

## **Frontier Government: The Folding of the Canada-US border**

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*ABSTRACT In this paper the border is evaluated as a fold of power relations in which sovereign capacity and competence is marshalled alongside strategies of control, surveillance, and risk management to constitute, what we call, a zone of frontier government. We advance the argument that the border is a site for both negative and positive power, for insertion and subtraction, and that the assemblage of surveillance and compliance regimes are “run” not so much in the furtherance of a precautionary or pre-emptive end-state, but as intermediate values that are sufficiently malleable by an invigorated sovereign, expressed in the residue of discretion in and between the many border agencies. Our analysis is based on extensive policy and program documents, as well as twenty-five interviews with officials in various agencies engaged in the US-Canada and, particularly, the Windsor-Detroit corridor.*

### **Introduction**

In recent literature,<sup>2</sup> an argument is put forward that neoliberal societies are obsessed with uncertainty and have shifted their policies and practices to align with a precautionary logic. This precautionary logic involves the avoidance of steps that create a risk or harm, even to the extent of avoiding steps that are part of the legal obligations of the state. This uncertainty and obsession is said to derive from an age of catastrophe where certain generalized “facts” of the social world, and interactions of individuals, populations, and governments, create new forms of risk and therefore stimulate new risk avoidance strategies. For Beck (2006) “the logic of compensation breaks down and is replaced by the principle of precaution through prevention” (p. 334). An “insurance-based society” overcomes the challenge to its postulates (attributing threat to an “objective value or price”), represented by events such as 9/11, by lurching toward precautionary, pre-emptive, or “pre-crime” strategies (see Heberton & Seddon, 2009; Zedner, 2009).

Certainly, there is much to lend initial support to this view. There has been a transformation in the practice of liberal governance where officials, policy

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bureaucrats, and experts have been challenged to respond to all sorts of “dangers” or “threats,” not just those thought to be catastrophic or existential. As Andreas (2003) summarizes, the North American border environment, characterized by a “cyclical pattern of policy priorities” between security and economy, has been reset. He argues that the post-9/11 policy is predicated not on the “traditional concern of interstate military conflict, but rather terrorism,” and this creates “an awkward policy dilemma” because it requires “squeezing the arteries” of a highly integrated and interdependent economy “to filter out the bad from the good” (Andreas, 2003, p. 19). But while there is little doubt that the border is being transformed and the change draws from this discourse of terrorism, this is not to accept that the difference represented in the predicate of “new dangers” is the prior, necessary, or sufficient “objective fact” of such a transformation. There has been a shift in emphasis that has made the border zone more than a sieve for tariffs or taxes on trade and a checkpoint for passports and visas. Bordering practice is also less like an arterial squeeze (on mobility processes including the mobility of goods, migrants, tourists, financial resources) and more like an arterