical enterprise whose normative goal is intelligibility; that is to say, this set of questions serves to render visible the ways a particular regime of truth forms (through a complex of inter/extra discursive dependencies, and the competition of knowledge claims) and becomes strategically co-ordinated with a set of technical practices to constitute the seemingly ‘self-evident’ problems faced by government (Foucault 1980:84-85, [1978] 1991:58; [1979] 2008:19).

This mode of investigation thus starts from the local, micro-analytical level. It begins with an empirical mapping of everyday practices and techniques of power/knowledge and traces the means by which they reveal their political usefulness and economic advantage for political authorities so as “to [come to] be colonised and maintained by global mechanisms and the entire
State system” (Foucault 1980:101). This is a ‘bottom-up’ mode of investigation, whereby the starting points for analyses are the specific situations and instances in which ‘problematicizations’ materialize.

Rendering visible the discursive characteristics of government which inhere in the discourses and practices deployed in population management would appear to be the normative dimension of Foucault’s approach to governance; intelligibility and visibility facilitate criticism. This analytical perspective, hence, attends to language and knowledge as political technologies—‘thought made practical and technical’—as much it does to the non-discursive elements of a practical field (Foucault [1978] 1991:61). Thus, in political practice, thought and action transcend each other, and the governmentality analytic poses questions designed to be revealing of the rationalities guiding this “theoretico-practical matrix” (Miller and Rose 2008:39).

From this analysis of the type of approach Foucault inspires it is evident that his governmentality work provides a new ethos of investigation for studying contemporary government more than a rigid framework. The rationale for the trajectory of ‘how’ questions that is to be posed is presented and defended, and the germane discursive and non-discursive elements of government are emphasized. The governmentality mode of analysis does indeed appear—in Foucault’s fragmented commentary on the subject—to be designed to understand how the problems of contemporary government are rendered thinkable and amenable to management. The approach thus privileges the conceptual assemblages (or, rationalities and mentalities) of political authorities and uses them as a grid for understanding the instrumentalization of socio-political objectives. From these novel analytical arguments, a new ethos of investigation emerges for studying government—one which was to be taken up, reworked and popularized in social theory and empirical studies in Anglophone societies a number of years later.
2.3 Neo-Foucauldian Roots

This section traces the reception and adaptation of the governmentality approach in Anglophone scholarship starting in the late 1980s.\(^1\) English-speaking scholars found fertility in Foucault’s analytical perspective at a time when the rationalities of government in many Western societies were reconfigured for the present and thus surpassed the scope of the ‘history of the present’ Foucault began in his 1977-1979 lectures.\(^2\) While Foucault ([1979] 2008) performed some preliminary analysis of the rise of anti-welfare state sentiments and programmes in Europe and North America in the mid-1970s, his death in 1984 precluded him from extending his genealogy of governmental rationalities to include the assemblage of these critiques of the social state into a “relatively coherent” (Miller and Rose 2008:211) and “politically salient assault on the rationalities, programmes and technologies of welfare” (p. 209).

Within this latter socio-political context, and given the urgency for explanatory efforts it generated, theorists working in Anglophone countries found utility in the theoretical claims and concepts, objects and terms of analysis, and ethos of investigation formulated in Foucault’s governmentality work. Specifically, these theorists took up and reworked the governmentality approach within the framework of neo-liberalism, the anti-welfare state political rationality that was successfully articulated by the Right and entrenched in British and North American political culture as a way of posing and understanding contemporary problems of government (Rose 1996:60). These neo-Foucauldian projects develop ways of anatomizing neo-liberal problematizations, programmes and practices of government (Miller and Rose 2008:54). In ‘doing’ governmentality within the neo-liberal framework, these accounts render intelligible and

\(^1\) See Gordon (1996) for a detailed analysis of the delayed reception of Foucault’s ‘governmentality’ theorizing in Britain.
\(^2\) Garland (1999:28), noting this, refers to Foucault’s account of governmental reason as an “incomplete genealogy”.

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provide further explanations of the retreat of government and concomitant intensification of governance that has come to characterize the exercise of modern political power (Smandych 1999:2).

By offering accounts that complete Foucault’s genealogy of governmental reason, neo-Foucauldian work provides substantive analyses of the structuring forces underlying current governmental practices and the ways of governing specific to the present in advanced liberal democracies (Garland 1999:28). Understood along these lines, neo-Foucauldian governmentality theorizing offers accounts, interpretations and clarifications of the Foucauldian framework that are fruitful and timely for the study of governance at hand.

2.3.1 The British School of Governmentality – Completing the History of the Present.

This colloquial label is a reference to the “informal thought community” (Miller and Rose 2008:8) which, in the context of the rearrangements of late-modernity in Western societies, sought to understand contemporary rationalities and technologies of government with reference to Foucault’s governmentality theorizing. While the shepherds of these studies in governmentality were indeed mostly British theorists, the informal analytical programme simultaneously gained momentum in Australia, Canada, New Zealand and (to a smaller extent) the United States, all societies that were experiencing a rationalized antipathy for, and undermining of, welfare state programmes and policies (at variable rates and operating through diverse institutions) (Miller and Rose 2008:14; Garland 2004:178, 2001:98).

Miller and Rose ([1992] 2008) present the first major attempt to systematize the mode of analysis being increasingly used in their own and others’ interdisciplinary and empirical investigations of a similar theme in the late 1980s: the anatomizing of governing and “the
relations of knowledge, authority and subjectivity in the present” (Miller and Rose 2008:5).¹

Rather than attempting to articulate a general theory of governmentality, Miller and Rose set out to “[G]enerate . . . a set of conceptual tools that characterized the sort of work that we had been doing in our empirical analyses, and that would make the link more directly with the problem space of political power and its various forms” (p. 10). To this end, they draw on Foucault’s governmentality analytic and augment it with concepts and claims borrowed from studies in the sociology of science (like ‘governing-at-a-distance’) and work in the sociology of professional and expert knowledge (Miller and Rose 2008:11-13).

In the 1990s, subsequent to the publication of the seminal paper by Miller and Rose (1992), neo-Foucauldian studies in governmentality proliferated in various domains of investigation and subsequently generated several other attempts to systematize this style of analysis. Thus, in addition to Miller and Rose ([1992] 2008), this review will attend collectively to Barry, Osborne and Rose (1996), Dean (1999) and Rose, O’Malley and Valverde (2006), as we consider the prominent tendencies of the (more or less) neo-Foucauldian research programme in governmentality, risk and neo-liberal mentalities of government.

As Barry et al. (1996:4) contend, if there is what has been deemed a ‘Foucault effect’ (Burchell et al. 1991) in the contemporary governmentality studies, its materialization is two-fold. First, neo-Foucauldian studies share Foucault’s epistemological departure point for analyzing present-day arrangements. The present has only the appearance of a coherent historical conjuncture, an epoch with a series of ‘self-evident’ problems of government, and one which is “re-imagined by so much social theory” (Barry et al. 1996:5) as the “realization of underlying

¹ Burchell, Gordon and Miller (1991) predates Miller and Rose (1992) as an overview of studies in governmentality, but it neither has the systematizing rationale nor captures the Anglophone reception and adaptation the way Miller and Rose (1992) does, in the opinion of the author.
principles or development laws” (Hunter 1996:174). In keeping with the Foucauldian lineage of genealogical accounts and ‘histories of the present’, neo-Foucauldian analyses question this guise of unity, and ask how problematizations are imagined and constituted in the present as objects of particular forms of power/knowledge and effects of certain institutional practices (Barry et al. 1996:2; Burchell 1996:32). The inherited ethos, then, is to “decompose”, “fragment”, “destabilize”, or “cut up” the present and the ‘self-evident’ problems that ostensibly inhere in the present (Barry et al. 1996:5-6), with the purpose of reconstructing and rendering intelligible the “historically sedimented” (p. 6), contingent (Bell 1996:83) and unnecessary (Burchell 1996:33) character of our present arrangements. As such, the normative dimension of these studies appears to be in league with that of Foucault’s work (1980) for rendering visible the conditions of possibility that shape contemporary rationalities of government and revealing contingencies, vulnerabilities and possibilities for change (Bell 1996:83).

The second ‘Foucault effect’ on neo-Foucauldian governmentality analyses is a persistent and primary focus on the “structure of conceptual and technological assemblages” (Garland 1999:30) of contemporary governing. Indeed, this work retains and clarifies the terminology Foucault uses to describe the two key ‘anatomical objects’ of governing: Political rationalities of government are dominant styles of thinking, intellectual frameworks for rendering reality and problems amenable to intervention (Miller and Rose 2008:15); Technologies of government and of ‘self’ are “assemblages of persons, techniques, institutions and instruments” (Miller and Rose 2008:16) that attempt to “produce stable, standard and reproducible forms of relations amongst persons and things” (Miller and Rose 2008:44). These technologies act upon the self-regulating propensities of ‘governable subjects’ to effectively instrumentalize relational life for certain ends (Miller and Rose 2008:46). And, in concert with Foucault’s (1980) understanding of
power/knowledge, the neo-Foucauldian analytic identifies ‘veridical knowledges’—knowledges that claim the status of truth (Miller and Rose 2008:16)—as mediating variables in the alignment of individual interests and aspirations with socio-political objectives (Miller and Rose 2008:51-68).

This excursion into neo-Foucauldian clarifications of Foucault’s terminologies and conceptual schema is intended to re-emphasize the contours of the governmentality analytic as it was conceived in Foucault’s fragmented commentary and taken up by neo-Foucauldian theorists. The next investigative task, then, is evaluating the ways neo-Foucauldians colour the governmentality analytic with, and therefore explore substantively, neo-liberalism and its dramatic displacement of welfare state policies and programmes. Neo-liberalism, as a political rationality, is conceptualized as a relatively systematic discursive matrix, distinct from other political rationalities or ‘governmentalities’, wherein the activity of government is articulated by reference to specific rules and norms (Miller and Rose 2008:30, 57). In other words, the neo-liberal political mentality opens up a political ‘problem-space’ (Burchell 1996:28) and fertile terrain for ‘politico-technical’ innovation (ibid.) which is inhabited and regulated by distinctive idiom and epistemological and moral qualities (Miller and Rose 2008:58; Rose 1996:42; Miller and Rose 1992:198).

When neo-Foucauldian analyses explore contemporary political discourse, they find it appeals to the concepts, terms, norms, and values of free enterprise and economic productivity (Miller and Rose 2008:47; Dean 1999:57). This political vocabulary of enterprise is derived from the neo-liberal thesis of minimal state interventionism (Miller and Rose 2008:209), and it draws on the expertise and mentalities of accountants, managers and economists (Miller and Rose 2008:109). With the extension of economic forms of knowledge and expertise to non-economic
realms (Miller and Rose 2008:17; Dean 1999:57)—the spread of a “calculative mentality” (Miller and Rose 2008:212)—new governable and ethical subjects are construed in the language of active, choosing, responsible, autonomous individuals (Miller and Rose 2008:48). Images of “prudent” or “self-governing” subjects (Miller and Rose 2008:100; O’Malley 1996a:196) are projected by this language, subjects who have the freedoms and responsibilities to engage in the voluntary associations (or communities) necessary for ethical behaviour (Dean 1999:153).¹

However, to successfully align this presupposed “free subject of need, desire, rights, interests and choice” (Dean 1999:165) with the socio-political objectives of neo-liberal political authorities, a re-figuration of the relations between expertise (knowledge of ‘truth’) and politics necessarily occurs (Miller and Rose 2008:211-212; Rose 1996:55). On a conceptual level, there is a displacement of the internal logics of expertise (Miller Rose 2008:110), which entails the permeation of previously impenetrable ‘enclosures’: “relatively bounded locales or types of judgment within which . . . power and authority is concentrated, intensified and defended (Miller and Rose 2008:69). Whereas ‘enclosures’ had previously insulated and preserved the specialties of experts of the social welfare state (Miller and Rose 2008:109), ‘post-social’ governance emerges (Rose et al. 2006:98) and privileges individualistic thought-forms. With the rise to prominence of neo-liberal discourse, power is shifted to economic styles of reasoning. Thus, to the end of representing domains and their problems in forms that can enter the realm of neo-liberal political calculation, the judgments of experts in economic and non-economic specialties alike are now “construed, justified, prioritized and enacted” (Miller and Rose 2008:109) by the

¹ This articulation of the discursive character of governmentality (Miller and Rose 2008:29) explains the priority with which neo-Foucauldian analyses of neo-liberalism attend to political discourse, its distinctive vocabularies and rhetoric. For the language of neo-liberalism is more than merely contemplative; it regulates the arguments and theoretical claims that can be made about the legitimate means and ends of government (Miller and Rose 2008:57; Dean 1999:64) and the governmental categories and networks (Rose et al. 2006:89) that come to make systems of action operable (Dean 1999:65).

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managerial vocabularies, values and logics of neo-liberalism (Miller and Rose 2008:62). To be recognized as legitimate ‘authorities of truth’ when it comes to the problems of government, experts are now required to speak the language of neo-liberalism and render calculations and solutions consonant with the values and normative assumptions of individual freedom and responsibility (Miller and Rose 2008:63).

What this reconfiguration of the relationship between expertise and politics looks like concretely, then, is the emergence of ‘governable subjects’ as clients and consumers of expert knowledges (Dean 1999:172, 207; O’Malley 1996a:203). Of course, these theorists note, subjection to and subjectification by expert knowledges is a condition of freedom, which means that both direct (dire warnings, threats, injunctions, sanctions) and indirect (calculation, inscription, norms) technologies of government form the systems of domination (Miller and Rose 2008:65, 206) through which the subject must first be “shaped, guided and moulded into one capable of exercising freedom” (Dean 1999:165). Previously ‘social’ experts operate competitively within and outside different levels of the State, forming strategic networks and connections to provide authorities and prudent subject-clients alike with forms of knowledge specific to the neo-liberal problematic of (personal) security. These knowledges serve to empower and responsibilize, to foster the self-regulative capacities of individuals and communities (Miller and Rose 2008:107; Garland 2001:124; Dean 1996:211; O’Malley 1996a:201, 1996b:313).

This is the governmentality analytic, coloured and animated by the politics, knowledge claims and practices of neo-liberalism. Its neo-Foucauldian genesis is arguably located in Miller and Rose ([1992] 2008), and its prominent Foucauldian analyses of the rationalities, programmes
and technologies of government have since been reiterated and reemphasized in numerous subsequent studies.

2.3.2 Neo-Foucauldians Contra Neo-Foucauldians – Critique from ‘Within’.

Along the trajectory of nurturing governmentality studies, constructive criticisms of this analytical perspective and its applications in neo-Foucauldian analyses have been generated by theorists whose theoretical reflexes are also significantly indebted to Foucault’s oeuvre (e.g., Garland 2006, 2004, 2001, 1999; O’Malley, Weir and Shearing 1997; O’Malley 1996a, 1996b). These critical discussions, which (more or less) take the analytic outlined by the ‘British School’ as their object of analysis, augment the explanatory power of the governmentality perspective for understanding the ‘messy actualities’ (Larner 2000) involved in the shaping and reshaping of rationalities of government and relations of governance. In this sense, these critiques address the silences of earlier governmentality studies.

O’Malley et al. (1997), responding to the surge in governmentality studies in the 1990s and the critical reviews of the literature that followed, argue that in narrowing the theoretical objects of analysis to political rationalities and technologies (p. 509), the governmentality analytic problematically restricts its perspective of rule to one that is “episodic” or “insular” (p. 513). These authors tease out the prominent tendency in governmentality studies to divorce the conceptual and technological assemblages of government (as reflected in the discourses of political authorities and official programmatic texts) from the contestation and resistance that work from ‘below’ to reshape governmental thought-forms (O’Malley et al. 1997:510). With these types of analyses a problematic assumption is reproduced that suggests uniform, uncontested logics shape the perspectives of decision-makers (Garland 2004:164; O’Malley 1996b). The explanations generated thus overlook the complexity and density of forces involved
in contemporary governance; indeed, Garland (1999:34) suggests, “[F]or a history of the present, [an analysis of ‘rationalities’] is only one (static) element in a dynamic situation”.

These tendencies are perhaps attributable to earlier tensions between genealogical and sociological styles of analysis (see Rose 1987), tensions which shaped the epistemological design of the governmentality analytic and insulated it from more ‘sociological’ analytics of contestation and social variation (for instance, post-colonial, feminist and queer theory perspectives) (Garland 1999:37; O’Malley et al. 1997:504; O’Malley 1996b:312). However, political rationalities, programmes and technologies are shaped by and inhabit complex social domains or ‘fields’ (Bourdieu 1989) with their own constitutive forces (Garland 1999:31; O’Malley et al. 1997:504); therefore, the configuration and reconfiguration of relations of governance needs to be understood by ways of alternative—often conflicting and oppositional (Garland 1999:31)—analytical accounts that reflect the ‘balance of forces’ (Garland 2004:167) involved in governance in the ‘real world’ (Garland 1999:31). To theorize this productive engagement between contestation and rule, studies in governmentality can expand the theoretical objects under review and reach out to forms of sociological analysis that are neither conceptually nor epistemologically incompatible with the governmentality analytic (Garland 1999:37).

Garland (2006, 2004, 2001, 1990) argues for and demonstrates the importance and efficacy of drawing from cultural theory, suggesting that scholars look “beyond policy makers and politicians to the social and cultural conditions that structure political decisions and make certain social arrangements seem possible and desirable” (2004:185). He argues that a “single-minded focus on the political and instrumental aspects” of contemporary rule has occupied neo-Foucauldian governmentality analyses, to the exclusion of “the cultural and expressive characteristics” of politics (Garland 2006:421)—prominent characteristics which, Garland argues,
are actually distinct determinative forces (p. 422) that shape the policies and practices of government (p. 420, 2001:76, 1990:195). Thus, Garland’s (2001) investigation of contemporary crime control practices analyzes the cultural mentalities and sensibilities that have shaped present-day responses to crime and insecurity. He shows empirically how cultural practices, interests, experiences and feelings, and values and sensibilities, have organized and motivated contemporary structures and strategies of governance more than any one dispassionate, ‘rationalistic’ mentality of government (e.g., neo-liberalism and its economic style of reasoning) (2001:163, see also Garland 2004). Borrowing from Bourdieu (1977), Garland characterizes culture as a matter of habitus:

[Culture is] the embedded and embodied habits of social actors who have been acculturated to the norms of life in specific settings. It refers to the common sense understandings that these actors have acquired, and to the perceptions, judgments and evaluations that they habitually make as a consequence of this acculturation. Culture in this sense is . . . a concept that focuses on the point of convergence between the behavioural orientations of individual actors and the norms, constraints and power relations of the social field in which they act. (2006:433)

Garland’s (2001) inquiry is exemplary in blending an analysis of mentalities of government with cultural considerations. By reference to a sociological and historical reflection on the transformative dynamics of social change in ‘late twentieth century modernity’ (Garland 2001:77; see pp. 75-89 for in-depth discussion of these changes), Garland identifies a new collective experience (habitus) of chronic insecurity and risk which animates political and governmental decision-making in the crime control field (pp. 7, 163, 195). This habitus shapes and embodies a new set of cultural sensibilities which are organized around concerns for “tighter order and control”—concerns which have a tendency to find resonance in, and organize and motivate, neo-conservative discourses and claims (Garland 2001:99).
Operating within these cultural currents, Garland argues, are non-instrumental (value-rational) rationalities that need to be recognized as constitutive forces in the shaping of governmental practices and policies (1999:35). He contends that populist, neo-conservative style sentiments, motivated by the insecurities of everyday life, intersect with neo-liberal political rationalities—the latter of which are considered technical, knowledge-based and grounded in instrumental calculation (Garland 1999:35)—to generate a “tension between reason and emotion” (Garland 2004:183). This tension, he argues, characterizes the incoherent and often contradictory character of the discourses and practices implemented to govern individuals and communities (Garland 2001:98). Thus, Garland’s inclusion of cultural analysis in his anatomizing of governing shows us that contemporary political decision-making in the field of crime control is often structured by a vacillation between two key discursive matrices: neo-liberalism (the economic-administrative matrix) and neo-conservatism (the populist-political matrix) (1999:34). The dominant cultural themes of insecurity and risk that emerge in the 1980s and 1990s, therefore, result in a paradoxical pairing of the individualization of freedoms and responsibilities of neo-liberal strategies with increased efforts to “segregate, fortify, and exclude” risky individuals and dangerous communities (Garland 2001:194). Many of these latter strategies find expression and justification in the emotion-laden and morally-toned sentiments of populist discourses (Garland 2004:285).

Where Garland’s analytical approach augments the purchase of the governmentality analytic is in its refusal to hastily translate evidence of the influence of populist sentiment into forms of instrumentality. Garland’s (2001) analysis eschews the tendencies of some neo-Foucauldian accounts that reduce the contemporary intensification of social controls and punitive practices to rational and direct interventions designed to shape the “responsibilized” neo-liberal
subject (see Dean 1999:139-164; O’Malley 1996a). This is certainly not to deny that intensified social controls and punitive practices can, in practice, work towards instrumental ends by coercive reform and/or empowerment. However, Garland argues (1999, 1990) and demonstrates effectively (2001) that non-instrumental rationalities, which are produced by and through *habitus*, co-exist—sometimes peacefully, sometimes not—with instrumental rationalities of government.

Consistent with the work coming out of the ‘British School’ in the early-to-mid 1990s, Garland’s approach examines contemporary politics from the vantage point of political and governmental authorities (2001:105, 2000:347). But in providing a more comprehensive problem-solving account of how the policies and practices in question are made possible (their conditions of possibility/existence) and ‘how they really function’ in a ‘field’ of social action, Garland’s analysis can be seen to expand the governmentality analytic to examine the extra-political contexts and considerations that condition, shape and validate certain decision-making (2001:139). By making use of ‘sociological’ forms of analysis in tandem with the governmentality approach, thoughtfully borrowing concepts and claims from Bourdieu (1989, 1977), Garland’s study rethinks and accounts for contemporary social controls within a social field of constitutive and dynamic forces, and thus better approximates the processes and mechanisms by which the discourses, techniques and practices of present governing are made possible and sustained.

Garland (2001) therefore provides a method and several conceptual tools for rendering intelligible explanatory shifts in structures of relations, forms of thought *and* cultural sensibilities, all of which are constitutive forces in the formulation of contemporary policies and practices of government. Thus, the recent developments under review can be explained from a perspective other than (but not in lieu of) “the point of view of the governmental agencies and political actors
directly responsible for policy formation” (Garland 2000:347). This increases the capacity of a study in governance to make visible “how it really was” (O’Malley 1996b:312), entailing some of the contestation, contradiction and instability of present forms of rule that have been neglected in earlier neo-Foucauldian ‘governmentality’ studies. Indeed, by making these analytical adjustments, we can see that “[P]olitics is a far more open-ended process of contestation and engagement than readily emerges from viewing it as a ‘mentality of rule’” (O’Malley 1996b:312).

2.4 Revisiting Materiality

If this study in relations of governance is to employ a “more open-ended view of the work of programmers, and of the fate of programmes, than is implied by most existing governmentality studies” (O’Malley 1996b:314), if it is to move beyond a narrow ‘programmatic vision’ of government (Larner 2000) and investigate the very political process of managing conflicting and competing forces and rationalities both within government and emanating from “all sorts of exigency, political calculation, and short-term interest” (Garland 1999:34), then a new explanation of relations which cannot be theorized within the ‘British School’ analytic is necessary. To engage the level of ‘messy’ politics—with all of its contestation, contradiction, compromise and accommodation—is to theorize the constitutive competition between different constituent groups, voices and preferences. These groups bear different claims to knowledge and mobilize different discursive resources and competencies with which to (re)shape relations of governance and have their ideas and interests taken up and represented in the political realm (Snider 2009, 2004a, 2004b, 2003, 2000; Garland 2001, 1999; Larner 2000; O’Malley 1996b).

Since the navigation of competing knowledge claims structures political and governmental decision-making, and since “all claims validate some interests and demonize others, all create winners and losers” (Snider 2000:171; see also, 2003:355), a study in governance would do well
to investigate ‘why’ some knowledge claims ‘grow legs’ and rationalize certain programmes and others do not (Snider 2000).¹

This initiative has the conspicuous effect of re-introducing a ‘why’ question into the study of governance. It directs attention to ‘why’ (but no less ‘how’) certain knowledge claims acquire the status of ‘truth’ and are thus legitimated as the expert knowledges that rationalize and sustain certain political and governmental decisions. ‘Why’ other knowledge claims are subjugated and never ‘heard’ in legitimating and programming processes is, of course, the other side of this coin (Bittle and Snider 2006:472). In Foucauldian terms, this is a question of the “politics of knowledge” (Foucault 1980:69), wherein struggles and confrontations within and between claims to truth play out. And, as Snider (2000:171) argues, in this competitive political context “the acceptance of knowledge claims is not an equal opportunity game”!

The most immediate issue, then, becomes how to best theorize the politics of knowledge that operate in local practices of political and governmental decision-making and relations of governance. The task: to be prepared to link empirical evidence of these relations and their effects to a set of theoretical claims without compromising the epistemological modesty underlying this study. These relations still revolve around Foucauldian understandings of the relationship between power/knowledge (Foucault 1980) and the ‘performative’ role of language in governing (Miller and Rose 2008). However, a ‘more sociological’ set of questions about interests, resources and competencies, and social and strategic positions is posed—questions about “the concrete, complicated ways in which linguistic practices and products are caught up in, and

¹ Indeed, Foucault (1980:133) takes this lead when he speaks of a “‘political economy’ of truth” in Western liberal-democracies, noting the social, economic and cultural forms of hegemony within which the power of truth operates.
moulded by, the forms of power and inequality which are pervasive features of societies as they actually exist” (Thompson 1991:2).

2.4.1 The Political Economy of Knowledge Claims.

Larner (2000) has framed this sort of initiative within the theoretical project of addressing the silences of poststructuralist governmentality work, chief among them the neglect of the dynamic force of oppositional knowledge claims in the constitution of neo-liberal projects and subjectivities. She argues that the programmatic orientation of much of this work ignores the very political process of managing contesting knowledge claims in governmental decision-making (Larner 2000:13-15), and her concern is to render intelligible the inherent contradictions in neo-liberal projects. Because the neo-Foucauldian approach has a proven tendency to create the false impression of a ‘top down’ implementation of coherent, programmatic and ideal-type rationalities (Larner 2000:13-14), Larner urges ‘governmentalists’ to draw on the insights of neo-Gramscian and neo-Marxist analyses of neo-liberalism, and to weigh the forces involved in the reproduction or (rare) disruption of hegemonic power.

Snider (alone, and with others: 2009, 2004a, 2004b, 2003, 2002, 2000; Bittle and Snider 2006) has established a particularly constructive theoretical and analytical programme along this trajectory. This work examines the “intimate connection between expert knowledge, authorized knowers and forms of discipline/power” (Snider 2003:355) in relations of governance. In doing so, useful political economy claims and assumptions are integrated with a (neo-)Foucauldian ethos of investigation into neo-liberal mentalities and strategies of rule. Concretely, this translates into a set of analytical claims and questions—which have been a point of continuity in Snider’s various empirical investigations—that situate knowledge claim reception and acceptance within the political (and politicized!) context of competing interests and asymmetrical power relations:
To understand why and how the claims of one set of authorized knowers . . . ‘grow legs’ and hop off the computer screens of experts on to the legislative agendas of politicians, while other claims . . . atrophy and die, one must examine relations of power. What groups benefit from each set of knowledge claims, gaining moral, economic and/or political capital? What groups lose? The mechanisms of power are important too. Once legitimated . . . knowledge claims must be distributed, publicized and accepted by other elites, in the judiciary, industry, media. What groups own, control or otherwise dominate these distribution networks, particularly mass and elite media? (2003:370)

As a most immediate response, we can say that the analytical questions and claims guiding this programme appear to resonate with the governmentality ethos in a number of prominent ways. Much like the governmentality analytic, this framework seeks to examine the conditions of possibility for certain policies and practices—how they ‘came to be’ (Bittle and Snider 2006:471). It seeks to cast light on the perspectives and strategies of political and governmental authorities, another point of compatibility. And this programme seems just as concerned with “the structure of conceptual and technological assemblages” (Garland 1999:30), with its emphasis on the production of knowledge claims and their distribution via definite institutional practices and networks.

However, the approach Snider (2003) outlines augments the governmentality analytic and adjusts its focus insofar as it entails a tacking back and forth of sorts between the rationalities, mentalities and strategies of authorities, and the struggles between hierarchically positioned interests and dispositions of which the former are fluctuating outcomes. It most importantly introduces an interrogation of “the corresponding relationship between knowledge claims and interests” (Snider 2000:170) that expands the vision of the ‘British School’ analytic beyond the seemingly impenetrable, ‘vacuum-sealed’ cognitive structures of political and governmental authorities (Snider 2003). This line of enquiry, then, supports an interrogation of ‘why’ it is that certain knowledge claims are accepted, and ‘how’ they are received (sometimes involving a
translation), in such a way as to legitimate certain political programmes and constitute governable subjects in certain ways (and not others!) (Snider 2003:353). And as the set of analytical questions Snider (p. 370) outlines quite clearly demonstrates, rendering intelligible this type of political process and appreciating the interests that motivate and are being served by particular rationalities of government (and those that are not) necessitates an evaluation of both the source of origin and pragmatics of use of those knowledge claims that become privileged as expertise and ‘common sense’ (Bittle and Snider 2006:471; Snider 2003:356, 2000:171).

Given this analytical rationale, it would pay to attend to the way Snider theoretically frames the relationship between knowledge claims and interests, specifically how she negotiates the introduction of ‘interests’, material and non-material, into governmentality discourse while being careful to avoid “mixing up analyses and propositions that are theoretically incompatible” and ending up in “an intellectual tangle of incompatible premises” (Garland 1991:152). After all, the intellectual and historical context within which the governmentality analytic was conceptualized is characterized by strong opposition to a triangle of ‘vulgar’ Marxist ‘isms’: realism, economism and structuralism (see Miller and Rose 2008; Rose et al. 2006; Barry et al. 1996; Burchell et al. 1991). However, as Snider demonstrates, when ideas of political economy and materiality are expressed in “more sophisticated and non-reductionist ways” (Garland 1990:86) they can shed light on the relationship between knowledge claims and interests, and thus on relations of governance, without necessarily evoking epistemological controversies with the governmentality ethos. While we stay with Snider’s work, we look now to the theoretical concepts that can be used in this study to interrogate the effect of interests and prerogatives on the formation of mentalities and sensibilities of government.
2.4.2 Bourdieu the Materialist-Poststructuralist.

At times, in interrogating the ‘political economy of knowledge claims’ through empirical enquiry, Snider (2006, 2004a, 2004b, 2000) turns to Gramsci (1971) and the concept of hegemony to explain the relationship between knowledge claim reception and accommodation, and differentially weighted interests. Elsewhere, Snider (2009) instead turns to Bourdieu (1991, 1977) and his theory of symbolic power to explain the same intimate connection.¹ When knowledge claims present a vision of the world that corresponds with the “interests, ideas, and understandings of the world” (Snider 2000:182) held by social agents and groups who already occupy positions of “hegemonic power” (Gramsci 1971) or possess a privileged quantity of previously accumulated “symbolic capital” (Bourdieu 1977), they are “more likely to win out” (Snider 2000:182). That is, knowledge claims that appeal to the interests of elites—“the powerful players in the modern world” (Snider 2000:192)—have a greater probability of being received by political and governmental authorities and legitimating certain decision-making. Reproduced in this process are the ‘common sense’ representations and perceptions, and mentalities and sensibilities, that tend to reinforce the structure of the positioning of ‘authorized knowers’; hegemonic power in Gramscian terms; and, the unequal distribution of symbolic capital in Bourdieu’s terms. And as Snider’s analyses also demonstrate, this process and its asymmetrical outcome are all the more likely given the relative inaccessibility of “the institutions and communication systems” (2003:360) of those “officially sanctioned” and “universally approved” power/knowledge discourses so commonly appraised as ‘disinterested’ and ‘apolitical’ systems of knowledge (e.g., law and natural science) (on law, Bittle and Snider 2006:481; on science, Snider 2004a:278).

¹ Snider (2009) does not make explicit reference to this theory (i.e., by its name) but applies a number of its key concepts as they are formulated in Bourdieu’s literature (1991, 1989, 1977).
Bourdieu’s resolve to eschew the economism, realism and structuralism of Marxist analyses (1991:228) while pursuing similar themes of social hierarchy (1989:20) and the unequal distribution of capital and competencies with which to pursue interests (1991:56, 1989:17) is most appealing for this study. Theoretical work on ‘symbolic capital’ offers a particularly fertile body of resources for examining and explaining the constitutive role of interests within the field of crime control—a traditionally ‘non-economic’ domain—in tandem with the ‘governmentality’ approach to the problem of crime. In pursuing a key claim that posits the co-ordinates of social position as “not necessarily economic” (Bourdieu 1991:228), Bourdieu:

. . . [O]ffers a theory of action which analytically puts symbolic practices on the same level as economic practices, so that the former can be interpreted as strategies in the competition for prestige or standing in the social hierarchy. Both forms of activity, symbolic representation as well as economic accumulation, serve as means by which. . . social groups can improve their social standing. (Honneth 1986:56)

It is important to identify that Bourdieu argues that the power associated with symbolic capital is “a form of performative discourse”; “the power to make things with words”; “the power granted to those who have obtained sufficient recognition to be in a position to impose recognition” (1989:23).

Bourdieu, then, conceptualizes and locates the relationship between knowledge claims and interests within a structured space of positions (1991:231-232, 1989:19), which is based on the unequal distribution of symbolic (immaterial) and/or economic capital (1989:16), depending upon the “active properties” or “the different types of power or capital that are current in the different fields” (1991:230). It is within this structured context—this ‘political economy of symbolic power’—that differently positioned groups, discursively produced (not ‘real’ (Bourdieu 1991:232-236)) categories of people, are “engaged in a symbolic struggle . . . one aimed at
imposing the definition of the social world that is best suited to their interests” (Bourdieu 1991:167). Barring any instances in which dominated groups successfully seize the instruments of representation (Bourdieu 1991:244)—like “universally approved”, “officially sanctioned”, or “institutionalized” linguistic products (Bourdieu 1991:245, 1989:21)—then the hierarchy of ‘authorized knowers’ (Snider 2000) will tend to be reproduced. The status quo “categories of perception and appreciation of the social world” (*habitus*) will tend to be reinforced (Bourdieu 1989:20). And the interests of those possessing symbolic and/or economic capital will be (re)realized (Bourdieu 1991:199).

In following the lead of Garland (2001) and Snider (2009) and considering Bourdieu’s theorizing on the ‘political economy of symbolic power’ within a study of the perspectives and strategies of governance, this study gains a valuable set of explanatory claims. The constitutive roles of “political opportunism”, “pragmatic adaptation” (O’Malley 2004:63) and populist sentiments (Garland 1999:34) in shaping the knowledge claims that ‘grow legs’ (Snider 2000) within different rationalities and strategies of crime control gain theoretical reference points. And although earlier neo-Foucauldian governmentality theorizing hastily dismisses any concern for ‘messy actualities’ in a study of governance as a form of ‘sociological realism’ (Miller and Rose [1992] 2008:57), the epistemological premises of Bourdieu’s (1991, 1989, 1977) theorizing provoke no major issues of incompatibility with a governmentality approach.

### 2.5 Conclusion to the Literature Review

This literature review began by laying out the commitment of this study to the perspective of governance as an analytical approach. To restate the position staked out at the beginning of the chapter, the study at hand is both an argument *for* and critical exposition *of* that style of analysis. To the extent that the genealogical and theoretical account just delivered has
been persuasive, both the argument and exposition have begun to mature. By beginning with a concise but deliberately under-theorized version of what a study in the mentalities and sensibilities of government ‘looks like’ (Garland 2001, 1990), we were able to conduct our own (mini-)study in social theory, chart our own reflexive and analytical inquiry into the history of governance and governmentality, and produce a genealogy of the perspective of governance that makes sense of that style of analysis for this study.

A study of the mentalities and sensibilities of government in local decision-making practices thus transcends the categories of ‘cold and calculative’ thought and ‘value-laden’ feeling which are used to render problems of government thinkable and practicable (they were never really discrete categories to begin with). It attends to the constitutive role of ‘government from below’—the potential and actual ways political rationalities are destabilized by, and inscribed with, contradictory thought-forms and subterranean currents. And it probes the relationship between interests, influence and governmental decision-making, reimagining an analytics of government that retains its distinctive focus on ‘how things get done’ while offering modest appraisals of ‘why things happen the way they happen’.
Chapter Three

The Goudge Report: The ‘Official’ Version of Paediatric Death Investigation in Ontario

3.1 Introduction

The previous chapter examined the theoretical assumptions and concepts that will be used to interrogate the mentalities and sensibilities of government (re)produced in the Goudge Report. This current chapter is less theoretically ambitious and much more descriptive than the one before it, a first step towards understanding the paediatric death investigation (PDI) system in Ontario as it is understood by the governmental or decision-making actors involved. The narrative of the Goudge Report is used here to diagram a specific, programmatic version or blueprint of the institutional framework and principles of governing that came to organize and guide paediatric death investigation in Ontario in its contemporary arrangement.

The Goudge Report is the major document released following the work of the Public Inquiry into Pediatric Forensic Pathology in Ontario (the Inquiry). The Inquiry commenced in April 2007, conducted public hearings between November 2007 and April 2008, and released its report on 30 September 2008. Its mandate was to “conduct a systemic review and assessment and report on the policies, procedures, practices, accountability and oversight mechanisms, quality control measures and institutional arrangements of pediatric forensic pathology in Ontario from 1981 to 2001 as they related to its practice and use in investigations and criminal proceedings” (Goudge 2008:45). The Inquiry was a direct response by the Ontario (Liberal) government to the troubling results of a Chief Coroner’s Review into the work—expert testimony, provision of consultative opinions, administrative conduct, and performance of autopsies—of high-profile
paediatric forensic pathologist Dr. Charles Smith in criminally suspicious paediatric death cases (p. 41). And although the mandate of the Inquiry was systemic in focus, the Report often provides vivid accounts of Dr. Smith’s professional practices, positing them as indicative of larger failings in the “institutional arrangements and organizational structures” (p. 115) of the PDI system in Ontario: “The tragic story of pediatric forensic pathology in Ontario from 1981 to 2001 is not just the story of Dr. Charles Smith. It is equally the story of failed oversight” (2008:205). In light of this position, and given the mandate of the Inquiry to focus on mechanisms of oversight and accountability (p. 46), the Report offers a volume of critiques and recommendations for perfecting the machinery of the PDI system as a technology of criminal justice, public safety and crime control.

The rationale for using the Report here, and in a less critical way than elsewhere (chapters four and five of this study), is a classic one for sociological investigations. Because the Goudge Report largely reduces the problem of child welfare and the sequence of events under review to a narrow risk management ideal, its claims and descriptions can be assembled to provide a useful heuristic device for this study: an ideal-type (Weber 1985), and a basis for the empirical analysis that will come in later chapters (Garland 1999:31; 1990:167). Thus, by way of holding out a totalized risk management system for paediatric death investigation—a professionalized and systematized organizational form, rationalized on its face by the instrumental logic of preventing future harm—as the measuring stick against which the ‘structurally flawed’ institutional arrangements of the 1980s and 1990s can be evaluated, the Report presents us with the image of a perfected governmental network for investigating and responding to criminally suspicious paediatric deaths. The Report, then, is equal parts ‘what went wrong’ and ‘what ought to be’.

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We now turn to the ‘official’ story that unfolds in the Report’s risk management narrative, to “the categories and forms of action which the . . . institution holds out to us” (Garland 1990:4), and to the story of Ontario’s PDI system ‘proper’.

3.2 ‘We Speak for the Dead to Protect the Living’1: The Risk Management Ideal

In a rare deviation from its mandated scope (1981-2001), the Report locates the ideal and principles that ought to guide a death investigation system in a programmatic vision as old as the earliest formalized figure of a coroner in England in 1194 (p. 60). At this time, clerks known as *custos placitorum coronae* (keepers of the Crown’s pleas) were authorized to investigate the circumstances surrounding death in order to “protect the interests of the Crown” (Hanzlick 2008:274, as cited in Goudge 2008:60). With time, these clerks became known as “crowners”, then “coroners” (*ibid.*), and coroner-centered death investigation accrued legislative recognition as an element of criminal procedure and a necessary component of the machinery of criminal justice (Goudge 2008:61). In what would become the province of Ontario this trend held true, with the establishment of the office of the coroner before 1780 and the embedding of the coronial system—as an irreplaceable fixture of the grander death investigation system—in the statutory framework in 1833 (*ibid.*).

Demonstrating the relevance of this history (albeit a truncated history) for understanding the rationale of the present PDI system, the Report identifies and re-energizes an ideal that has dominated the programmatic vision and working ideologies of its agents in their “pursuit of excellence” and “dedication to seeking the truth” (2008:340) about suspicious deaths:

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1This is the mantra and mission statement of the Office of the Chief Coroner for Ontario (OCCO): http://www.mcscts.jus.gov.on.ca/english/DeathInvestigations/office_coroner/coroner.html.
[T]oday the coroner investigates the deaths of vulnerable citizens and those who die in suspicious circumstances and holds inquests, if necessary, to answer five fundamental questions: Who died? How did they die? Where did they die? When did they die? By what means did they die? By answering these questions, and by recommending ways to improve public safety and to prevent similar deaths in the future, the coronial system serves the living. Although coroners no longer function as a preliminary hearing into a criminal charge, the death investigation system, and particularly its forensic pathology component, continues to play an essential role in the criminal justice system.” (Goudge 2008:61, emphasis added.)

A high-quality death investigation system, therefore, through the refined knowledge of forensic science seeks a truth that can stimulate decision-making and action in the present which is oriented towards the future, action deemed capable of mitigating the likelihood (or the risk!) of preventable morbidity and mortality. The ideal at the heart of the PDI system, then, is one of risk management, an instrumental end and organizing principle around which the most basic contours of a death investigation system as an organizational form are imagined and take shape. Thus, while the “institutional arrangements and organizational structures” (p. 115) have changed and will change in detail over time (a process the Report itself supports both symbolically and practically), the Report identifies the risk rationale and ideal as the fixed or foundational mentality within which those changes should occur.

The Report often presents the risk management ideal as intimately tied to the proper “administration of justice” (p. 51). These two rationalizations—risk management and the administration of justice—are presented as mutually reinforcing in the Report (pp. 60, 76), and

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1 Although the Report, here, seems to suggest that only the Inquest format is guided by these five fundamental questions, elsewhere and often the Report identifies that these questions must be answered in any case that becomes a ‘coroner’s case’, as mandated in the Coroner Act s.18(2). “Coroners’ cases” are cases in which a coroner’s warrant is issued to seize a body and/or issued for a post-mortem examination of the body, either as mandated by the Coroner Act or at the discretion of the investigating coroner.
this dynamic establishes the interdependencies between science and law that the Report strives to strengthen through its counsel. The Report clarifies that the claims of PDI to be doing *justice* in cases of criminally suspicious death are realized when the Truth about a death—that is, whether or not a third party is legally culpable (p. 78), and if so, whom the responsible party is (p. 4)—can be determined with accuracy (p. 361), and when the perpetrator can be held criminally accountable (p. 76).

In this imaginary, then, the administration of justice and risk management alike depend for their realization upon a relatively stable alliance between science and law (p. 67). To meet these compatible ends, the knowledge of forensic medicine, translated into “objective” (p. 189), “accurate” (p. 381), and “expert” (p. 50) medico-legal opinions on cause of death, becomes a “pivotal, if not decisive” (p. 406) *resource* for criminal investigations and prosecutions, and child protection proceedings, which ‘find’ and ‘test the facts’ (pp. 75, 567). With this collaborative body of medico-legal knowledge—or the “totality of evidence” about a criminally suspicious death, as the Report suggests (p. 442)—action can be stimulated towards delivering “just outcomes” (p. 4) and, ultimately, managing the risks of future harms (p. 54).

**3.3 The Paediatric Death Investigation Team: An Anatomy**

Before we review the Report’s versions of ‘what went wrong’ and ‘what ought to be’, we need to take inventory of the key players, organizations and voices included or represented in the Report’s vision of a paediatric death investigation team. The Report argues that paediatric death investigation in criminally suspicious cases is a process which begins at the death scene and ends when criminal and child protection proceedings conclude (that is, if these proceedings are commenced in the first place) (p. 378; see also, pp. 52-59). In articulating a model of a “smooth functioning system” (p. 171) or “organized and coherent service” (p. 283) for navigating this
process, the Report details an inter-institutional arrangement involving “multi-disciplinary” (p. 441) criminal justice professionals and agencies (p. 316). These key entities are neatly divided in the Report by their expert knowledge, skills, roles and responsibilities (see pp. 437-514), but intimately connected by their interdependent demands for risk knowledge (p. 42). The PDI team in Ontario, as envisioned in the Report, is comprised by five key agencies: police, local child protection authorities (CAS), coroners, (paediatric) forensic pathologists, and Crown attorneys (p. 51). The following are descriptions of the roles and responsibilities of the key players in PDI, as they are laid out in the claims of the Report:

**3.3.1 Police and Children’s Aid Society (CAS).**

When the sudden and unexpected death of a child occurs, members of the local police service are often the first criminal justice agents to respond. They must initiate the information gathering and production process of a paediatric death investigation with prudence, precision and diligence, in the form of evidence collection and continuity (p. 55), as well as through the interviewing of potential witnesses and suspects (p. 445). Both internal protocol and external demands from other participants in the PDI system organize and govern these practices of information gathering. Internally, the police must determine, through evidence and information collected, whether or not they have reasonable and probable grounds to charge (a) potential suspect(s) with a Criminal Code offence (pp. 50, 445). The demands for police information and evidence emanating from other participants in the PDI system are multiple, and the police must also be responsive to these needs for the “smooth functioning” (p. 171) and “success” (p. 4) of the criminal justice system.

If responding police officers suspect that a deceased child has been abused, especially if there are surviving siblings in the household, then local child protection authorities working for
the Children’s Aid Society (CAS) have a need for information which is quite time-sensitive (p. 567). CAS agents depend on this information to flag family situations as potentially problematic and ‘deserving’ of child protection investigations and possible interventions (pp. 52-53). The Report stresses that the sooner necessary knowledge is produced and transmitted to the CAS by the police, the sooner action can be stimulated and risks managed.

Often times in criminally suspicious paediatric deaths, the police rely on the knowledge produced by forensic pathologists to form a confident and complete opinion on the cause of death and, more importantly, from the perspective of the police, the confirmed involvement of another party or parties in the death of a child (pp. 50, 174). Medical professionals who perform post-mortem examinations, in turn, exercise their own demand for knowledge from the responding and investigating police officers: “It is widely accepted that pathologists will be better able to direct their attention where it is needed during the post-mortem examination if they are given relevant information about the death” (p. 55). The Report emphasizes that this knowledge is crucial for the re-creation in the autopsy suite of ‘what happened’ at the death scene (p. 378). Investigating police officers are therefore tasked with the responsibility of providing forensic pathologists with all of the “factual information” (p. 383)—medical and non-medical factors which police deem not to be “rumours, irrelevancies, and speculation” (ibid.)—necessary to convey the “circumstances of death” (p. 385) to pathologists. The quality of knowledge police officers produce in this preliminary stage of the death investigation process may therefore be determinative of the quality of knowledge the forensic pathologist produces in the autopsy suite as the process progresses.

However, before any forensic pathologist is consulted, and certainly before any post-mortem examination is commenced, police officers investigating a “sudden and unexpected” paediatric death, or a paediatric death resulting from “violence, negligence, or misconduct” (pp.
52, 63), are required by law\(^1\) to notify forthwith the figure of the PDI team charged with the statutory responsibility for the investigation process: the coroner.

### 3.3.2 Coroners.

In Ontario, coroners are medical doctors in good standing with the provincial regulatory body for physicians, the College of Physicians and Surgeons of Ontario (CPSO) (e.g., licensed to practice medicine without condition) (p. 53). Other than regional coroners, and the Chief and Deputy Chief Coroners for the Province of Ontario employed by the Office of the Chief Coroner for Ontario (OCCO) in Toronto, most coroners serve in a part-time, fee-for-service capacity; typically this service is supplementary to a part- or full-time medical practice in the field of medicine in which the coroner is certified (\textit{ibid.}). It is not a requirement that coroners hold any form of certification or fellowship training in clinical or forensic pathology; indeed, most coroners are trained in family and/or emergency medicine.\(^2\)

The ultimate role of coroners in the PDI system is to evaluate the “totality of evidence” (p. 442) collected in a given criminally suspicious case, contemplating ‘medical’ and ‘non-medical’ factors alike (p. 54) to opine on both the physical cause of death and the manner of death (p. 164)\(^3\) in the official record of a death investigation (p. 438). This work forms the ‘data set’ from which senior coroners with administrative and managerial positions, namely those

\[^1\] \textit{Coroners Act}, R.S.O. 1990, Paragraphs 10(1)(a) and (d)
\[^2\] Two of the most prominent and influential figures in the Report—Dr. James Young (Chief Coroner for the Province of Ontario, 1990-2004) and Dr. James Cairns (Deputy Chief Coroner for the Province of Ontario, 1991-2008)—were trained formally as emergency medicine doctors. Incidentally, both have surrendered their licenses to practice medicine since leaving the OCCO.
\[^3\] Manner of death is registered according to one of five categories used by the OCCO: natural; accident; suicide; homicide; or, undetermined (Goudge 2008:164).
working within the OCCO, can take action and make recommendations designed to ‘speak for the
dead to protect the living’ and “reduce the risk of similar deaths in the future” (p. 54).

In cases where coroners have reason to believe a paediatric death is criminally
suspicious they are required by statute to conduct a death investigation. Criminally suspicious
paediatric deaths are “invariably among the most complex cases to go through the death
investigation system” (p. 64), and to reach their conclusions coroners will almost always depend
on the expert knowledge of forensic pathology and those capable of interpreting the findings of a
post-mortem examination (pp. 51, 64). This means, then, that coroners, like the police, must be
responsive to the information needs of forensic pathologists with respect to attending the death
scene and relaying all “factual information” (p. 383) that can direct pathologists’ attention in
helpful ways during the post-mortem examination (p. 55).

In cases of sudden, unexpected and criminally suspicious paediatric deaths, coroners are
compelled to issue an initial warrant to take possession of the body. Once a post-mortem
examination warrant is issued, coroners await the cause of death findings determined by forensic
pathologists. If the police decide to lay criminal charges in a criminally suspicious case and
criminal proceedings are imminent, the coroner will not complete the final death investigation
statement until these proceedings conclude (pp. 58, 64). In the interim, coroners continue their
information-brokering roles, often chairing case conferences between investigating coroners, the

1 This is not to say that lower-level coroners do not conduct coroner’s inquests and develop
recommendations for changes in policy, practice and law. But it is to say that they do not carry the same
clout.
2 OCCO supplies the following list as a guideline for suspicion: “A known history of child abuse, unusual
or suspicious appearance of the death scene, history of an unusual fall or accident, poor hygiene or other
evidence of neglect, injuries or bruising or burns of an unclear nature, previous sudden and unexplained
infant death of a sibling, and history of recurrent life-threatening episodes” (Goudge 2008:328).
3 *Coroners Act*, s.18(2).
police, representatives of CAS, and sometimes Crown counsel (although, the Report reminds us, prosecutors “should be mindful of their independent and quasi-judicial role” (p. 439)).

3.3.3 Forensic Pathologists.

The Report positions forensic pathologists at the center of the PDI system, claiming that “pathology often plays a pivotal, if not decisive, role in pediatric death cases” (p. 406) and in the “success or failure of the criminal justice system in coping with the sudden, unexpected death of an infant in criminally suspicious circumstances” (p. 4). Forensic pathology is a medical subspecialty that is unique in its dual obligations to medicine and law. While forensic pathologists study and diagnose disease “based on the gross, microscopic, and molecular examination of organs, tissues, and whole bodies” (ibid.), the rationale for such enquiry “operates on an entirely different paradigm from clinical pathology” (p. 4). As the Report states comparatively and succinctly:

The clinical pathologist focuses on providing diagnostically useful advice to a clinician to assist in the medical management of a patient. The forensic pathologist focuses on providing diagnostically useful conclusions for the death investigation team and the judicial process. (2008:68)

This difference in “analytical frameworks” (ibid.) establishes forensic pathology as the core discipline and body of medical knowledge required for a PDI team, one which can find the facts and uncover the truth about criminally suspicious deaths—according to the Report.¹ After all, a systematized death investigation system demands that its medically trained members also have a

¹ As is problematized later by the Report, Dr. Charles Smith was trained as a paediatric (clinical) pathologist, not a forensic pathologist. The status or reputation he acquired over the years under review, however, was that of the leading expert in Ontario, if not Canada, in ‘paediatric forensic pathology’.
“proficient” and “detailed understanding of the legal system and legislative method” (p. 68) and of the specific needs of the criminal justice system (p. 77):

Forensic pathologists must understand the objectives of the criminal justice system, how it operates to achieve those goals, and how they can best fulfill their roles as experts. All the internationally renowned forensic pathologists who participated in the Inquiry emphasized how important it is for forensic pathologists to understand the criminal justice system and their role within it. After all, their work is done for the justice system and is essential to it. (Goudge 2008:299-300)

That these principles are considered fundamental for organizing and guiding the knowledge-work of forensic pathologists is conveyed strenuously in the Report, and this leads to a rather synoptic moment in the narrative: “For pathologists doing forensic work, the ability to do the job required in the courtroom is as essential as the ability to do the job in the autopsy suite” (p. 178). Although expert testimony represents only one example of the ways forensic pathologists communicate their medico-legal opinions to other death investigation team members, it illustrates the demands for knowledge exercised against forensic pathologists and some of the rules or governing forces that structure their expert opinions and the forms they may take.

Forensic pathologists are introduced into a criminally suspicious paediatric case when investigating coroners issue a warrant for post-mortem examination, an indication that the knowledge of forensic pathology is required to determine the cause of death. As discussed earlier, forensic pathologists rely on coroners and the police to provide the ‘factual information’ about the circumstances of death, from which pathologists extract only the information that in their judgement is relevant to the post-mortem examination (p. 130). Post-mortem examination must be approached with a mentality and a methodology that is “open-minded, objective and evidence based” (p. 349). Maintaining an ‘open-mind’, the Report explains using OCCO Autopsy Guidelines favourably, is about keeping a prudent and practical mindset:
Every sudden and unexpected death of a child under five years of age must be actively investigated as potentially suspicious and premature conclusions should not be made regarding the cause and manner of death until the complete investigation is finished and all members of the team . . . are satisfied with the conclusions. (OCCO Autopsy Guidelines 2007, as quoted in Goudge 2008:375-376)

To which the following is added:

In general, the pathologist must keep an open mind to the possibilities of occult violent death, child abuse, sexual assault, maltreatment and neglect. On this basis, it is recommended that the forensic pathologist have a low-threshold for performing special dissections and collecting biological samples. (OCCO Autopsy Guidelines 2007, as quoted in Goudge 2008:376)

As soon as the post-mortem examination is concluded, demands for information are exercised against forensic pathologists by the police, who have relatively urgent needs with respect to identifying and laying criminal charges against a prospective perpetrator. Even more pressing in this moment, the Report tells us, are the knowledge requirements of CAS authorities. These child welfare agents face “severe time lines” (p. 568) as they strive to bring problematic families under their watchful eyes and protect surviving (and future) siblings from the risks of abuse. In short, child protection authorities largely depend on the knowledge generated by the autopsy to take action and manage risks in cases of sudden and unexpected paediatric deaths.

Upon completion, the post-mortem report is released to the investigating coroner and local Crown counsel (assuming the police have laid criminal charges) (pp. 58, 351). The next major instance in which pathologists will be asked to communicate their expert knowledge to their ‘team mates’ is in the form of expert testimony during criminal proceedings. Criminal cases are “prosecuted, defended, and adjudicated by those who are not pathologists and who may have
a limited understanding of the pathology” (p. 74); thus, pathologists appearing as expert witnesses serve to make expert evidence “understandable and understood” (ibid.).

3.3.4 Crown Attorneys.

When and if the police lay criminal charges in a criminally suspicious paediatric death, Crown counsel “will determine whether there is a reasonable prospect of conviction, and, if there is, will prosecute the accused at trial” (p. 52). In that event, Crown prosecutors quickly become the most prominent and ‘needy’ consumers of information within the PDI team. Crown counsel depend on post-mortem examination reports, as well as less formal communications with forensic pathology experts, to acquire the information (claims of science) they need for a successful prosecution (p. 455).

3.4 ‘What Went Wrong?’: Departures from Inter-Institutional Ideals

We now turn to the Report’s reading of ‘what went wrong’ in PDI in Ontario during the years under review (1981-2001). We will recall that the reason for documenting this reading is to make visible the ideal-typical ‘measuring stick’ against which the problems with PDI are identified and evaluated by the Report’s authors. The picture that develops here through a reconstruction of the Report’s assessment and claims is one of ‘system-failure’, of deficiencies in the “institutional arrangements and organizational structures” (p. 115) of the PDI system in Ontario. By understanding the Report’s criteria for identifying these deficiencies and unmet expectations, we can glimpse the inter-institutional ideals of PDI.

3.4.1 Knowledge Deficits and Professional Incompetency.

While the Report singles out the professional deficiencies of Dr. Charles Smith early and often, it is also the case that the incompetency demonstrated in his work as a medical examiner
and expert witness in criminal proceedings (almost always appearing for the Crown) is argued in the Report to have systemic causes. Much of Dr. Smith’s knowledge deficit is traced back to the absence of any educational foundation in Canada for forensic pathology (pp. 287-302), let alone paediatric forensic pathology. Indeed, “Nowhere in the world can one attend an accredited training program and receive certification in pediatric forensic pathology, and very few pathologists in the world are certified in both forensic and pediatric pathology” (p. 284). Funding for postgraduate training programs in forensic pathology has always been scarce (p. 298), fellowship opportunities have been few and far between (ibid.), fee structures have never been attractive (pp. 87, 107), and continuing medical education in this area has never been adequately facilitated or supported (p. 301), the Report argues. Because adequate and sustainable funding for a forensic pathology service has never been secured from the Province of Ontario, interest in forensic pathology as a subspecialty has not been fostered in medical schools (p. 295), and that, the Report tells us, is why someone with no formal training in forensic pathology—Dr. Smith was trained as a paediatric (clinical) pathologist only—was able to undermine public confidence in the PDI system in Ontario through incompetent and faulty practices (pp. 46, 206). Unqualified as he was, Dr. Smith was “willing to fill a void that no one else wanted to fill” (p. 89).

The Report also underlines the absence in Ontario’s forensic pathology service of “any formal instruction in giving expert evidence” (p. 16). Dr. Smith’s candid admission that he, at one time, “believed that his role [as an expert witness] was to act as an advocate for the Crown and to ‘make a case look good’” (ibid.) is supplied as a symptom of this systemic deficiency in professional training. So too are snippets of his more dogmatic and categorical testimonies over the years, like: “You have to drop [children] from three storeys in order to kill half of them. You have to drop them from more than three storeys in order to kill more than half of them” (p. 183).
Since no infrastructure, criteria or programming existed for educating forensic pathologists on their responsibilities as expert witnesses, pathologists’ opinions were often “communicated in ways that promoted misinterpretation or misunderstanding on the part of police, prosecutors, defence counsel, and the courts” (2008:44-45, see also 2008:406-437). For the Report, this was a clear source of ‘malfunction’ in PDI.

3.4.2 Inadequate Mechanisms of Accountability and Oversight.

The Report is damning in its assessment of the often absent or consistently frustrated structures of accountability and oversight in Ontario’s PDI system in the years under review. Again, it presents Dr. Smith’s common practices and problematic tendencies as evidence of systemic inadequacies, this time concerning internal governance and “quality assurance measures” (p. 205). Good internal governance is considered a must for “smooth functioning” (p. 171) and the appearance of “smooth functioning” (pp. 254-255), and internal monitoring practices are necessary for securing these operations. But the Report tells a story of failed accountability and oversight, and poor organizational governance. It details a “symbiotic relationship” (p. 253) between Dr. Smith and the “de facto overseers” of his work at the OCCO (208), and argues that “This symbiosis stood between the OCCO and the ability to assess Dr. Smith’s work without bias—an objectivity that is vital to effective oversight” (pp. 252-253).

Senior leaders at the OCCO invested an “absolute faith in Dr. Smith until the very end” (p. 253). A micro-level critique on its face, this instance of ‘accountability frustrated’ is traced back to systemic deficiencies in fostering interest in the (paediatric) forensic pathology field:
[Dr. Young and Dr. Cairns] actively protected [Dr. Smith] and played a substantial role in the development of his career. . . . Dr. Young, in particular, was afraid that, given the small number of qualified people in the field, without Dr. Smith there would be nobody to do the work in criminally suspicious pediatric cases. In short, Dr. Smith needed the OCCO to continue his work, and, for the same reason, the senior leadership at the OCCO needed him to do it. (Goudge 2008:253)

Had the lines of accountability between Dr. Smith and his ostensible superior at the Ontario Forensic Pathology Services Unit—Dr. David Chiasson, “one of the few formally trained and certified forensic pathologists at the time” (p. 9)—been clarified in a legislative framework, things might have been different (pp. 100, 206-208). But no such clarification was found in the Coroners Act—forensic pathology services were “ignored in the legislation” (p. 100). Under these conditions, the Report argues, the veracity of forensic scientific claims could not be tested properly (p. 207), and we are presented with the troubling cases examined in the (eventual) Chief Coroner’s Review of Dr. Smith’s work as the results of this failed oversight (pp. 7-32).

### 3.4.3 Ad-Hoc Communication Practices.

Effective communication between members of the PDI team is a favourite theme of the Report, in some measure because it locates ad-hoc communication practices as central to ‘what went wrong’ in the PDI system. The PDI system of the 1980s and 1990s saw much in the way of poor information sharing practices, namely: ‘backroom’ verbal communications that often conveyed premature medical and legal opinions or circumstantial and ‘non-pathology’ information which compromised ‘impartiality’ (pp. 57, 396); coroner’s warrants that provided insufficient information to pathologists regarding where they ought to direct their attention (p. 42); and post-mortem reports that provided little or no reasoning behind conclusions drawn from pathology findings (p. 58). The Report traces out the effects that these types of failures generated
for the functionality of ongoing paediatric death investigations and the criminal proceedings that followed. Claims made between PDI team members via informal and undocumented communications led to “misinterpretations” (pp. 211, 381), which delayed or impaired the capacity of criminal justice and child protection agencies to take preventative or reactive-interventionist action (pp. 135, 210). Methodologies used to come up with medico-legal findings—including and especially controversial findings like ‘shaken baby syndrome’—were un(der)documented and were thus not easily subject to independent reviewability (p. 58).

The Report returns often to the ideal communication practices of forensic pathology experts in the court setting: “It is essential that forensic pathologists be able to testify fairly, objectively and in language that clearly communicates their findings” (p. 68, see also p. 178). But it provides plenty of reminders, delivered via extracts of Dr. Charles Smith’s more provocative testimonies, that such expectations had not been met: “My children have fallen from, and . . . unfortunately bounced down more steps than those [in the relevant case of death] and they are still happy and healthy children . . .” (2008:17); “In several cases, Dr. Smith expressed opinions in court regarding other experts that were disparaging, arrogant, and, most important, unjustified” (p. 185); “[Smith] stated, with respect to the [other] pathologist’s report: ‘[T]he paper [the report] is written on is not worthy of filing as an exhibit. It should be filed in the garbage can.’” (p. 185). These deviations from ideal communication practices are framed by the Report as disruptive to the PDI process.

3.5 ‘What Ought to Be’: Getting Things Right in PDI

We know now that the Report’s reading of ‘what went wrong’ in the PDI system in Ontario is framed in terms of weaknesses, deficiencies and failures in its “institutional arrangements and organizational structures” (p. 115). Here, we continue to reconstruct the
Report’s projection of PDI as a risk management ideal-type, but do so using its recommendations for ‘what ought to be’: “My recommendations attempt to ensure that pediatric forensic pathology appropriately supports society’s interest in protecting children from harm and bringing those who do harm children before the courts to be dealt with according to law” (Goudge 2008:6). These recommendations, which are shaped by the Report’s assessment of ‘what went wrong’, come in the form of organizational solutions or reforms structured around two key ideas: (i) the systematization of risk communications; (ii) reflexivity and internal governance.

3.5.1 Systematization of Risk Communications.

The Report stresses the need for standardized rules and formats designed to govern the communications between PDI team members, because the capacity for swift and decisive action in criminally suspicious paediatric deaths comes from and depends upon systematized knowledge-sharing (pp. 406-469, 577). Its recommendations are thus colonized by new protocols, guidelines, codes and ‘best practices’ documents, all designed to regulate inter-institutional communications, oral and written. The principle of transparency of communications—of maintaining thorough documentation of all shared information between PDI team members—is lauded: “The need for a written record permeates every stage of the PDI process” (p. 132). Standardized communication rules and formats take shape in this light.

Warrants for post-mortem examination ought to be accompanied by a standard questionnaire in cases of sudden and unexpected paediatric deaths (pp. 382-384). These forms are (pre)structured to ensure that forensic pathologists receive from police and coroners, in a transparent, reviewable format, “all needed information” about a death (p. 384), including any confessions of guilt made to the police, the identity of suspected perpetrators, or histories of child abuse in the household where the deceased lived (pp. 383-388).
The Report also supports the regulation of post-mortem reports of examination by a Code of Practice and Performance Standards for Forensic pathologists in Ontario, a standardized protocol which outlines and categorizes the subjects to be addressed and the types of claims to be prioritized in these written communications (e.g., those claims which are quantifiable and amenable to independent validation) (pp. 408, 429). And any preliminary opinions on cause of death, the Report argues, must be communicated using standardized OCCO notification forms which forensic pathologists must triplicate and distribute so that police, investigating coroners and Crown counsel are all ‘on the same page’ as pathologists (p. 398).

Managing ‘subjective explanations’ and guaranteeing objectivity can, too, be facilitated by the regulation of communications, the Report argues. When it comes to expressing expert opinions in the form of court testimony, forensic pathologists must “always remember that they are not there to secure a conviction or an acquittal” (p. 59), and they are certainly not there to, in the words of Dr. Smith, “make a case look good” for Crown prosecutors (p. 16). The Report argues that objectivity in testimony can be partially institutionalized through the building of consensus around the “precise use of language” for forensic pathologists when testifying in court (pp. 430-436). To generate this consensus, the Report again insists on a standardized protocol—a code of practice and performance standards for forensic pathologists in Ontario. Therein, “words and phrases that forensic pathologist should utilize or avoid as potentially misleading” (p. 345) can be articulated, giving expert witnesses a supreme resource for avoiding ‘subjective’ language and employing the “neutral language” (ibid.) required to convey knowledge in an ‘objective form’—the form that best serves those who ‘try the facts’.

The Report argues that the ideal PDI system also finds a way for its forensic pathologists to opine on causes of death that are controversial and beyond the threshold of the existing
pathology findings in a fair and transparent way (pp. 75, 416). It argues that controversial hypotheses—hypotheses that “fall within a spectrum of views in the forensic pathology community” (p. 418), like ‘shaken baby syndrome’—and alternative or potential explanations for causes of death in cases where the evidence is not sufficient to support any one cause\(^1\) are important forms of expert forensic pathology knowledge that need not be disqualified by legal actors for their relatively subjective nature (pp. 414-419). For this type of knowledge to be useful to the criminal justice system, however, it must be structured and communicated according to certain standards that empower forensic pathologists to present controversial or potential explanations in an objective and fair way (p. 432)—this being the argument of the Report.

Generating standardized categories and classifications for establishing and communicating *levels of certainty* in cause of death opinions is one suggestion towards this end (pp. 410-413). For written opinions, mini-literature reviews are suggested as a means for providing the background context of uncertainty (p. 418). In oral testimony, forensic pathologists should describe this context and also identify any circumstantial evidence that informs their controversial or potential hypotheses (pp. 151, 421-432). By drawing attention to the areas of dispute or disputability in these explanations, forensic pathologists can transform ‘subjective’ explanations into objective and fairly presented medical opinions (pp. 432), according to the Report. In this way, the scope for forensic pathologists to supply expert testimony in court is widened.

\(^1\) The official cause of death in these cases is to be reported as “undetermined” or “unascertained”. 

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3.5.2 Reflexivity and Internal Governance.

The Report argues that in a professionalized and rationalized PDI system, the regulation of communication and similar systematizing measures are themselves subject to regulation. Once standards for best practices are put in place, compliance needs to be monitored and shortcomings corrected (p. 215). Effective accountability and oversight necessitates legislative recognition of the operational structure within which forensic pathologists work (p. 309). The Report recommends legislative clarification of the jurisdictional boundaries between the OCCO and Ontario’s forensic pathology service (pp. 284-288), to ensure that those who are in positions of oversight for forensic pathologists have the requisite knowledge of forensic pathology to ensure quality control (p. 340).

A “central tracking system” (p. 358) for monitoring and assessing pathologists’ involvement in ongoing criminal cases is also recommended in the Report (pp. 207, 358). Ideally, this oversight mechanism, through a centralized computer system, amasses and monitors the important communications between forensic pathologists and other members of the PDI team, including: all outgoing reports of post-mortem examination, consultation opinions, and supplementary opinions delivered after the initial post-mortem report; expert opinions rendered to Crown counsel or police; the courtroom testimony of forensic pathologists; and any judicial critiques of the expert testimonies given by pathologists (pp. 357-358). With this information, the progress of criminally suspicious paediatric death cases across the province and the performance of the forensic pathologists involved, from the autopsy suite to the courtroom, can be tracked and measured for quality and timeliness (p. 398).

The Report also supports a publicly accessible Registry of all those pathologists authorized to perform post-mortem examinations in criminally suspicious cases. This Registry
should discriminate those pathologists approved to perform paediatric cases from those approved
to perform adult cases (p. 343). The inclusion criteria for the Registry should include specified
standards of competence, academic training and professional experience (ibid.). Meeting these
standards and demonstrating active participation in continuing medical and medico-legal
education should be prerequisites for regular re-appointment to the Registry (p. 343). “Offending
pathologists” should be removed (p. 342).

Performance measures for Crown prosecutors assigned to complex paediatric death cases
are also necessary quality control mechanisms, the Report argues. Again, a central database is
seen as the most effective tool for this task. All child homicide cases in Ontario should be
collected in and retrievable from an internal, web-based, searchable database administered by the
Criminal Law Division of the Office of the Attorney-General.¹ With this information being
centralized, Crown supervisors and their managers can monitor and assess the compliance of
prosecutors with the key requirement that they seek expertise and advice from the senior Crowns
who comprise the Child Homicide Team in all appropriate cases (pp. 448). The Report argues
that the database can serve an additional quality assurance function in that Crown prosecutors
have access to the information they need in order to measure their relative performance with
Crown attorneys involved in similarly complex cases (pp. 448-449).

3.6 Conclusion to Chapter Three

This chapter has used the claims of the Goudge Report to reconstruct the PDI system in
Ontario as a risk management ideal-type. Because the Report’s reading of ‘what went wrong’ is

¹ The Ministry of the Attorney General in Ontario defines “child homicide” cases as “any suspicious death
involving a child under the age of 12, where the cause of death or the time of death is not immediately
apparent, and where the Crown is consulted by the police or where pediatric forensic pathology evidence
services are engaged, whether charges are laid or not” (Goudge 2008:448).
framed in terms of deficiencies in “institutional arrangements and organizational structure” (p. 115), its descriptions and recommendations of ‘what ought to be’ carve out an image of the PDI system which, for us, serves as a useful heuristic device in moving forward, towards critique. This programmatic, ideal-typical account provides us with a first step in analyzing and appreciating how governmental authorities ‘make sense’ of PDI, a preliminary glimpse of “the categories and styles of reasoning with which they think” (Garland 2001:24).

Of course, the resources of social theory must take us the rest of the way, towards an understanding of the mentalities and sensibilities that get (re)produced in the Report. But since this study is one in the governmental and cultural codes that constitute mentalities and sensibilities of government—after all, “we can never know the inner domain of the person – all we have is language” (Rose 1998a:9)—the review of the Report has given us a crucial departure point for this critical analysis: the language of risk.
Chapter Four

The Silences of the Goudge Report

4.1 Introduction

From the ‘quick reading’ of the Goudge Report laid out in the previous chapter, we were able to see that its programmatic narrative frames the PDI system in Ontario within a problematic of risk. Risk discourse is central to the story it tells, the image it projects of paediatric death investigations done ‘properly’. It is possible now to say with confidence that ‘risk’ is the dominant language or code through which the mentalities, sensibilities and strategies that get (re)produced in the Report take shape. But until we know more about what the language of risk does in the Report—“what components of thought it connects up, what linkages it disavows, what it enables humans to imagine, to diagram, to hallucinate into existence, to assemble together” (Rose 1998a:178); “what it functions with, in connection with what other multiplicities its own are inserted and metamorphosed” (Deleuze and Guattari 1998:4)—this preliminary finding really tells us quite little about the character of the mentalities and sensibilities that ‘risk’ articulates. And so the task for the remainder of this study is set: To understand the perspectives of the authorities who wrote the Report, we must understand how risk discourse ‘gets things done’ in the story it tells—its “‘superficial’ connections, associations, activities” (Rose 1998a:178).

As a means of structuring this task, and in the spirit of deconstructive strategies for resisting authoritative texts, this study will first probe the silences of the Goudge Report (this chapter) before generating its main analytical claims (chapter five). The rationale for this plan goes like this. The current study presupposes, along with Foucault (1978) and Derrida (1976), that silences and “things said” constitute a mutually involved duality rather than a dualism: that
which is ‘heard’ is always inhabited and shaped by, and contingent upon, significant silences and ‘what is left absent’. In this way, silences “are an integral part of the strategies that underlie and permeate discourses”; they “function alongside the things said, with them and in relation to them within over-all strategies” (Foucault 1978:27).

To understand what risk does in the Report, then, this analysis foregrounds a version of the reality of the PDI system in Ontario that went ‘unheard’ in the programmatic account. Kramar (2005) provides for us a socio-legal investigation of criminal justice responses to infanticide, ‘child abuse’, and child homicide in Canada, with a particular emphasis on the peculiarities of the PDI system in Ontario. This genealogical and sociological inquiry, in its final book-length form, predated the Public Inquiry and the writing of the Report by more than two years. The claims and insights of Kramar (2005), however, receive neither consideration nor recognition in the Report, despite the studies sharing a rather specific substantive area of investigation. By elevating the tension between these two readings of PDI in Ontario—the ‘official version’ and an ‘unheard’ version; the ‘programmatic project’ and the ‘social scientific project’—and by interrogating the silences of the Report, we can try to understand how the language and problematic of risk evidenced in the Report enables and constrains, authorizes and subjugates.

The deconstructive features of this approach are, for this study, tied back into an analytic of government, for the ‘activities’ of risk discourse in the Report actively (re)produce the mentalities, sensibilities and strategies of the key players in PDI (Garland 2001, 1990; Lyon 1999:19). In this light, the coming analysis seeks to explicate the centrality of narratives and knowledges of risk in the perspectives of PDI governors, reconnecting an analysis of textual function with questions of power, authority and government. It is through this lens that the notion

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1 In the independent research studies prepared from the Inquiry, Kramar’s (2006) work is recognized by one contributor only (MacFarlane 2008:233-281, in Roach (ed.) 2008).
of the ‘discursive power of risk’ can be imagined, interrogated and explained, as it relates to the story of PDI in Ontario.

4.2 The Silences of the Goudge Report

Kramar (2005), *Unwilling Mothers, Unwanted Babies: Infanticide in Canada*, is a book-length, empirical study of twentieth-century criminal justice responses to infanticide, infant murder, and ‘child abuse’ in Canada. The study unfolds by contrasting present-day policies and practices with those that existed up until the 1980s, combining historical narrative with sociological and legal analysis. Empirically, it examines provincial and federal indictment case files, coroners’ records, reported legal cases, Hansard Parliamentary Debates, official crime statistics, newspaper accounts, and expert and medical texts.

Kramar’s analysis of present-day policies and practices focuses mainly on the peculiarities of the PDI system in Ontario in the 1980s and 1990s, particularly the activism of the OCCO and the high profile of Dr. Charles Smith during these years. But because her critical narrative received neither consideration nor acknowledgment in the final report of the Goudge Inquiry, this leads us to consider Kramar’s study as an alternative plotline, the ‘unsaid’, a ‘haunting absent presence’.

To organize the Kramar (2005) account into analytical categories that represent the silences of the Goudge Report, two overlapping frames of reference were emphasized. Kramar (2005) identifies that her Foucauldian reflexes guide her investigation; thus, power, knowledge, and subjectivity were broadly considered in teasing out the contours of her analysis vis-à-vis the

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1 A second paediatric forensic pathologist, Dr. Chitra Rao (Head, Regional Forensic Pathology Unit – Hamilton), is named in Kramar’s analysis. According to Kramar, Drs. Smith and Rao were relied on almost exclusively for conducting post-mortem examinations in cases of criminally suspicious paediatric deaths in Ontario in the 1990s.
Report. Secondly, and an equally broad organization principle, Kramar’s formal training as a socio-legal scholar (and not as a lawyer!) shaped the way she theorized and explored the relationship between the legal/criminological domain and the social/cultural domain. These broad considerations allow this current study to structure the following presentation of Kramar’s (2005) claims as the silences of Goudge Report. While Kramar’s voice is the one that gets re/presented most in this exposition, the fact remains that the ‘silences of the Goudge Report’ are being manufactured here through a particular reconstruction of her claims, and this invariably involves interpretation. We must remember, then, that Kramar never claims to be doing the silences of an ‘official’ story of PDI (especially since her study predates the Report), and that any characterization of her claims as ‘silences’ in the following discussion is the voice of this author.

4.2.1 Silence: A History of the Present.

The Goudge Report employs a ‘presentist’ perspective through and through. The result is a profoundly ahistorical narrative that discusses the PDI system in Ontario in ways which assume or take-for-granted its present-day arrangements and working assumptions rather than questioning why they have come to be in the first place. The very foundations of PDI are left unquestioned in this programmatic narrative, as the Report seeks to systematize and ‘fine-tune’ what is presented as a very ‘obvious’, ‘necessary’ and ‘common-sensical’ apparatus of crime control today. In sum, there is no historical line of enquiry to be found in the Goudge Report, and PDI is not situated within the context of institutional and social change.

For Kramar (2005), the complex of discourses and practices that constitute the contemporary PDI system in Ontario pose a problem for historical explanation. Working from a Foucauldian angle, she frames the present in a long-term perspective, moves beyond the “immediacy of the present” (Garland 2001:1), and with this move renders intelligible a series of
transformative and reconstituting forces from which the current configuration of Ontario’s PDI system—the one narrated in Goudge—only recently emerged in a stabilized, coherent form. Her empirical examination of Hansard parliamentary debates and Canadian case law presents substantiating evidence that until the 1980s some infant murders in Canada, and specifically in Ontario were viewed from the perspective of government not as a problem of crime control, but as a “problem of unmet social welfare needs” (Kramar 2005:141). This late-modern transition in governmental thought and institutional practices is, Kramar claims, animated and motivated by an unprecedented concern among forensic pathologists and law-makers in Canada about widespread child abuse, a concern arising from a series of high-profile incidents in the 1980s (pp. 18-19, 118). The problematic she sets for herself, then, is the emergence of ‘child abuse’ discourse as the dominant paradigm through which “virtually all childhood suffering, and certainly all child homicides are apprehended” by criminal justice authorities since the 1980s (Kramar 2005:136).

By situating the PDI system in Ontario in its historical and social conditions of existence, Kramar’s narrative disrupts any easy intelligibility this criminal justice apparatus may presently have for observers, and that is the silenced perspective in the Goudge Report. Because this concern for historical inquiry—for ‘rethinking the present’—guides the analytical questions Kramar (2005) pursues, this ‘silence’ permeates and forms the basis for each of the remaining ‘silences’ that will be evidenced here. In preparation for carefully considering these silences, what follows is a broad overview of three key ‘indices of change’ (Garland 2001:6) that Kramar gleans from her empirical inquiry. These signs of historical transformation in PDI practices and policies are, to reiterate, not found in the ‘presentist’ narrative of the Goudge Report. In this sense, their appearance here has the additional effect of ‘denaturalizing’ the present and the problematic of crime control that is assumed and carried forward in the Goudge Report.
4.2.1.1 The De-Differentiation of Regulatory Categories and Criminal Code Offences:

Studying coroners’ case files and post-mortem examinations of criminally suspicious paediatric deaths from the 1980s and early- to mid-1990s, Kramar documents the proliferation and overrepresentation of ‘child abuse’ as a ‘death factor’ cited by forensic pathologists and coroners in their official records (2005:123-141, 161). Kramar argues that this novel practice by PDI practitioners had the puzzling and reckless effect of collapsing a sophisticated scheme of nuanced regulatory categories and Criminal Code offences—which, in practice, had been used often in a mitigation framework for criminal culpability throughout the twentieth-century—into one homogenizing, awkward, quasi-legal category: child abuse (pp. 137-138). Even more striking, from the perspective of historical analysis, is the translation of ‘child abuse’ as a death factor and forensic pathological finding into an equally homogenizing Criminal Code offence: second-degree murder (*ibid.*).

Through her interrogation of Canadian case law and parliamentary debates from the early to mid- twentieth century, Kramar illustrates the much differentiated regulatory categories and laws traditionally used to respond to infant murder in light of the specific circumstances of the fatal incident and the life chances and social conditions of the perpetrator (more on this to come) (pp. 16, 54). The collapsing of the regulatory categories surrounding infant murder and the concomitant rise of ‘child abuse’ as a quasi-legal category and a powerful discourse and lens for analysis, then, are recent and puzzling transformations in institutional thought and practices. That they are assumed and uncritically reproduced in the Report is in line with its ahistorical narrative and univocal message.
4.2.1.2 New Experts and Expert Knowledges:

Not unrelated to the peculiar developments in the medico-legal designations operationalized by PDI authorities are the shifts in the expert knowledges privileged by the PDI system. We have already seen that the Goudge Report privileges the knowledge claims of forensic pathology and forensic medicine, and it assumes the truth-telling authority of the scientific method and the normative and procedural claims of law. It follows logically that forensic pathologists and coroners are the actors who assume the power to narrate the capital-T truth about criminally suspicious paediatric deaths—they are the ‘authorized knowers’ (Snider 2000) in PDI, the “leaders of the forces charged with identifying, avenging, and preventing infant homicides” (Kramar 2005:186). But the impression given by the Goudge Report that this leadership in PDI is obvious and unproblematic is the result of a narrow channel of thinking that, again, ignores the resources of historical inquiry.

Kramar’s examination of Ontario criminal assize clerk indictment records covering the mid- to late nineteenth-century; medical texts and academic papers from the early twentieth-century; and, the official discourse around and content of the Canadian Infanticide Act (1948), demonstrates the centrality of psychiatric, psychological and sociological knowledge claims in criminal justice considerations of infant murder for the bulk of the twentieth-century (pp. 54-96). Through these lenses, the social and economic hardships of women who kill their newborns were brought to the foreground as mitigating circumstances (Kramar 2005:9, 68). Indeed, as Kramar documents (pp. 139-140), it is not until the 1970s that forensic pathologists emerge as the purveyors of (capital T) truth in cases of criminally suspicious paediatric deaths. This displacement of one set of ‘authorized knowers’ by another is tied to the ballooning of interest in the medical community about ‘child abuse’, its pathology and diagnostic criteria: “An issue
mostly grappled with by social workers was suddenly ‘discovered’ and ‘expropriated’ by a more powerful profession: medicine” (Kramar 2005:139). New knowledge claims re-named and re-defined the problem. Interestingly, as Kramar demonstrates, socio-economic considerations do not completely vanish in the new configuration of PDI expertise; rather, they are used in new ways to strengthen—not mitigate—criminal culpability (pp. 122, 168).

4.2.1.3 New Penal and Political Goals:

The narrative of the Goudge Report spells out in unequivocal terms the penal and political goals of a systematized, professionalized, risk-managing PDI system. Its penal goals are detection, punishment, and prevention. The political goal is one of sustaining public faith in the ability of the system to do its job, to fulfill its penal goals and hold perpetrators accountable for wrongdoing (Goudge 2008:46). Embedded in this perspective is the principle of retributive justice, which is expressed in the Goudge Report as an ‘obvious’ component for community healing and as a duty owed to the most helpless of victims. To be sure, nothing about the way the Report rationalizes this inter-institutional system and its organizational mission is incompatible with the general tenor of contemporary crime control policies and practices (Garland 2001; Stenson and Sullivan 2001). But this familiarity can only be sustained to the extent that the Report views the PDI system and the problems to which it responds through a distinctively late-modern, “scientific” problematic of crime control. By posing the present configuration of PDI in Ontario as a historical problem, Kramar’s account avoids this narrow perception and interrogates the penal and political goals of PDI as political, legal and administrative decisions and problem-solving solutions.

Her analysis of the decision-making processes that culminated in the Canadian Infanticide Act (1948) provides a fertile example for comparing the way PDI was rationalized
before the 1980s in Ontario to the way it is rationalized today. Her analysis of Canadian case law and the parliamentary debates surrounding this legislation strongly suggest that, from the perspective of government, the penal goals of PDI were structured and characterized by ambivalence. Throughout the first third of the twentieth-century, Crown prosecutors were consistently obstructed in their attempts to secure an indictment or conviction for the charge of murder in cases where mothers killed their newborn babies. The sympathetic lens through which judges and juries viewed the straitened circumstances of these (mostly single) mothers halted the efforts of prosecutors time and time again (Kramar 2005:92-94). In 1948, federal politicians debating the appropriate legislation for dealing with infanticide agreed with frustrated prosecutors that this subset of infant murders had to be responded to with successful criminal convictions for culpable homicide (pp. 72, 92). However, they also noted the lack of appetite among judges, juries and the general public for punitive responses in these cases (pp. 28-29). Taking these humanitarian sensibilities into account, law-makers introduced the ‘infanticide’ provision into the Criminal Code of Canada.

Kramar (2005:4-5) describes the Canadian infanticide provision as “a pragmatic, even artful, solution to the problem of securing convictions faced by prosecuting authorities”. Although infanticide is recognized as a form of culpable homicide, the psychological and sociological rationales embedded in the provision resulted in relatively mild consequences for those women successfully convicted (p. 8). Thus, prosecutorial and penal aims were, at least in theory, satisfied, without offending the sensibilities of other actors in the criminal justice network and the Canadian public.
4.2.2 Silence: The Often-Classed, Often-Gendered, Always Marginalized ‘Other’.

The Goudge Report stresses the importance of a robust network of surveillance in Ontario for detecting child abuse, identifying child abusers and ‘high-risk’ individuals, and for preventing future harms. CAS authorities are positioned at the hub of this network, sustaining the provincial Child Abuse Registry, conducting risk assessments, and leading crisis interventions in the community. Police, general practitioners and emergency room physicians are key constituent parties who are trained to recognize the signs of abuse and neglect and mandated to forward their concerns to the CAS (Goudge 2008:186). As we saw in chapter two, this knowledge-production and knowledge-sharing is precisely what motors a systematized, professionalized, risk-managing PDI system. With the success of this system being contingent on knowing something about the people it defines as ‘high-risk’ to offend, it is therefore surprising that the Report is silent on exactly who commits child abuse and child homicide. At various points throughout its narrative, the Report uses labels like the “perpetrator” (p. 76), the “suspected offender” (p. 52), the “guilty” (p. 406), and the “killer” (p. 4) to characterize this key situational actor. However, these categories constitute (non)identities that, when put forth to the exclusion of other descriptive information, seem far too obscure for talking about socially-situated actors. They are more akin to abstract renderings: “projected image[s] rather than individuated person[s]” (Garland 2001:179).

The ‘unheard’ story here is the one which eschews the types of categories that reduce these actors and their “socially ascribed life chances and living conditions” (Kramar 2005:54) to measures of ‘criminal culpability’. Kramar’s account generates a very different set of knowledge claims for thinking about mothers who kill their newly born babies specifically, and parents who are accused of killing their infant or child generally. Indeed, for most of the twentieth-century a sociological lens was used to make sense of the act of infanticide, albeit in varying permutations
and combinations with the discourses and explanations of the psycho-sciences (otherwise known as the ‘psy’ professions: psychiatry, psychology and social work (Rose 1998a:2)) (Kramar 2005:9-16). Kramar’s genealogical account of the ‘perpetrator-mother’ subject resuscitates these ways of knowing the ‘criminal’, constructing a more humanized identity for this socially-situated actor than is constituted in the narrative of the Report.

Kramar begins by sketching a rather typical case of the killing of a newborn baby in Canada in the twentieth-century. In this canvassing, we find a description of the classic perpetrator of infanticide:

Typically, a sexually adolescent woman finds herself pregnant and conceals her pregnancy and subsequent delivery. Sometimes women kill their newly born babies because they have been raped or otherwise coerced into sex by male employers, relatives, co-workers, or boyfriends. The women usually conceal and/or deny their pregnancies, give birth alone, and then dispose of the body of the baby in an outhouse, garbage bin, closet, field, or stream, where it is eventually discovered by authorities. (Kramar 2005:2)

Nowhere in the Report do we see this type of contextualized description of the offender-subject; in fact, as we have already seen in the present chapter, this gender specific way of understanding infant murder is given no consideration at all in the programmatic narrative and within its ‘child abuse’ discourse.

Kramar goes on to fill out this vignette in her analysis of early- to mid- twentieth-century assize clerk records, coroner’s inquest records, and medical texts, all of which demonstrate the dominant constitution of the ‘infanticidal’ mother by sociological and ‘psy’ discourses. At that time in Ontario, coroners’ juries and grand juries operated as formally independent bodies armed with the power to decide the fate of Crown attempts to indict persons for the charge of murder (Kramar 2005:30, 42). In analyzing the deliberations of these decision-making groups, Kramar traces out an offender-subject who is typically a working-class woman (p. 10), herself considered
a ‘legitimate’ victim of social injustice (p. 5) by virtue of her disadvantaged and often “sordid” social and economic circumstances (p. 14, see pp. 52-79 for analysis). As Kramar identifies, invoking a humanitarian narrative to frame or ‘make sense’ of these incidents had the practical and legal effects of, first, mitigating the culpability of the gendered offender; second, frustrating the efforts of prosecutors to secure an indictment for murder (pp. 21, 66). But the evidence that is perhaps most germane to the current discussion is the knowledge produced about the offender subject and her historically and socially situated experiences. *She* is the subject of a ‘discourse of tragedy’ (p. 134), recognizable in social scientific, legal and lay knowledges by her socially ascribed and structurally reinforced living conditions and life chances. *She* is constituted by the knowledge claims and subjectivities that Kramar’s sociological and genealogical accounts retrace and the ones that the Report does not ‘hear’.

Kramar’s analysis of present day PDI practices suggests that not much has changed with respect to the structural and situational coordinates of those who are investigated and criminally charged by PDI authorities: for the most part, these individuals live life at the margins of social and economic solidarity.¹ Mothers—especially young, single, unemployed and poor mothers (‘welfare mothers’)—remain a key group under the ‘gaze’ of PDI authorities (pp. 137-140, 159). They continue to be “prime suspects” in cases of criminally suspicious paediatric deaths (p. 137) and are deemed ‘high-risk’ (p. 140) for future offending. Surveillance ensues, by way of a centralized Child Abuse Registry which, in addition to identifying criminally convicted ‘child abusers’, tracks individuals who have merely been investigated by CAS officials at one time or

¹ A sketch of the contemporary offender subject is generated by analyzing a sample of coroners’ reports drawn from “all deaths of infants less than one year of age in which the death was ruled a homicide by any one of the regional Coroner’s Offices in Ontario between 1986 and 1998” (Kramar 2005:259).
another: “One does not have to be convicted of a Criminal Code offence to be named in the province’s child abuse register” (Kramar 2005:161, see also p. 142).

When men are investigated and sanctioned by PDI authorities in cases of criminally suspicious paediatric deaths—and Kramar’s analysis suggests that this is not infrequent—they are typically the father of the infant, or partner or common law spouse of the infant’s mother (p. 159). Again, the family—or, at least the mother and her child(ren) – is/are usually afflicted by poverty and un(der)employment. Notably, even when the father or mother’s partner is identified as the ‘prime suspect’ in the documents Kramar analyzes, the mother is nonetheless subject to “intensive investigation” (p. 159); as identified earlier, she becomes ‘known’ to authorities through her deprived social and economic coordinates, poor quality of life indicators, personal and sexual conduct (pp. 159, 168, 170-171).

This section has, via an interpretation of Kramar’s empirical work, used the discourses of sociology and criminology to render intelligible the offender-subject in cases of criminally suspicious paediatric death. Rather than the vague and abstract classifications offered by the Report, Kramar’s (2005) narrative puts forth the representation of a humanized, socially-situated individual—a ‘real’ person. However, emphasizing these knowledge claims is not the same as arguing that they have always been the dominant discourses through which the offender has been ‘made up’ (Hacking 1983) and understood by authorities. Nor is it the same as claiming that this knowledge has always been used by authorities in the same way, towards the same ends. As Valverde (1991) reminds us, “subjectivity is never singular,” there exists always a “simultaneous presence of a number of distinct discourses converging on a particular social subject with varying degrees of effectivity” (p. 182). The point that matters most for now is that the (often gendered, often ‘classed’ and marginalized) offender-subject who is constituted in the sociological and
criminological discourses to which Kramar refers finds no expression in the Goudge Report and its ‘subjectificating’ categories of criminal and moral culpability. That the ‘effectivity’ of social scientific discourses has been radically reconfigured in the sense-making practices of PDI authorities and political actors since the early 1980s is an historical transition that must be tabled for now and explained in the analysis to come.

4.2.3 Silence: The Moral Panic.

When situated in the historical and social conditions of its existence, today’s PDI system in Ontario looks to be deeply embedded in a web of fears and anxieties about ‘child abuse’ that crystallized into a problem of crime control only in the last 30 years (Kramar 2005:137-142). To examine the ‘historical temporality’ (Garland 2008:21) of today’s reconfigured, ‘child-abuse’-centred PDI system, Kramar positions the recent ontology of ‘child abuse’ within the wider framework of social, cultural and political change that took place in many Western liberal-democracies in the 1980s. Following Ian Hacking’s work on the ‘social construction’ of ‘child abuse’ (2000, 1983), she argues that a ‘moral panic’ about un(der)dected, un(der)reported, and un(der)prosecuted cases of ‘child abuse’ and child homicide emerged from a definite political and cultural context in the 1980s, with definite and appreciable conditions of existence. This panic, Kramar tells us, was made possible by advances in paediatric forensic pathology and diagnostic imaging (2005:139); but, it was made probable by a new set of political and penal rationalities and the mobilizing, organizing, and institutionalizing powers of popular mass media (pp. 135-158).

4.2.3.1 A ‘Novel’ Form of Deviant Behaviour (New Ways of Seeing Old Acts):

There is nothing recent about “vile behaviour toward children”, Kramar reminds us (p. 137). Parental neglect and ‘mis’treatment of children and infants (physical, mental, sexual and
otherwise) is, and long has been, an ongoing form of abusive conduct (ibid.). ‘Child abuse’, on the other hand, appears first in the late 1940s as a medical entity and a medico-legal conclusion capable of being indicated by diagnostic imaging. Paediatric radiologists and forensic pathologists studying the etiology of chronic subdural hematomas in infants whose deaths were otherwise unexplainable (SUDS cases) discovered a subset of cases in which long-bone fractures at various stages of healing were also present (p. 139). When infants present for medical care or post-mortem examination with this pattern of skeletal fractures alone, the possibility of non-accidental trauma is strong enough to prompt further interrogation. However, when this injury pattern is coupled with evidence of subdural hemorrhage the probability of third-party involvement and ‘foul play’ increases dramatically and with it the investigative powers to ‘reveal’ ‘child abuse’ and to name and blame ‘child abusers’ too (ibid.).

The seminal study that invented the category of ‘child abuse’ and implicated it in the etiology of sudden unexpected deaths of infants was published in 1946.¹ In the next several decades, paediatric forensic-scientific knowledge claims proliferated through a range of related research studies led by radiologists, paediatric pathologists and forensic pathologists (Kramar 2005:139). Violent shaking emerged as a suspect mechanism of injury in SUDS cases (p. 123). ‘Child abuse’ became a fertile substantive area of interest for ambitious researchers in these disciplines and sub-disciplines (pp. 137-139). However, its sources of energy and legitimacy were derived largely from within the medical community during these years, creating in turn an enclave of knowledge-production and knowledge-sharing. Indeed, the notion of ‘child abuse’ and the scientific knowledge claims capable of ‘discovering’ it did not really ‘grow legs’ (Snider 2000) in political, governmental and public discourse until the 1980s (Kramar 2005:100, 134,

When they finally did, it was a moment of transition bearing the hallmarks of an over-determined process of political and penal change; and at its centre was a moral panic.

4.2.3.2 The Impact of Rapid Social and Political Change:

The ‘discovery’ of child abuse in medico-legal discourse and practices was the most basic precondition for the panic that ensued. However, Kramar points to an important set of conditions—what we can refer to as ‘background conditions’—that facilitated the widespread acceptance of forensic pathology as the authorized knowledge for making sense of all types of criminally suspicious paediatric deaths. These background conditions, Kramar tells us, were mutually experienced in North America and the United Kingdom from the 1980s onwards (p. 118). They center on the new modes of governing ushered in by the respective governments of Mulroney (Canada), Reagan (the United States) and Thatcher (the United Kingdom), who commonly shared the “ideological notion that the market is the best mechanism for resource allocation and that the individual should not be interfered with by the state” (p. 100). In criminal justice, law and public policy this formula for government translated into a breakdown of previously existing structures of collective responsibility and control. The result was a transformative shift towards individual responsibility for social and economic security and overall well-being (pp. 16, 100).

The individual freedoms, risks and responsibilities fertilized by these new governing practices created the perfect opportunity for ‘law and order’ advocates to advance their own ideological agenda. They convincingly argued into political, legal and popular discourse a new explanatory model for violent crime, a model pitting the wholly responsible criminal against the wholly undeserving victim in a mutually exclusive and polarized relationship (pp. 14-16). Personal intent and rationality are assumed, socio-economic context becomes irrelevant, and
retributive and deterrent penal aims are legitimized by the combination of free market ideology and punitive sentiment that begins to materialize in the 1980s (pp. 10-11, 100).

4.2.3.3 The Media, Disproportionality and New Folk Devils:

Moral panics are exaggerated responses to societal risks (Cohen 2004:1), and in the mass mediated world of today the press plays an incomparable role in familiarizing the public with “new ways of seeing old acts” (Hacking 1995:55, quoted in Kramar 2005:137). Kramar implicates the Toronto Star (one of three national newspapers in Canada, albeit with a Toronto-centric flavour) in the popularization of hyperbolic and sensationalized representations of ‘child abuse’ in Ontario in the 1990s, this notion and phrase having been finally and fully appropriated from health sciences researchers (pp. 140-142). Her discursive and cultural analysis of the Star’s sudden and dramatic coverage of child homicide in the mid-1990s focuses on the public perceptions that these stories sought to shape and the sensibilities in which they were anchored. This public campaign, Kramar insists, was a major catalyst for the hysteria and generalized social anxiousness and agitation about ‘child abuse’ that followed in Ontario (pp. 137, 140-145).1

So what did the Star’s campaign look like and what made it so productive? In September 1996 the Star tapped into a new ‘child abuse’ programme that was taking shape at the OCCO, led by Deputy Chief Coroner Jim Cairns. Researchers for the Star, using court files and ongoing interviews with police, Crown attorneys, defense lawyers and CAS workers, reviewed 77 criminally suspicious paediatric death cases for the previous five years in Ontario. The Star ran its findings in the lead story of its 18 September 1996 edition, entitled ‘How the System Failed

1 It is worth noting that the Toronto Star is not typically a forum for the expression of populist penal sentiments or ‘law and order’ sensibilities. It is an avowedly liberal newspaper, with a consistent track record of endorsing centre-left and left-wing politicians for leadership positions at all three levels of government in Canada. That the Star could not resist the siren call of ‘under-prosecuted’ cases of ‘child abuse’ and child homicide demonstrates a deviation from its typical criminal justice reporting practices.
These Kids: They Died Despite Signs of Abuse’ (Kramar 2005:142-143). The findings of the study ‘revealed’ the failure of the CAS in Ontario to intervene in ‘known’ cases of neglect and/or abuse, cases which culminated in child mortality (p. 143). The idea was that major deficiencies in child welfare policies and practices existed and that this had left ‘blood on the hands’ of Ontario’s social workers (ibid.). But perhaps more alarming in nature was the Star’s ringing endorsement of a claim that had been circulating among death investigation professionals for some time—that SIDS had become an intolerably all-purpose classification for infant deaths, one which often disguised deaths caused by ‘child abuse’ and, more importantly, allowed ‘child abusers’ to ‘get away with murder’ (p. 144).

Soon after the Star’s report was published, Dr. Cairns announced the establishment of a Coroner’s Inquest into the deaths of eight children known to the CAS in Ontario, which would “study the causes of child mortality in Ontario with a view toward preventing future deaths and creating a system to evaluate the risk of serious injury or death in each case known to Child and Family Services” (Kramar 2005:143). A major report of Inquest recommendations concerning “long and overdue” administrative and legal reforms was to be rendered in about one year’s time (ibid.).

In the interim, the Star chose to capitalize on the outrage and emotional intensity ignited collectively by its September 1996 study and the OCCO announcements by running a series of articles united under the umbrella title, “Cry for the Children”. Between April and June 1997 the Star published intimate, personalized accounts of “some of the most sadistic and bizarre examples of child abuse” (Kramar 2005:140) in recent years—personalized and individualized from the perspective of the infant- or child-victim (pp. 145-146). Kramar argues that two staff reporters present only a handful of cases to support their claim that “most parents who kill their children in
Ontario receive little or no punishment for their crimes” (Welsh and Donovan 1997a:A1, cited in Kramar 2005:146).

Of course, Kramar notes satirically, “proving” a claim requires quantitative evidence (ibid.), and the Star was sure to include in its coverage a statistical representation of sentencing practices in cases of ‘child abuse homicide’. Carrying forward the weighty assumption that first- and second-degree murder charges are the “appropriate” penal sanctions for parents who kill their children (p. 147), the Star told its readers that in the province of Ontario parents are ‘getting away with murder’ (this being the title of one of the serial reports) by plea bargaining charges of murder down to lesser charges and by, in “most” instances, avoiding jail sentences (Kramar 2005:147-148). Its 18 May 1997 article argues that in 71 percent of the cases in their sample (n=77) of Coroner’s cases that list ‘child abuse’ as the death factor parents “got off with little or no punishment” (147). Kramar (ibid.) debunks this claim by showing that of this 71 percent who supposedly ‘got off scot-free’, 30 percent were actually “acquitted or determined to be not guilty”! To the point of plea bargaining specifically, the Star anticipated that its readers would be stunned to learn that in 51 percent of its sample cases in which a caregiver or parent was charged with murder a plea bargain was accepted in return for a guilty plea (p. 148). Kramar rejects the intended shock-value of this claim, stating that this figure is “practically meaningless without comparative data, raising the question of whether or not all charges are to a certain extent subject to this level of reduction through special plea arrangements” (ibid.).

What might be the most problematic dimension of the Star’s campaign was its reliance on the reporting practices of an OCCO whose administrative leaders and key practitioners had become engulfed in a surging and politicized ‘child abuse’ campaign. Kramar’s own analysis of coroner’s case files during the period identifies the overrepresentation of ‘child abuse’ as the
officially recognized death factor in cases of criminally suspicious child deaths (pp. 149, 160-161). Kramar identifies that virtually all infant deaths due to violence were coded during these years by forensic pathologists and coroners equally as ‘child abuse’, this regardless of a death being unintentional, a one-time only act of violence, or a case of ‘infanticide’ (in its formal, medico-legal description) (pp. 149, 160-161). The *Star* reproduced this carelessness in its own study, thus painting a picture that was “misleading at best and a gross distortion at worst” (p. 148).

The folk devils of this moral panic emerge from that very picture. The decontextualized approach to individual cases (p. 146); the silences surrounding relevant social and economic circumstances (p. 148); and, the meticulous attention devoted to the marks of violence on and in the bodies of victims (p. 140) constitute in the *Star*’s narrative the figure of a perpetrator who embodies “some type of inherent, undefined evil” (pp. 165-166). The often-gendered and/or often-classed offender-subject rendered visible in Kramar’s historical account of PDI discourses is supplanted by this new popular representation, envisioned first by interested advocates and legitimated finally by major media. And now that Ontarians were able to ‘know’ the realities and risks, they are told in the *Star*’s final report of the series that “both laws and attitudes must be changed so that child safety becomes paramount over the rights of abusive parents” (Welsh and Donovan 1997b:A1, quoted in Kramar 2005:149).

4.2.3.4 New Measures of Control:

In April 1998, in front of a primed and sensitized public audience, the findings of the OCCO’s Inquest into the deaths of eight children ‘known’ to the CAS were released in a major report. Recommendations for administrative and legal reforms were attached. These recommendations included, first, the establishment and strengthening of “innovative prevention
programs”, which Kramar (p. 152) synopsizes as “an enhancement of the investigation, monitoring, and reporting practices for children at risk—virtually a new and very detailed blueprint for professional involvement in these cases”. A key feature of this ‘enhancement’ was the instituting of mandatory reporting of suspected ‘child abuse’ to the Ministry of Community and Social Services in Ontario, the government department responsible for maintaining the centralized child abuse registry (p. 161). The second major recommendation stemming from this internal report had to do with criminal law reform. The report encouraged law-makers to create specific Criminal Code offences for ‘child abuse’ and neglect and “death by child abuse/neglect,” the latter of which ought not to require proof of “intent” (Ontario 1998:17, cited in Kramar 2005:153-154). Under this recommended rubric, infanticide would be removed from the Criminal Code (Kramar 2005:153).

While the first recommendation was implemented and realized through enhanced information-sharing practices, intensive scrutiny of ‘at risk’ parents by a new network of coordinated professionals, and a robust centralized child abuse registry (pp. 161, 186), the second recommendation has yet to formally materialize. Nonetheless, as Kramar (2005) notes, Crown prosecutors quickly began to carry out the spirit of this proposal for criminal law reform, insofar as they now (the practice continues today) aggressively pursue first- and second-degree murder charges in virtually every case of infant death due to violence (pp. 100, 142). Indeed, Kramar identifies, corporeal evidence of violence has become the surest sign of “evil intent” from the perspectives of PDI authorities, political actors and the public today (p. 166). In this light, the attitudinal or perceptual change looks to be accomplished, even if the crimino-legal changes are thus far de facto.
4.2.3.5 The Political and Cultural Vacuum of the Goudge Report:

One might argue that it is unfair or misleading to characterize the Goudge Report as having been narrated in a ‘political and cultural vacuum’. After all, the Report acknowledges a problematic “culture of advocacy” (Goudge 2008:16-17) at SickKids, the OPFPU and the OCCO in the late 1980s and 1990s. It speaks directly to the dogmatism (p. 178) of PDI practitioners and administrative leaders during those years, Dr. Charles Smith chief among them: “Smith’s deeply held belief in the evil of child abuse caused him to become too invested in many of these cases” (p. 203). And it situates the PDI policies, practices and priorities that emerged in Ontario in the period under review (1981-2001) within the context of a growing, international concern about ‘child abuse’ (p. 108). This last point, however, the Report does not problematize, and the first two it considers as mere obstructions to scientific validity, objectivity and Truth. But these are constitutive, intrinsic elements of the PDI system that need to be explained (not explained away)!

It is in this way that we can observe that the Report does not speak to the only-recent panic over ‘child abuse’, this newly ‘discovered’ phenomenon around which the contemporary PDI system is organized and rationalized (both discursively and concretely). In much the same way, the Report does not speak to the timing and popular appeal of PDI. Nor does it speak to its sources of political energy, legitimacy and professional usefulness. This is despite the fact that an analysis of the proximate social, political and historical conditions of existence for today’s PDI system—the moral panic over ‘child abuse’ being central to them!—was available via Kramar (2005), ready to be confronted, considered, and (perhaps) carried forward in the Report.
4.3 Conclusion to Chapter Four

This chapter has mapped out an alternative plotline to the Report’s ‘official’ story of PDI in Ontario. It did so using Kramar’s study (2005), a socio-legal investigation of societal and governmental responses to criminally suspicious paediatric deaths whose absence from the Report, whether planned or unplanned (likely more of the latter), can tell us something about what ‘risk’ does in the programmatic text. By offering a set of explanatory claims as to ‘how’ and ‘why’ risk discourse defined the ‘thinkable, sayable, and hearable’ limits of the Report in a way that excluded or rendered ‘unthinkable’ Kramar’s (2005) study, we can throw light on the mentalities, sensibilities and strategies that get (re)produced in the ‘official’ version of PDI. And now that we know what this ‘unheard’ story of PDI looks like—its themes, premises and foci of analysis—we can begin that analytical task.
Chapter Five

The Discursive Power of Risk

5.1 Introduction

This major analytical chapter generates a set of theoretical claims to explain how (and, to a more modest degree, why) risk discourse defined, limited and restricted the narrative of the Goudge Report in ways that rendered Kramar’s story of PDI decision-making ‘unheard’. It engages the theoretical and substantive arguments in the governance literatures appraised in chapter two with the empirical findings produced thus far (chapters three and four). What follows, then, is a defensible set of explanatory claims for understanding the enabling/constraining power of risk discourse in the Goudge Report.

The claims presented here emerge from an analysis of the discursive, textual and literary practices in the Report, and the composite argument they sustain goes like this. The risk management narrative in the Report sutures together a ‘volatile and contradictory’ (Garland 2001; O’Malley 1999) juncture between several hybrid risk knowledges and frames. In this way, the ‘effectivity’ of risk discourse in the Report is derived from its ongoing (re)organization and (re)articulation with other divergent sets of discourses and their (powerful!) rhetorical systems (Valverde 1991). The contour of this finding is unsurprising, since there exists “no consensus or legitimate meta-rationality for addressing risk and establishing standards of risk management” (Ericson 2007:17); however, its ‘volatile and contradictory’ terrain is where the demand for further analysis and explanation springs. For the purpose of analysis, we can artificially abstract and isolate, define and explicate the three key discursive formations with which risk discourse is
melded and articulated in the Report to produce hybrid risk knowledges: (i) what shall be called, the ‘modernist dream’; (ii) neo-liberalism; and, (iii) neo-conservatism.

While analyzing these different species of risk knowledges reveals the contradictory or incoherent aspects of the risk management narrative in Goudge, the analysis also demonstrates that the ‘slippage’ between the different meanings and understandings of risk maximizes the legitimacy, persuasiveness and popular appeal of the Report. By tapping into “familiar cultural scripts” (Garland 2010:60) and by anchoring its story in “established forms of authority” (ibid.), the Report’s risk management narrative operates at the nexus of ‘commonsense’ mentalities and populist sensibilities, where the alternative claims of the ‘welfarist’ criminology project are “not only not heard, but they never even make it into the realm of plausible...” (Snider 2001:244).

5.2 Risk Discourse and the Modernist Dream

In the key values, commitments and working assumptions it carries forward, the Report is a reproductive agent of what can be called the ‘modernist dream’, a majestic image that has haunted the imaginaries of political and governmental decision-makers since the Enlightenment. ‘Through Science to Reason; through Reason to Truth; and through Truth to certainty, mastery and social order’: this is the dream of modernity (Lyon 1999; Morrison 1995; Smart 1993).

Modernist thinking, overall, is constituted by and through ideal-typical discourses of progress and perfectability (Garland 2001:41). Disaggregated, we can understand this attitude—this “mode of organizing experience” (Morrison 1995:33) or “way of relating to contemporary reality” (Smart 1993:94)—in two appreciable parts. First, the modernist dream is organized and motivated by the ‘will to truth’ (and not ‘truths’, to be sure). In what brings about the privileged status of scientific methodology for Truth- and ‘fact’- finding, modernist thinking commits unfailingly to the “possibility of knowing total truth” (Morrison 1995:33) through “calculating and purposive forms
of rationality” (Smart 1993:87; Snider 2004a). Indeed, as one of the grand theorists of modernity writes, “[S]cience in the name of ‘intellectual integrity’ has come forward with the claim of representing the only possible form of a reasoned view of the world” (Weber 1970:355, cited in Smart 1993:89). Science can ‘make good’ on its promise of reasoned truth, so the story goes, because of its procedures and methodology: “The principles of scientific method – observation, experiment, measurement, followed by publication and replication – promises a fail-safe method that delivers truths about the laws of the universe” (Snider 2004a:267). And in response to these guarantees, political and governmental decision-makers routinely invest an unquestioning faith in the knowledge claims of science, “the purveyor and source of ‘truth’, the pathway to ‘wisdom’” (Snider 2004b:169).

The second discernible dimension of the modernist dream is the rationale that underlies the first. The pursuit of “true” knowledge through Reason is motored by the twin desires for certainty and social order (Ericson 2007:5; Lyon 1999:25), read often by postmodernist thinkers as an obsession with knowing and controlling the future (Walklate 2007:17; O’Malley 2004:53; Rose 1998b:177). Political and governmental concerns to govern the future—to tame uncertainty—epitomize the values and commitments of the modernist attitude. For in the dream of modernity, progress hinges on predictability, planning, and control (Morrison 1995; Lyon 1999; Smart 1993): “Uncertainty – if not always in practice then almost always in intent – [is] to be subordinated: to technologies that [are] the domain of experts; to knowledges that [seek] predictability and control; to science and to risk” (O’Malley 2004:53). Pat O’Malley’s concise portrayal of what he himself deems the “modernist desires . . . for control, standardization and scientific certainty” (2004:29) is a timely reminder (but a claim nonetheless) that risk discourse and risk knowledges are central to the dream of modernity. “[R]isk thinking seems to bring the
future to the present and makes it manageable” (Rose 1998b:177, cited in Doyle 2007:13-14). And it is this discursive quality which leads Ericson (2007:7) to appraise knowledges and technologies of risk as the *only* way of coping with the anxieties surrounding uncertainty with which contemporary political and governmental actors must wrestle.

When risk discourse is mobilized in the Report and articulated with the dominant political and cultural theme of modernist control, it takes a particular shape and has particular enabling/constraining effects on the ideas and interests that get ‘heard’ (Snider 2000) and, consequently, on the types of social subjectivities and social relations that are legitimized (Valverde 1991). We look now to how risk discourse of the modernist dream takes shape and how it fits in with the politics of the ‘said’ and the ‘unsaid’ in the Goudge Report.

### 5.2.1 The Risks of Realism: Policing the Epistemological and Ontological Boundaries of the Story of PDI.

Already in this study we have seen François Ewald’s (1991) well-known conceptualization of risk: “Nothing is a risk in itself; there is no risk in reality. But on the other hand, anything *can* be a risk; it all depends on how one analyzes the danger, considers the event” (p.199, italics in original). David Garland (2003) concurs, positing that risks only exist in our knowledge of them, thus precluding the possibility of ‘objective’ risks, risks which could somehow exist independent from the contingent social positions and perspectives of ‘authorized knowers’ (Snider 2000). Regardless of whether we label this perspective of risk ‘post-modernist’, ‘post-structuralist’ or ‘social constructionist’, it is backed by a set of epistemological assumptions which do not mesh with the risk management narrative that unfolds in the Report.

For the Report, the risks associated with ‘child abuse’ and child abuse homicide are very ‘real’, in that they are and always have been ever-present, static, existing in reality but too often
going ‘undiscovered’ (Goudge 2008:109-113). (Paediatric) forensic pathology, with its ability to interpret the corporeal effects of violence and to infer causation and culpability, is said to be able to access that reality and discover—or, in perhaps even more potent realist terms, ‘reveal’ or ‘unearth’—those risks (Goudge 2008:406). In this way (paediatric) forensic pathology experts are ascribed and assume a “privileged access to reality” (Rose et al. 2006:96), for they are the ones who can produce the surest and soundest knowledge of the risks of future ‘child abuse’ (homicide) based on evidence of past behaviour. Their knowledge claims provide the most certain and objective identification of ‘child abusers’ (‘risky individuals’) and future victims (‘at-risk children’) because of the ‘evidence-based’ methodology (Goudge 2008:268) and the standardized, independently reviewable procedure used to produce them (p. 139). Indeed, through the dominant lenses of realism and modernist thinking employed in the Report, positivist science and those who speak in its name ‘rule the roost’ in the quest for Truth.

The validity of the claims of forensic pathology for risk management need not be assessed here (and thankfully so, since the requisite expertise for such a task lies elsewhere). What matters most here are the effects of mobilizing and using a distinctively realist conceptualization of risk, the conceptualization assumed in the Goudge Report and advanced in its reproduction of the dream and pursuit of modernity. For the realist epistemological assumptions carried forward in the Report’s risk management narrative have a potent enabling/constraining effect for the story of PDI. By placing forensic pathologists and forensic scientists (coroners) on a higher epistemological pedestal than all other ‘knowers’—vis-à-vis revealing the ‘true’ levels of these ‘ontologically real’ risks (Hannah-Moffat and O’Malley 2007:15)—the Report marginalizes or ignores competing epistemologies, epistemologies which...
do not claim authorship of the Truth about PDI in Ontario (or the Truth about any other phenomenon for that matter) (Valverde 2003:7-10).

At the heart of this issue of modernist risk discourse, then, is what Mariana Valverde (2003:23) refers to as the ‘distribution of epistemological authority’, which is constituted in the Report through its assumptions about risk and through the way it ‘thinks’ the problem of ‘child abuse’. When a realist version of risk is the discursive formation through which the problem of ‘child abuse’ and child homicide is thought (Hunt 2003:173), then the Truth about criminally suspicious paediatric deaths resides in the positivistic realm of corporeal clues (Valverde 2003:60). Hence, the Report’s narrow and intense emphasis on ‘getting the science right’ (Snider 2000:357) and communicating the truth-claims of forensic pathology effectively, efficiently and format-appropriately, so that they may be translated into the legal knowledge of truth (see chapter three). When problematized through this modernist risk discourse, then, ‘child abuse’ and child homicide are rendered knowable and amenable to the intellectual and technical acumen of forensic pathology experts to the virtual exclusion of all others. And so the ‘operations of exclusion’ in the Report’s risk management narrative begin with its constitution of expert subjectivities (Foucault 1977) or authorized knowers (Snider 2000) whose deficit of epistemological modesty leaves little to no residual epistemological authority to be spread around.

From the perspective of the Report, this distribution ‘makes sense’; we might say it is ‘common sense’. After all, the risk knowledge (singular) being pursued is techno-scientific, the truth scientized and narrowly defined. If, as the Report suggests, only forensic scientists, pathologists specifically, possess the means to ‘get at’ the essence of the risks of future child homicide, then the boundaries of authoritative knowledge are, indeed, quite ‘obvious’. Thus, the
modernist risk discourse in the Report performs a ‘gatekeeping’ function for the story of PDI in Ontario (Lyotard 1984) through its (re)constitution and affirmation of the ‘same old’ authorized knowers central to the dream of modernity. Indeed, we can say that the way the Report conceptualizes risk is determinative of the expert subjectivities (re)invented in the story it tells. The exclusionary effects of these powerful representations: the knowledge-claims of ‘irrealist’ storytellers and those who might interrupt the unquestioned acceptance of scientific claims are denied existence in the programmatic narrative. Dayna Nadine Scott captures this discursive effect well:

As more and more actors, organizations and institutions assume risk discourse to be the “natural, primary and even exclusive frame for evaluating issues of technoscience” (to the exclusion of other, sometimes explicitly socio-cultural frames), the space in which ordinary citizens may legitimately claim a right to participate in public debate contracts. (2007:27)

5.2.2 The Risks of a Temporal Imagination (or, The Lazy Assumption of Unbroken Continuity).

From the analysis in chapter three we have already seen that the Report seeks to manage infrastructural deficiencies and forge concrete inter-agency partnerships, leaving historical questions of power, authority and social relations untouched. In chapter four, this ahistorical trend was analytically isolated and identified as a ‘silence’. In many ways this ‘presentist’ mindset is predictable given the timing of the Report, its production and circulation occurring in the enduring aftermath of the Dr. Charles Smith revelations. As Richard Sparks (2000) reminds us, high-profile scandals shake the ‘legitimation-claims’ of risk institutions (p. 133), provoking
programmatic responses which typically “achieve closure over the episode” via superficial system-repair (p. 140).¹

The two inter-connected analytical questions left to be tackled, then, are (i) how is this ‘valorization of the present’ accomplished through the language used in the Report, and (ii) what are the (enabling/constraining) effects of that language? The theoretical claim presented and defended here is that we can begin to answer both questions by looking to the discourse of risk invoked in the Report, specifically where it is mobilized and shaped within the dream of modernity. We have already reviewed existing theoretical claims that posit the “historical logic of modernity” (O’Malley 2000:30) as premised on “the inevitable progress of the will to truth” (Bouchard 1977:22). The temporal imagination that facilitates and is facilitated by this distinctively modernist ontology of the present permeates and structures the Goudge Report. To borrow from the conceptual toolbox of cultural analysis, we can say that this temporal imagination provides a ‘frame’, a “ready-made structure for discussion and debate” (Garland 2010:61) about ‘child abuse’, child homicide and the ‘thinkable’ responses to both (pp. 60-61). The powerful regulatory or enabling/constraining effects of this imagination have to be actively realized in the Report through language, through a modernist risk narrative that abbreviates and shores up its version of the past, privileges the point of view of the present, and obsesses over the future.

The mandate of the Goudge Inquiry, handed down to Justice Goudge by the Attorney-General for Ontario (then, a Liberal), established a definite period of time that was to be the focus of the Inquiry’s investigation and explanation: 1981 to 2001 (by many standards, ‘the

¹ David Garland (1990:5) also remarks on this type of programmatic response: “In normal circumstances an established institution can finesse its failures. It can explain them away in terms which do not call into question the foundations of the organization – such as the need for more resources, minor reforms, more co-operation from other agencies, and so on”.

contemporary’). But, although it may be a necessary condition, this mandated time frame alone is not sufficient to explain why it is that historical resources were not used in the Report to help interrogate, understand and critique the present-day policies and practices of PDI authorities in Ontario. Nor can the scope handed down to the Inquiry sufficiently explain how the Report legitimizes and normalizes its pre-1980 amnesia, a feat accomplished through the discourses and assumptions of its modernist risk narrative and problematic.

The Report considers as a kind of point of origin a (‘present-day’!) time when “pathologists and coroners operated in Ontario in separate silos” (Goudge 2008:82) and “no coherent forensic pathology service” existed (p. 83). Starting from this ‘point of deficiency’, which is identified as sometime before the early 1990s but no earlier than 1980 (pp. 80-83), the Report measures the progress of PDI using the criteria of: (i) techno-scientific advances in the field of (paediatric) forensic pathology; (ii) increased adherence to evidence-based scientific methodology; and, (iii) advances in inter-agency co-operation, namely the communication of risk knowledge between (paediatric) forensic experts and criminal justice actors (see chapter three or Goudge 2008:80-114). And, as ‘progress’ would suggest, the path of development on display is quite linear, a gradual—albeit, imperfect and incomplete—unfolding of the potential of (paediatric) forensic pathology for aiding the risk management goals of criminal justice officials.¹

What we know from Kramar’s (2005) study is that ‘child abuse’, as a medico-legal concept and forensic finding, has a recent ontology, having only been invented and institutionalized in medical, legal and lay discourse less than a decade prior to the earliest year under review in the Report (pp. 137-142; also, see chapter four of this study). Linked intimately with this “new way of seeing old acts” (Hacking 1995:55, cited in Kramar 2005:137), Kramar

¹ This is certainly not to suggest that the Report does not identify failures or hiccups in this progress.
tells us, is the expropriation of a social/'psy' problem that social/'psy' workers had been managing by medicine—by forensic pathology (p. 139). Thus, when viewed in the perspective of the long-term, the centrality of forensic pathology and those who speak in its name in paediatric death cases is neither as self-evident nor as inevitable as the Report assumes. The crowning of paediatric forensic pathologists as the dominant authorized knowers, their playing “pivotal, if not decisive, role(s)” (Goudge 2008:406) in these cases, is but the most recent stage in a long-term struggle between competing professional interests, working ideologies and knowledge claims (Smart 2002:57). In fact, what Kramar’s historical and genealogical record shows (and the Report’s snapshot of the present-day does not) is that today’s PDI system might yet prove to be “transient rather than persistent over the long term” (Garland 2010:23)! Indeed, a widening of perception allows us to see that the present PDI arrangements in Ontario “might have been—and might still be—differently arranged” (Garland 2001:3).

However, when the risks of ‘child abuse’ and child homicide are ‘real’ (see above, section 5.2.1) and the Truth about them lies in the positivistic realm of corporeal clues (Valverde 2003:60), the present is easily valorized as a “high-point of the process of development” (Smart 2002:56) and the inevitable effect of the modernist ‘will to truth’ about criminally suspicious paediatric deaths. The Enlightenment “myth of progress” is thus reproduced (Snider 2004c:232). The historical record thereby becomes superfluous, bracketed off as nothing more than an account of the days before these ‘ontologically-real risks’ could be ‘unearthed’ (Hannah-Moffat and O’Malley 2007:15), before the knowledge claims of forensic pathology gained clout and before science started to ‘get it right’ (Snider 2000:357). And thus, the present becomes a natural(ized) and normal(ized) perspective and starting point for investigation in the Report.
If a modernist risk problematic simultaneously reduces history to a logic of capital-S scientific progress and closes off discussion of any alternatives to the present (O’Malley 2010:99), then the second powerful structuring effect it has on what gets ‘heard’ in the Report extends the temporal imagination into the future. The affinity between the dream of modernity and risk discourse is well theorized, and we have seen some of the claims that articulate this relationship already. In the modernist dream the future is centered as a terrain to be mapped out and controlled by science; perfection is the Holy Grail. Because it can “bring imagined futures to the present” (Ericson and Haggerty 1997:87) and make them manageable (Rose 1998b:177), risk discourse generates the capacity for taking social action (Hunt 2003:173), for pursuing the perfectibility which epitomizes the modernist dream. As a result, risk discourse stimulates action “with reference to the future more than the past or present” (Ericson and Haggerty 1997:87).

No wonder, then, that the Report is profoundly ahistorical. Its conflation of technological and scientific advance in (paediatric) forensic pathology with social progress (Scott 2007:35), its drive for perfection in the production and communication of risk knowledges (see chapter three), and its treatment of the forensic-scientific version of “speaking for the dead to protect the living” as an article of faith, have the net effect of generating a future-oriented institutional narrative.

5.2.3 The Risks of an Avowedly Neutral Lens.

Within its risk management narrative, the Report undoubtedly gives voice to key modernist values and ideas: objectivity, detachment, standardization, independent-reviewability, truth (see chapter 3). The language of risk is mobilized within this set of commitments as a ‘neutral’ vocabulary (Ericson 2007; Douglas 1992), an apolitical code for envisioning, evaluating and responding to the problems of ‘child abuse’ and child homicide. The modernist, technical sensibility (Garland 2010:52; Simon 2001:131) thus projected by the Report, as we have already
seen, helps to insulate the process of risk selection, identification and assessment from non-scientific, irrational or emotion-laden ‘contaminants’, such as political, professional, moral or ‘subjective’ interests and concerns (see chapter three; for example, Goudge 2008:179-188).

Viewed this way—narrowly, “by the light of science” (Douglas 1992:4)—the language of risk is merely a slave to the observation and reason of PDI authorities, namely (paediatric) forensic pathologists (Hassard 1996:50).

The enabling/constraining effects of using this sterile, monolithic and techno-scientific version of risk are many, and we have seen some of the most powerful ones already. The goal here is to expand on the analytical and political consequences of using a form of risk discourse that makes claims to objectivity by examining the silences it generates. Stated in other (and more Foucauldian) terms, we can shed light on the shape and effectivity of the Report’s modernist risk discourse by understanding what ‘risk’ in the Report is not, a task aided by the theoretical and substantive claims developed in poststructuralist risk scholarship. For the nuanced, polysemic and relational conceptualization of risk that emerges from these ‘risk and government’ studies gives rise to a cluster of analytical questions and considerations which are simply not ‘thinkable’ in the Report’s risk management narrative. Alternative discourses and knowledge claims that speak to these issues and ‘constitutive forces’ (as we shall soon call them) are thus not ‘heard’ in the Report (Scott 2007; Snider 2000).

Because they follow the work of Michel Foucault (1973) in stressing the plurality and heterogeneity of knowledges, governmentality risk studies place heavy analytical emphasis on the “dynamics of (risk) knowledge production and circulation” (Valverde et al. 2005:87) (e.g., Hannah-Moffat 2005; O’Malley 2004; Ericson and Doyle 2003; Stenson and Sullivan 2001; Ericson and Haggerty 1997). Assumptions of epistemological homogeneity like those that tend to
be reproduced in the Report’s risk management narrative are strictly eschewed. Rather, the ‘messy’ practices of risk knowledge production and dissemination are embraced theoretically and mapped out empirically in their complexities and contradictions (O’Malley and Hannah-Moffat 2007; Scott 2007; Hannah-Moffat 2005, 2004; Valverde et al. 2005; Moore and Valverde 2003).

Within this body of work, two prominent foci of analysis have emerged—the hybridity of risk knowledges; and, what we can call the ‘social dynamics’ of risk knowledges—both of which generate findings (and more questions!) that undermine the pontificated neutrality of ‘risk’ and risk management programmes.

On the matter of the hybridity of risk knowledges, Valverde et al. (2005) quite helpfully summarize the trajectory of many recent governmentality risk studies when they claim that contemporary risk experts and institutions “often mix expert and everyday knowledges of risky situations in such a way as to create new assemblages of risk that are neither scientific nor anti-scientific” (p. 86). The challenge for these studies, then, is to “try to capture this creative moment in our analyses” (p. 89). Studies of this sort have proven fruitful, bringing to light all kinds of ‘common-sense’ or ‘everyday’ knowledges which are embedded in risk-based strategies and techniques of government but rendered invisible because of the “veneer of technical neutrality” (O’Malley 2004:147) constituted by risk discourse and projected outwards by those authorized to speak in its name (O’Malley 2010, 2004, 1999, 1996; Hannah-Moffat and O’Malley 2007; Hannah-Moffat 2005, 2004; Valverde et al. 2005; Ericson and Doyle 2003; Moore and Valverde 2003; Brown and Pratt 2000; Hope and Sparks 2000). Studies that consider and analyze the hybridity of risk knowledges thus render intelligible political/politicized and moral ‘know-how’ and assumptions, including assumptions concerning race, class and gender, which (despite the
“deceptive character of risk” (O’Malley 2010:91) invariably constitute and shape ‘risk’ and its deployment as a method and means of government.

The neutrality of the language of risk looks even less plausible when measured against the insights that many of these same studies produce concerning what we can call the ‘social dynamics’ of risk. The idea here is twofold: First, “The identification of risks that require attention involves a political process of selection in which some harms are given special attention while others are relatively unattended or ignored” (Ericson 2007:15); second, “Risk techniques take their form and function from the broader – and always contested – governing environment that puts them to work” (O’Malley 2010:47). These premises, which are also empirical findings, direct analytical attention to socio-political context and to the sources of political energy and legitimacy that sustain a given risk management programme (O’Malley 2004; Garland 2001; Hope and Sparks 2000; Brown and Pratt 2000). Because studies of this flavour view risk as a “politically contested space” (O’Malley 2001:95), they provoke questions about political, professional and institutional strategies, agendas and struggles in risk programming. And those poststructuralist risk studies that have fruitfully incorporated a ‘cultural’ approach to risk, usually credited to Mary Douglas (1992)\(^1\), have probed and revealed the influence of “‘popular’ experiences, beliefs and expressions” (O’Malley 2010:16)—“of fear, resentment and hostility” (Garland 2001:76)—on risk identification, selection and management (O’Malley 2010, 1999; Hacking 2003; Hunt 2003; Garland 2001; Stenson and Sullivan 2001; Brown and Pratt 2000; Hope and Sparks 2000; Simon 1998). Indeed, these studies show that risk is governance, and as such risk knowledges and technologies are subject to politicization and populist sensibilities as powerful constitutive forces.

\(^1\) Lupton (1999) is also frequently identified.
That the Report can speak of ‘risk’ as a ‘pure’ and ‘uncontaminated’ knowledge and technology is telling of its effectivity when harnessed by the dream (and dreamers) of modernity. By examining what ‘risk’ for the Report is not, by understanding the constitutive forces of risk knowledges that do not enter—and could not enter—its lens of analysis, we have glimpsed what Dayna Nadine Scott (2007:33) calls the “discursive strategy central to the risk frame”: “the strategy of containment”. With its “strict focus on technical methods of risk assessment and a dedication to specialized knowledge and expertise” (ibid.), the Report’s modernist risk management narrative can render ‘unthinkable’ questions of culture, morality, politics, and relations of power and governance. It can make an artificial disengagement of ‘risk’ from its politics and value-assumptions seem natural, and thus maintain the scientific integrity and ‘neutrality’ of risk management (Douglas 1992).

The de-politicizing effect of this (language) move means that the “highly abstract nature of risk” is never considered (O’Malley 2004:145), nor is the idea that risk management programmes are “not the application of a technology of risk; they are always just one of its possible applications” (Ewald 1991:198). And so it goes unnoticed that the shape and form these programmes take is contingent on power, politics, and knowledges that can be categorized as neither homogenous and static nor ‘cold and calculative.’

5.3 Neo-Liberal Risk Discourse

The dream of modernity proved to be a particularly effective heuristic device for understanding the (exclusive!) risk expert subjectivities created in the Report. Here, the neo-liberal ethos and governmental formula is examined, and the claim advanced is that we can discern many of the key assumptions that constitute the programmatic narrative’s underlying understanding of the world by interrogating the neo-liberal mobilization of risk discourse. (Neo-
liberal) risk discourse in the Report comes loaded with dominant (and domineering) *political-economic, criminological and ethical* assumptions, where ‘ethics’ is considered in a Foucauldian sense: the normative prescriptions concerning “individuals’ *relations* with themselves and with others” (Miller and Rose 2008:7, italics in original). Assumptions like these are necessary ingredients in a version of the reality of Ontario’s PDI system which seeks to repair, legitimate and persuade, for this criminal justice assemblage must ‘make sense’ in the socio-political context in which it operates (Garland 2010:60). And as we shall see, the assumptions underlying the neo-liberal risk discourse in the Report fit so well with the political, economic and cultural climate in Ontario since the 1990s (think *habitus*, from chapter two) that alternative political mentalities or governmental rationalities—ways of ‘knowing’—were simply ‘unthinkable’, excluded from the narrative.

The affinity between neo-liberalism, as a set of political and intellectual claims, and the concept of ‘risk’ was introduced in chapter two of this study, but an abbreviated refresher here is fitting. If we artificially isolate the neo-liberal formula of rule from the (often contradictory) mentalities and sensibilities with which it is frequently articulated (Garland 2001; Larner 2000), we can view its ideal-typical blueprint for governance. Neo-liberalism is “premised on the values of individualism, freedom of choice, market security and minimal state involvement in the economy” (Comack and Balfour 2004:40), a cluster of ideals to which we can add “personal responsibility, control over one’s own fate, self-promotion and self-government” (Rose 1999:249). What stands out, or should stand out about the language of neo-liberalism is its economic inflection. Indeed, the application of market forces and disciplines to *social* fields and *social* behaviour is central to neo-liberal politics (Miller and Rose 2008; Garland 2001), an absurd notion by the standards of liberal or social welfarism (Rose et al. 2006:91). Neo-liberal
claims animated by this economic creed have reshaped the role of government in many advanced liberal democracies, both discursively and in material ways: “Government responsibility for the social welfare of its citizens is being replaced by a political and social order in which governments are only responsible for helping citizens help themselves” (Cossman 2002:172).

This ‘responsibilization’ strategy (Garland 2001) or ‘new prudentialism’ (O’Malley 1996a) is routinely brought into existence by and through the language of individualized and privatized risk, for, in this instance, risk is simultaneously a discourse of personal responsibility, accountability and, so the story goes, justice (Ericson and Doyle 2003a:5). Perhaps it is unsurprising, then, given the strong ‘legs’ that neo-liberal claims have grown in economic and social fields alike (Snider 2003, 2000; Garland 2001), that neo-liberal assumptions and risk-based strategies have come to shape the crime control practices and policies of most advanced liberal democracies in ‘the contemporary’ (O’Malley 2010; Hannah-Moffat 2005; Garland 2001; Stenson and Sullivan 2001).

The following analysis of neo-liberal risk discourse in the Goudge Report is supported by existing evidence that neo-liberal claims have indeed been ‘heard’ and attended to (Snider 2000) in the Canadian context generally, and in the province of Ontario specifically. Although comparisons to neo-liberal knowledge claim reception in the US identify the ‘delayed’ and perhaps ‘tempered’ nature of their reception in Canada (O’Malley 2004:32; Snider 2004a:280-281; Garland 2001:75), the influence of neo-liberal claims and social forces in political and governmental decision-making in the Canadian context has proven powerful. At the federal level, this is often traced back to the 1980s, when (Tory) Prime Minister Mulroney declared Canada “open for business” (Day, Girard, Snider and Watters 2009:49). The federal Conservative government (and successive Liberal governments too!) embraced globalization and free trade
(through the FTA and, later, NAFTA); deregulation of the economic sector and the promotion of unrestrained economic risk-taking and market uncertainty (Bittle and Snider 2011:5); and, the undermining of universal social security programs, via “the principle of ‘less eligibility’” (Pulkingham and Turnowetsky 1999:88) and “massive cuts in federal social transfers to the provinces for welfare, social services, and post-secondary education” (Fudge and Cossman 2002:15). Meanwhile, neo-liberal politics and policies were kept at bay by Ontario provincial governments until the election of Mike Harris’s Conservatives in 1995 (Snider 2004a:268, 280-281). A rich body of studies documenting the discursive and material effects of the Ontario Conservatives’ “neo-liberal social experiment” (p. 268)—an experiment which has shown no convincing signs of letting up (Gavigan and Chunn 2010:66-67)!—has emerged, largely thanks to socio-legal feminist work surrounding the massive cuts to social welfare provisions and the privatization of the delivery of public goods (Gavigan and Chunn 2010, 2004; Snider 2004; Chen 2003; Little 2003; Cossman and Fudge 2002; Gavigan 1999).

When risk discourse is mobilized in the Report with the rhetoric, strategies and assumptions of neo-liberalism, it has particular enabling/constraining effects on the ideas and interests that get ‘heard’ (Snider 2000) and, consequently, on the types of social subjectivities and social relations that are legitimized (Valverde 1991). We look now to how neo-liberal risk discourse takes shape and how it fits with the politics of the ‘said’ and the ‘unsaid’ in the Goudge Report.

5.3.1 Risk and Responsibilization.

Through the ideal-typical narrative it creates, the Report assumes and valorizes the distinctively neo-liberal relocation and redefinition of responsibility for child welfare and risk management which was set in motion in Ontario by the provincial Tory government in the 1990s
(Gavigan and Chunn 2010; Chen 2003; Little 2003; Cossman 2002). Because it employs an ahistorical lens, the recency of the ‘privatization’ of child welfare in Ontario—its realization through a radically new set of political mentalities and decisions in the province—escapes the Report’s risk management narrative. As a result, neo-liberal assumptions about responsibility and the state restructuring they have made possible are normalized rather than problematized in the Report, bracketed off as ‘common-sense’. This means they get shored up and closed off, “removed from the realm of political and contentious claims, that are open to disagreement and debate, and transformed into…things that everyone just ‘knows’” (Snider 2002:93). This is the claim, now for the evidence.

By acts of both omission and commission, the Report is complicit with the neo-liberal project of “hiving off” responsibility for child welfare from the government; that is, until the ‘responsibilized’(Garland 2001), ‘prudent’ (O’Malley 1996a) parent or caregiver fails to meet their newly devolved, risk-managing obligations (Kline 1997)! The Report (re)produces and supports this neo-liberal subject position in its narrow and rabid commitment to the task of identifying ‘who done it’ (Valverde 2003:64). Divulging the identity of ‘the killer’ (Goudge 2008:4)—always a parent or caregiver in the Report (easy targets for ‘responsibilization’!)—through the best scientific practices and the most effective risk communication channels, and acting on that risk knowledge, is, after all, what the investigation of unexpected paediatric deaths should be all about (chapter three of this study). Because the needs of the criminal justice system reign supreme in the Report’s narrative, “success or failure” is measured by the presence or absence of a criminal conviction, for a successful conviction is the “right and just way” for “a society to deal with the tragedy of an unexpected, criminally suspicious pediatric death” (Goudge 2008:4). That the problem-solving solution envisioned in the Report rests almost entirely on
holding a parent or caregiver criminally responsible, that doing so somehow brings finality to these complex issues, suggests that not only is the neo-liberal, ‘responsible’ subject (re)produced in the Report, but it is obsessed over, fetishized.

Acts of omission compliment and augment the Report’s normalization of the (neo-liberal) privatization of child welfare and risk management. For a Report that, quite predictably, “appeals to a sanctified image of childhood innocence” (Jackson and Scott 1999:95)\(^1\) in stressing ‘societal’ concerns for the ‘at risk’ child, there is no critical reading of the erosion of collectivist or socialized risk management in the area of child welfare (Swift 2010; O’Malley 2004). Far from archaic practices, socialized risk management initiatives—wherein the approach to child welfare is characterized by a bipartite, shared responsibility agreement between ‘the state’ and ‘the family’ (Cossman 2002)—were backed rhetorically and materially by successive provincial governments since the 1960s (Struthers 1994). The risks of inadequate housing, unemployment and poverty, all conditions disproportionately experienced by female lone parent families (Gavigan and Chunn 2010; Cossman and Fudge 2002), were (to some degree) tamed for decades through mothers’ allowances and universalized social assistance (welfare) (Gavigan and Chunn 2010; Chunn and Gavigan 2004). But this socialized approach to risk management came to an abrupt halt in Ontario under Premier Mike Harris: “Indeed, one of the first things the Harris Tories did upon election in 1995 was to introduce a 22 percent cut to welfare rates and to redefine (i.e. broaden) the definition of spouse in welfare law in order to disentitle a broader range of previously entitled recipients” (Chunn and Gavigan 2004:228). The relationship between ‘relative deprivation’, structure and ‘child abuse’ is, of course, a complex and highly contentious issue (Swift 2010; Chen 2003), and one which is beyond the scope and capacity of this study (or any

\(^{1}\) An example from the Report (Goudge 2008:4): “Children are the community’s most precious and most defenceless asset”.

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one study, for that matter). The important point here is that the radical discursive and material transformations in child welfare responsibility that popped up in Ontario in the 1990s are neither analyzed nor problematized in the Report, and this omission shapes and is shaped by its (re)creation and valorization of the neo-liberal, prudent risk subject.

What neo-liberal risk discourse does in the Report, then, is operate as a forensic language, a discursive resource for individualizing and assigning blame (Ericson 2007:11; Douglas 1992:15-16). And while this (language) move necessarily presupposes the ‘responsibilized’ subject of neo-liberalism, it simultaneously silences questions and considerations about social responsibilities and obligations for child welfare (Swift 2010:153; O’Malley 2004:138).

5.3.2 Risk and Obfuscation.

When it comes to neo-liberal subjectivities, risk discourse not only wholly responsibilizes but it also obfuscates, and this can be discerned in the Report’s risk management narrative and its representations. We have seen that early and often the Report projects an image of ‘the offender’ in criminally suspicious paediatric death cases which is highly abstract, characterized in simplistic terms of criminal culpability and ‘riskiness’. The effects of divorcing these social actors from “the political dimensions of their existence” (O’Malley 2004:139) by silencing or ignoring knowledge claims of social context are important to understand, because these rhetorical representations mediate how ‘we’ will (or will not!) relate to ‘them’ (Valverde 1991).

Because risk discourse plays a powerful constitutive role in the “rebirth of the abstract notion of the individual” (Brodie 1999:43; see also, Garland 2001:189-199; Douglas 1992:15), the neo-liberal conception of the ‘risky subject’ effectively “strip[s] away the sociological and psychological layers in which twentieth century criminology had clothed its conception of the

This ‘risky subject’ of the neo-liberal mentality is alive and well in the Report, and what gets obscured—or, in Garland’s (2001:189) terms, what gets “stripped away”— is, first, gender. As we saw in the review of Kramar’s (2005) study, gender-specific cases of infant homicide (‘infanticide’) that had historically been understood through ‘psy’ and sociological discourses disappeared into the ‘melting pot’ of the ‘child abuse’ paradigm when it was invented and later popularized in medical, legal and lay discourses alike (p.136; see also chapter four of this study). This empirical finding rings true in the Report’s risk management narrative, where there exists no meaningful reference to the relevance of gender, ‘post-partum depression’ or ‘infanticide’.

Because the neo-liberal discourse that constitutes the ‘risky subject’ emphasizes sameness (Gavigan and Chun 2010:7) and “promote[s] an abstracted individual, a disembodied market citizen (Brodie 1997; Klatch 1988)” (Cossman 2002:179), the differently situated experiences and local knowledges of women get swallowed up by the simplistic, binary category of ‘criminal status’ in the Report. And, when the ‘risky subject’ is the gender-free subject, the disproportionate suspicion and surveillance of female lone parent families by PDI authorities (Kramar 2005:159) is, from the perspective of the programmatic narrative, simply of no relevance.

Perhaps more broadly, the obfuscating effects of neo-liberal discourse in the Report are evidenced through the absence of any consideration of structural factors surrounding ‘child abuse’ and child homicide and, therefore, the absence of structural solutions:
Difference, social disadvantage or structural inequality all disappear as the basis for citizenship claims. Social and structure analyses are displaced in favour of highly individualized approaches that identify individual solutions to individual problems. (Cossman 2002:172)

David Garland (2001:131) advances the same claim, but explicitly ties this neo-liberal lens of analysis and its obscuring effects to the discourse of risk, as it is mobilized and used within the realm of crime control. Because neo-liberal risk discourse individualizes and allocates blame so effectively (Garland 2001:201; see also, Douglas 1992), it “silences excuses, ignores root causes” (Garland 2001:131) and disguises the social and economic exclusion which is experienced disproportionately by those who come to be known as ‘criminals’ (p. 199). Thus, the risks of poverty, unemployment, illness and poor housing availability—all of which were prioritized, socialized and thus alleviated, though never fully addressed in the welfare state (in the case of Ontario, pre-1995) (Comack and Balfour 2004:42-43; O’Malley 2004:11)—are simultaneously off-loaded and rendered invisible from the perspective of governmental authorities. While we can use Kramar’s study to remind us that the invisibility of these structural and social factors must not be mistaken for their impotence (Snider 2001:246), the neo-liberal ‘risky’ subject and the ‘blame the offender’ strategy it supports resonate so well with today’s political-economic and ‘common sense’ assumptions that even the ‘liberal professionals’¹ who wrote the Report could not resist its appeal.

¹ The expression ‘liberal professionals’ is used here, and will be used later, as a (provocative) reminder that legal officers were central to the network of “knowledge class professionals” (Garland 2001:68) and “liberal elites” (p. 148) that supported and sustained the penal-welfare state for the bulk of the twentieth-century.
5.3.3 Risk, Deterrence and Incapacitation.

Perhaps the strongest affirmation of the Report’s neo-liberal vision of reality lies in the risk management strategy it valorizes, for this strategy presupposes and rests on the distinctively neo-liberal assumptions about and representations of ‘risky subjects’ which we have just interrogated (O’Malley 2004:138-140). Indeed, the ‘inaudibility’ of social pathology and cause for the Report’s (neo-liberal) risk management narrative has telling effects on the crime control strategy it authorizes and legitimates, for in this instance “crime is a pathology of a subject’s individual freedom” (O’Malley 2004:155; Garland 2001:130). Through the reductionist lens of a neo-liberal risk problematic, subjects are thus depicted as “culpable, undeserving and somewhat dangerous individuals who must be carefully controlled for the protection of the public and the prevention of further offending. Rather than clients in need of support they are seen as risks who must be managed” (Garland 2001:175). And, as we shall see concretely by studying the Report, it is in these conceptions of ‘risk’ that strategies of risk management through general deterrence and incapacitation find their justification and ‘common sense’ appeal (Brown 2000:93). In sum, in this neo-liberal version of risk management, social exclusion and threats thereof are ‘obvious’ or ‘self-evident’ crime control solutions (Garland 2001:130), while the goals of an only-recently displaced social welfarist criminology are simply not ‘thought’.

The Report betrays its commitment to general deterrence—a penal goal to which the assumption of the fully-calculating, rational choice actor is central—as one of its key risk managing strategies in the following programmatic statement:

There may be a killer who goes unpunished. For the community at large, failure in such traumatic circumstances comes at a huge cost to the public’s faith in the criminal justice system – a faith that is essential if the justice system is to play the role required of it by society. (Goudge 2008:4)
Again we see that identifying ‘who done it’ in cases of criminally suspicious paediatric deaths is foremost, as is apprehending and punishing the person(s) identified. The idea here is a classic one; or, perhaps more accurately, it is one of classical criminology’s primary tenets (e.g., Beccaria [1764] 2009; Bentham [1781] 1996). The form of subject envisioned in this risk strategy is the rational choice offender who “asses[s] their relative probabilities”, who ‘naturally’ “takes on the ‘yoke of foresight’” and “looks to the future in a calculative fashion” (O’Malley 2010:55). 

*Certainty of capture* thus becomes a critical component of a risk-based strategy (*ibid.*; Garland 2001:130), which is precisely what we see in the Report’s programmatic statement above, for it skews the cognitive calculations of would-be offenders in favour of the *non-commission* of prohibited behaviour. Hence the Report’s narrow and intense focus on (i) ‘getting the science right’; and, (ii) systematically and seamlessly communicating risk information between PDI team members. Together, these ideal-typical practices are said to be able to maximize the detection, investigation and prosecution of cases of criminally suspicious paediatric death (see chapter three of this study). The fully calculating, utility-maximizing neo-liberal subject is ostensibly ‘put on notice’ under these conditions of guaranteed apprehension, and it is incumbent upon him or her to ‘do the math’, to weigh the risks and chart the course accordingly.

For those who fail to heed the message of deterrence, ‘prison works!’ (Garland 2001:14; Sullivan 2001:40). Indeed, the ‘reinvention of the prison’ (Garland 2001:14-15) in the perspectives of contemporary political and governmental authorities is premised in large part on its effectiveness for risk management—not by way of reform or rehabilitation but by way of the isolation and incapacitation of “those identified as risk creators” (O’Malley 2004:136; Feeley and Simon 1994). The functional, instrumental logic (Hudson 2001:147) behind this strategy (and, as we shall see soon, this is not the only logic behind it) is central to the Report’s neo-liberal risk
management narrative. For the risk knowledges produced by (paediatric) forensic pathologists are used by their PDI team members to stimulate risk-reducing action which is far from inclusionary, restorative or rehabilitative (all three adjectives are missing from the Report). The knowledges of risk produced by (paediatric) forensic pathologists and translated into legal truths are used, first and foremost, for the purposes of criminal conviction and incapacitation—for the social exclusion and, therefore, the neutralization of ‘risky subjects’ (O’Malley 2004:143).

Thus, when a dominant mentality of government envisions crime as “a pathology of a subject’s individual freedom” (O’Malley 2004:155), as is the case in the Report, then the deprivation of that freedom in the name of risk management seems rational, legitimate and intelligible. Moreover, such risk management measures come across as ‘self-evident’ and compelling, and these rhetorical effects support and are supported by the silencing of social and causal criminology’s claims and solutions. In this light, Kramar’s (2005) concerns with social(ized) responsibilities for child welfare, mitigating factors in paediatric death cases, and leniency in criminal justice responses simply never stood a chance at being ‘heard’, for the criminological assumptions upon which these ideas are based do not and cannot fit into the logic of individualized risk and responsibility.

5.4 Neo-Conservative Risk Discourse

This section argues that a “neo-conservative colouring of risk” (O’Malley 2004:143) can, too, be discerned in the Report’s risk management narrative. In defending this claim, this analysis lends support to the political observation and empirically backed claim that Western “penal policies since the 1980s have been formed by regimes that amalgamate and combine contradictory governing rationalities” (O’Malley 1999:188): most prominently, neo-liberalism and neo-conservatism (O’Malley 2010, 2004, 2003, 1999; Comack and Balfour 2004; Garland
2001, 1996; Stenson and Sullivan 2001; Chen 2000). What results from this “unstable political alliance” (O’Malley 2001:92) has been characterized as “a volatile and contradictory politics of crime” in many Western, advanced liberal-democracies (ibid.; Garland 2001; Sullivan 2001).

Because there are “key points of articulation” between neo-liberalism and neo-conservatism (O’Malley 1999:187; see also, Comack and Balfour 2004:43-44), the analytical abstraction and isolation of these two mentalities of government in our examination is rather artificial: “Sorting out the pressures from neo-liberal and neo-conservative poles, of course, is not often as black and white in practice” (O’Malley 1999:190). But it is a necessary investigative move, for much is lost analytically and politically with the neglect or “flattening of risk’s diversity of form, function and meaning” (O’Malley 2010:34)—especially when “a discourse of risk can take very different forms even within the same legal and regulatory regime” (Scott 2007:39; Valverde et al. 2005)! This claim, we will recall, goes to the heart of the argument that has been forged and sustained throughout this chapter.

While neo-liberalism has the look and feel of a dispassionate, ‘rationalistic’ mentality, the neo-conservative imagination envisions reality by reference to a distinctive set of “mores and sensibilities” (Garland 1990:195) which smack of a pre-modern, pre-Enlightenment social authoritarianism (O’Malley 2010:32) and moral fundamentalism (Sullivan 2001:35). Neo-conservatism is, in this way, unlike neo-liberalism, because it is both deliberate and explicit in its moral exhortation. The key values and ideals underlying this moral message are: “tradition, order, hierarchy and authority” (Comack and Balfour 2004:43); governance is imagined as: “the upholding of order and authority, the assertion of absolute moral standards, the affirmation of tradition and common sense” (Garland 2001:184).
Most important for this study is the “criminological echo” of these neo-conservative inclinations (ibid.). Crime takes on a new political and cultural salience in a (deregulated) world where (i) welfare-state institutions of social and economic solidarity are hollowed out or dismantled (discursively and materially) via neo-liberal politics (O’Malley 2004:142; Garland 2001:100-102); and, (ii) respect for (state) authority is lionized and doggedly pursued (Garland 2001:131). For the insecurity, anxiety and mutual distrust generated by the first phenomenon is precisely what shores up political and popular demand for the enforcement of the second (O’Malley 2010:31; Doyle 2007:11; Garland 2001:131, 156-157, 193-194; Brown and Pratt 2000:1).

While economic risks are most certainly tolerated and promoted in this landscape (courtesy of neo-liberal indoctrination), the risks of crime and violence are not (Garland 2001:100). The latter are seen as grave threats to the neo-conservative version of what constitutes the ‘social’: a source of obligation and authority rather than a source of claims to welfare and rights (O’Malley 2001:90-91). ‘Social defence’ and ‘warfare’ against ‘enemies within’—the “most visible agents of chaos and disorder: criminals” (Gamble 1988:58)—are thus legitimated, and rendered intelligible and compelling as dominant working ideologies for the political and governmental authorities responsible for crime control (Garland 2001:184; O’Malley 2001:93; Stenson 2001:31-32). Through this lens, more expressive, retributive and exclusionary forms of crime control find justification and popular purchase (Pratt 2007; Garland 2001; O’Malley 2001, 2000, 1999; Sullivan 2001; Brown and Pratt 2000).

We are only now, under the Harper Conservatives, beginning to see a version of neo-conservative politics and its ‘criminological echo’ bear out in federal political rhetoric and (to a smaller extent) in penal policies and practices in Canada (Balfour 2011; Doyle and Moore 2011;
see also, Meyer and O’Malley 2005:205-208, for pre-Harper administration resistance to ‘neo-
con’ rhetoric and practices at the federal level). However, crime control rhetoric at the provincial
level (Ontario) took a sharp right turn much earlier, in the years under review in this study
(Moore and Hannah-Moffat 2005:88-89; Cossman 2002:178; Chen 2000). Yet again, the election
of Mike Harris’s provincial Tory government in the mid-1990s is central to understanding the
conditions of possibility for the mentalities and sensibilities we see reproduced in the Report, this
time concerning neo-conservatism. In 1996 Harris’s Tory government introduced into Ontario’s
political culture the ‘get tough on crime’ rhetoric of the American model of crime control (Moore
and Hannah-Moffat 2005, 2002; Hermer and Mosher 2002), rhetoric which authorized and
legitimated the creation of more punitive and exclusionary crime control practices in Ontario,
including: “Mega-jails, boot camps, private prisons, and work gangs” (Moore and Hannah-Moffat
2005:88), as well as, “The demise of parole” (ibid.:87; Moore and Hannah-Moffat 2002;
Montgomery 2002:210-211). These practices and the hybrid neo-liberal and neo-conservative
lens through which they are ‘made sense of’ have been maintained in Ontario ever since, renewed
and re-energized by subsequent provincial governments of both Conservative and Liberal stripe

When risk discourse is mobilized in the Report with the rhetoric, strategies and
assumptions of neo-conservatism, it has particular enabling/constraining effects on the ideas and
interests that get ‘heard’ (Snider 2000) and, consequently, on the types of social subjectivities and
social relations that are legitimized (Valverde 1991). We look now to how neo-conservative risk
discourse takes shape and how it fits in with the politics of the ‘said’ and the ‘unsaid’ in the
Goudge Report.
5.4.1 Obscured ‘Others’ in the Report: Monsters in the Risk Society?\(^1\)

We have seen already the abiographical, abstract and obscured image of the ‘offender’ that is constituted in the Report (see chapter four, this study). We have also seen how the lens of neo-liberalism renders this ‘offender’ ‘knowable’ in the Report, albeit no less obscured, through its assumptions about the responsibilized risk subject, the rational choice actor of utilitarian criminological theories (earlier in this chapter). It will be argued here that \textit{it is also the case} in the Report that a neo-conservative offender-subject is created, invoked and appealed to, through an emotionally-charged form of risk discourse that “relies upon an archaic criminology of the criminal type, the alien other” (Garland 2001:135).

This claim draws on a broader argument common to more recent ‘risk and government’ literature which posits that, although political and governmental authorities responsible for crime control may speak the language of risk and situate their practices and policies in risk discourse, it is often the case that “the motivating mind-set here is not actuarial prediction or careful risk-management. It is hard, self-righteous intolerance produced by stereotypical images of danger and negative evaluations of moral worth” (Garland 2001:192; Ericson 2007; O’Malley 2010, 2004, 2000, 1999; Sparks 2001, 2000; Sullivan 2001; Pratt 2000; Simon 1998). In this instance, risk discourse is “not so much a quantified and calculating basis of rational action as a trope for experiencing and expressing anxieties about threats” (Ericson and Doyle 2003b:115). Underlining this ‘neo-con’ species of risk discourse is an unwillingness to ‘know’ and understand the ‘other’, and the cultivation of an essential(ized) difference between ‘us’ and ‘them’ which locks ‘them’ into “a mode of life that is both alien and \textit{threatening}” (Garland 2001:135, italics added). This is the risky ‘other’ that takes shape through the lens of neo-conservatism.

\(^1\) ‘Monsters in the Risk Society?’ is an expression borrowed from Pat O’Malley’s (2000:27) discussion of neo-conservatism and risk rationalities.
To be sure, the Report’s invocation of neo-conservative sensibilities and the neo-conservative risky ‘other’ is infrequent, cautious and subtle. After all, the “decidedly anti-modern” character of the neo-conservative formula (Garland 2001:184, emphasis in original) does not sit easily with a risk management narrative so fervently committed to the dream of modernity (see this chapter, section 5.2). But traces of neo-conservatism can be found in the Report nonetheless, especially where a (modernist) narrative that stresses knowledge, learning and perfection relies on such an obscured, nondescript image of a group of characters who are central to its story.

We have seen that the Report relies on measures of criminal culpability and wrongdoing to create the image of an offender-subject in cases of unexpected paediatric death (chapter four). Structural and situational details that might mitigate or qualify these measures; facilitate mutual regard and intelligibility; build a “bridge of understanding” through which we might “humanize them, [and] see ourselves in them and them in ourselves” (Garland 2001:184); and relax the torrent of condemnation for even a moment, are ignored or silenced in the Report. Such absences encourage or prompt ‘us’ to believe that “[S]ome offenders are not like us. They are dangerous others who threaten our safety and have no calls on our fellow feelings” (Garland 2001:184; O’Malley 2004:146). The ontological and epistemological effects of these silences are telling, for the world that is created in the Report’s story of PDI is thus divided in a Manichean manner (Sullivan 2001:35), in terms of moral absolutes: victims and victimizers; law-abiding citizens and criminals; those who are innocent and those who are guilty (Garland 2001:184); and, to extend this logic and insert a claim, ‘us’ and ‘them’.

These are the very (totalizing and simplistic) categories and types of (ontological) distinctions which resonate with the politics of neo-conservatism and its fundamentalist
sensibilities. And although the Report certainly and quite predictably does not descend into a favourite story of neo-conservative politicians where the offender is represented by the ‘spectre of the monstrous’ (Rose 1998b; see US President Reagan quoted in Garland 2001:136), the social, moral and ontological distance created by its absolutist categories condition ‘us’ to be complacent with the Report’s refusal to humanize ‘them’. In ‘them’, ‘we’ are thus not prompted to consider any potential for “betterment” or change. As the neo-conservative intelligentsia advised us early on: “Wicked people exist. Nothing avails except to set them apart from innocent people” (Wilson 1975:209, cited in Garland 2001:131; see also, O’Malley 1999:190). Indeed, beyond the realm of the moral, we are encouraged to concede, lay only enemies against whom ‘society must be defended’.

By invoking the absolutist categories and projected images of neo-conservative crime control rhetoric, the Report also leaves us with the impression of a “totalized power relationship between offender and victim” (Sullivan 2001:30, emphasis added), which simultaneously amplifies and deepens the fear of the ‘unknown enemy’ and, thus, intensifies his or her perceived ‘riskiness’ (ibid.; Garland 2001:135-136; Ericson and Doyle 2003b:114). This absolute relationship of power is all the more palatable when the victim is a ‘guileless’ child or infant, for “[T]he (socially constructed) value of children in modern society continue[s] to mean that those who are thought to pose a threat to them represent an irreparable risk” (Pratt 2000:46; Sullivan 2001:31; Jackson and Scott 1999:86-95). When the offender-victim relationship is conceived as such, with the odious ‘child abuser’ or ‘child murderer’ sketched out as the all-powerful alien ‘other’, then “[t]he deepest goal of criminal justice is to do a chiasmatic (sic) reversal of this
relationship and have the overwhelming power of the state brought to bear on the same criminal” (Sullivan 2001:45).

No more cogently and concisely can the productivity of this dynamic be described than in the words of David Garland (2001:135-136): “The risks they [offenders against children] are perceived as posing, the anxieties they call forth, the sense of powerlessness that they engender, all work to reinforce the felt need for the imposition of order and the importance of a strong state response”. Thus, in the Report, neo-conservative rhetorical representations of the ‘risky’ ‘other’ (re)authorize and naturalize crime control practices and strategies that have come to be theorized as the ‘criminological echo’ of neo-conservative politics: using the force of law, state power and coercive institutions to punish and exclude (O’Malley 2010, 2004, 2001, 2000, 1999; Garland 2001, 1996; Simon 2001; Stenson and Sullivan 2001).

5.4.2 Risk, Retribution and Revenge.

Earlier in this chapter we saw that incapacitation and deterrence are the main crime control strategies featured in and legitimated by the Report’s (neo-liberal) risk management narrative. The rationalization mapped out in that discussion was instrumental in character, focused strictly on risk reduction by (i) modifying the everyday risk calculations of free subjects, or (ii) depriving subjects of their freedom to eliminate the risks they pose. However, instrumental logic does not work alone in the Report to rationalize these penal strategies—and that is the analytical claim explained here. The Report also appeals to and legitimates retributive goals and sentiments which betray an expressive logic at work in its (neo-conservative) risk management narrative (Garland 2001:142-143, 199; Sparks 2001:197). In this mentality, imprisonment is envisioned as more than merely “[A]n instrumental mechanism for the management of risk and

1 ‘Chiasmatic’ is likely an erroneous spelling of ‘schismatic’ in this citation.
the confinement of danger” (Garland 2001:199)—it is also a (legitimated) measure of retribution, and quite possibly revenge (ibid.; Sarat 1997). Because the Report is largely a modernist endeavour and, therefore, represents itself as a rational, technical and neutral document (this chapter), its legitimation of retribution as a penal goal is very subtle. Only by mapping out a chain of rhetorical linkages established in its (neo-conservative) narrative does the Report’s appeal to retaliatory gestures become evident.

In a move that partially (and uncharacteristically, given said modernist commitments) personalizes unexpected paediatric deaths by “extend[ing] the idea of the victim to include survivors, those left behind to bear the burden of suffering and grief” (Sarat 1997:164), the Report imagines, invokes and prioritizes a set of needs on behalf of and attributed to victims’ kin and communities. It does so early on, in its introductory arguments, where the justification for the Report and the rationalization of an ideal-typical, risk managing PDI system are laid out (Goudge 2008:3-5). Indeed, we are told in a most programmatic moment, “The tragedy of a child who dies unexpectedly in suspicious circumstances has many victims. It becomes vital for society to deal with the tragedy in a way that is right and just, and that allows all those affected to come to terms with it. The criminal justice system is central to this task” (Goudge 2008:4). These remarks may have a certain easy intelligibility in today’s victim-centred crime control climate, but the cascade of rhetorical, moral and political consequences which they trigger in the Report cannot go unnoticed. For it is right away that the Report establishes and holds out, on behalf of the symbolic victims it creates and privileges(!), a set of ‘subjective satisfactions’ which must be produced by a risk management programme in order for it to be considered effective, successful and ideal-typical (Simon 2001:139-140). And at this same moment, as a result of this same narrative move, the Report establishes itself as a champion of both the victim who has been permanently silenced
and the symbolic victims to whom it has just granted voice, privilege and, after all, victimhood (Sarat 1997:168).

By isolating victims’ kin (minus ‘the offender’, of course) and their communities as the collateral sufferers an ideal-typical PDI system should satisfy, ‘justice’—a favourite but yet-to-be-explored theme in the Report—is supplied with a distinctively ‘illiberal’ dominant meaning. As conceptualized in liberal imaginaries and the ‘official version of law’—“what the legal world have us believe about itself” (Naffine 1990:24, cited in Comack and Balfour 2004:22)—‘justice’ is a ‘dispassionate’ search for truth premised on the values of impartiality, objectivity and fairness (Comack and Balfour 2004:23; Hudson 2001:162; Stenson 2001:19). However, when the administration of justice is (quite openly) pre-shaped to be a satisfying experience and gesture for one set of voices and interests over all others, as would appear to be the case in the Report, ‘justice’ is divorced from its liberal virtues (Simon 2001:139; Hudson 2001). Moreover, when the voices, interests and desires that are privileged in this way belong to the victims to a most ‘odious’ and ‘vile’ form of criminal behaviour, the liberal understanding of ‘justice’ is easily undermined (Sarat 1997). In its place a (neo-conservative) version of ‘justice’ takes shape, one that is reduced to and synonymous with ‘punishment’ and ‘retribution’ (Hudson 2001:144) and often animated by revenge:

‘Vengeance and justice enjoy a long and complex connection that has been falsely denied in the liberal understanding of justice’ (Aladjem, 1992: 2). Every effort to distinguish revenge and retribution nevertheless reveals that ‘vengeance arrives among us in a judicious disguise…vengeance always cloaks itself in the most current styles of “justice”’ (1992: 8). (Sarat 1997:171)

We must remember, however, that the punitive, retributive logic which rationalizes the (nonetheless over-determined!) crime control strategies that get (re)legitimated in the Report is expressed neither vehemently nor even explicitly in its narrative. Rather, this mentality is
betrayed through the rhetorical strategies it deploys, the victims it recognizes, the group interests, desires and perspectives it privileges, and the neo-conservative colouring of ‘justice’ it produces. These strategies construct a ‘self-evident’ moral imperative or duty to retaliate against ‘child abusers’ who kill. Punitive, retributive and vengeful thought-forms are rendered invisible (but not impotent!) within this frame of intelligibility, because the claims of a moral imperative or governmental duty are absolute (Garland 2010:65). Little surprise, then, that the ‘law and order’ mentality and punitive sensibilities which nurture and sustain these claims are not problematized in the Report, nor tackled by the liberal professionals who wrote it—they have been normalized and rendered invisible or “cloaked” by the latest fashion of justice: risk management (Sarat 1997).

5.5 Conclusion to Chapter Five

This chapter has traced out a ‘volatile and contradictory’ set of habits of thought that get (re)produced in the Goudge Report through the language and lens of risk. The findings here suggest that the Report is motivated and organized by a cluster of thought-processes, calculations, or ways of thinking that resonate with the dominant political, cultural and criminological values and assumptions of what has come to be known as the ‘New Right’ style of governance. This major finding lends empirical support to the claim that “a discourse of risk can take very different forms even within the same legal and regulatory regime” (Scott 2007:73; Valverde et al. 2005). Indeed, in this case, the diversity of risk’s “form, function and meaning” (O’Malley 2010:34) is precisely what will allow the Report’s version of the reality of PDI to engage and sustain the energies, interests and support it requires to maintain its status as the capital-T truth about PDI in Ontario.
Chapter Six

Conclusion: Why Does this Study Matter?

This study has mapped out the risk discourses and rationales circulating in the Goudge Report on paediatric death investigation in Ontario. It has done so with the aim of understanding how the discourse of risk systematically constrained what could be ‘said’ with legitimacy in the Report, and how the mentalities and sensibilities of PDI decision-makers bear out in this enabling/constraining process. Along the way, a significant set of silences in the Report were confronted, mostly as a pragmatic means to an end, but also with a view towards ‘rewriting’ the Report: undermining or destabilizing its ‘common sense’ and normative assumptions by foregrounding a story of PDI which simply could not be ‘thought’ from the perspective of authorities.

By way of a conclusion, this final chapter seeks to document, with the benefit of hindsight, why this study matters—for theory and for the substantive area it investigated. The position staked out early on was that this study is both an argument for and critical exposition of the perspective of governance as an analytical approach. Thus, as much as this analytical perspective was a resource for the present study, it was intended to be a topic of analysis as well. The goal was to maintain these dual commitments to theory and research, to navigate an admittedly wide range of levels of abstraction, without subordinating one commitment to the other. The costs entailed in this choice surround errors of omission on both fronts: this study is neither an in-depth examination of (child) welfare policies in Canada (e.g., Swift and Callahan 2009) nor a hearty rehearsal of the materialist-poststructuralist debates and negotiations that now surround and organize much of the governmentality theoretical dialogue (e.g., Balfour 2011;
Doyle and Moore 2011; Rigakos and Frauley 2011; Comack and Balfour 2004; Dupont and Pearce 2001; Larner 2000). But the benefits of tacking back and forth between ‘theory-building’ and the “problem-solving use of theory” (Garland 2004:164) lie in the adaptive and pragmatic theoretical product we get and the intelligibility it can facilitate. This idea is drawn out and particularized in the following discussion.

The analysis in this study was most obviously indebted to governmentality thinking and writing, especially in its commitment to understanding “how things work” (Valverde 2003:8; Garland 2001:5) or “how things get done” (Rose et al. 2006:93) in governmental and societal responses to criminally suspicious paediatric deaths. Insofar as the empirical area examined was viewed in the light of changes in political economy and contemporary cultural sensibilities (in addition to the political mentalities that ‘governmentalists’ trace out so well), this study is in league with a growing body of work that seeks to compliment the governmentality ethos of investigation with, shall we say, more ‘practicable’ lines and forms of enquiry (e.g., Garland 2010, 2001, 1990; Snider 2009, 2004a, 2003, 2002, 2000; Bittle and Snider 2006; Chunn and Gavigan 2004; Cossman and Fudge 2002). Indeed, one of the regular critiques of studies in governmentality is that, despite their rich analyses of ‘how things get done’, questions of “why things happen the way they do?” and “what is to be done?” are seen to be left unanswered (Balfour 2011; Snider 2006, 2003).

This study matters, then, because it joins existing efforts in attempting to address the theoretical gaps and schisms between governmentality theorizing, cultural analysis and political economy, in studies of governance.¹ The competency with which different theoretical premises and critical arguments were negotiated in this study is, as always, left for readers to judge. But the

¹ The suggestion here is not that each of these forms of analysis is ‘incomplete’, but that in certain cases they have something to offer each other.
perspective of governance as an analytical approach will tend to benefit from a willingness to go out on theoretical and substantive limbs when theorizing and analyzing the “cultural and political contexts within which [the] choices [of authorities] are validated” (Garland 2001:105). To the extent that this study has been persuasive, those benefits will have proven tangible.

When it comes to poststructuralist risk research specifically, this study matters because it shows empirically how “a discourse of risk can take very different forms even within the same legal and regulatory regime” (Scott 2007:73). This claim is repeated often in governmentality risk scholarship, but empirical studies testing its veracity do not seem to be in abundance (existing examples include: Scott 2007; Hannah-Moffat 2005; Valverde et al. 2005; Garland 2001; Chen 2000; O’Malley 1999). Within the subset of studies that have empirically examined different forms of risk discourse operating within a single governmental programme, neo-conservative risk discourse has rarely been mapped out (notable exceptions: Garland 2001; Chen 2000).1

It is imperative that studies in governmentality break the intellectual habit of assuming that risk-related crime control discourses and practices can be explained with reference to neo-liberalism chiefly or solely (Chen 2000). Neo-conservative mentalities of crime control continue to flourish in advanced liberal democracies (Doyle and Moore 2011; O’Malley 1999), and the language of risk management in this policy area and social field persists. As such, the relationship between risk discourse, and retribution and revenge—two key thought-forms in the neo-conservative imaginary—needs to be explicated in empirical studies of local decision-making practices. Hopefully, this thesis has provided a glimpse of the merit and value-added of a study in ‘risk and government’ that considers as a constitutive force an emotion-laden, ‘irrational’

1 Undoubtedly, Pat O’Malley (2010, 2004, 1999) has done the most to theorize neo-conservative risk imaginaries, and that fact was reflected in this study.
rationality like neo-conservatism. A diagnosis of the ‘present’ in risk management strategies demands no less.

Moving from the theoretical to the substantive, this study matters because, in addition to mapping out ‘how things get done’, it throws light on the retreat of government from social welfarist thought and socialized risk rationalities. As we have seen, the legitimation claims lodged in the Report are couched in risk discourses that are shaped by and resonate with rather disparate cultural themes and political mentalities and agendas. Its risk management narrative has something to offer for modernist professionals and thinkers, neo-liberal politicians and champions of small government, and the ‘law and order’ crowd alike. However, the most glaringly absent governmental rationality and species of risk discourse in the Report is the one that was used most often to understand issues of child welfare for the bulk of the twentieth century in Canada: social welfarism. Socialized risk management rationalities in this policy area supported (rhetorically and in material ways) inclusionary governmental practices that aimed to tame the risks of poverty, illness, un(der)employment and substandard housing through social programs and public expenditures which were universal and guaranteed in character—not radically rules-based and income-tested (Gavigan and Chunn 2010; O’Malley 2004; Comack and Balfour 2004; Cossman and Fudge 2002). These risk rationalities and practices aimed to bolster the discursive and material conditions of families, especially families deemed ‘at risk’ for child ‘maltreatment’.

However, as we have seen, the Report neither appeals to nor even pays fealty to the language of social welfare. Thus, complex issues of poverty, mental illness and addiction, un(der)employment, gender inequality, and the inaccessibility of childcare and adequate housing get reduced to risk problematics that are narrowly focused on ‘blame the offender’ strategies like those we saw in this study.
Documenting the absence of social welfarist risk discourse in the Goudge Report matters, because this finding provides a potential point of entry for resistance, political action, praxis. The silences of the Goudge Report and the subversive story of PDI they constitute in this study denaturalize the ‘New Right’ style of governance that gets (re)produced in the Goudge Report; they render the absence of social welfarist risk discourse and collectivist risk management ideas in the Report conspicuous, even peculiar. They remind us that ‘champions’ of a social welfarist style of governing could be found in positions of formal political and judicial power in Ontario less than two decades ago, and that the habitus of criminal justice actors and agencies—PDI authorities specifically—may not yet be ‘fully and finally’ settled in a neo-liberal/neo-conservative mode (Garland 2001:24). They remind us that today’s governmental imagination of and responses to problems of child welfare “may prove to be transient rather than persistent over the long term” (Garland 2010:23). Indeed, they remind us that things have been—and might still be—differently arranged.
References


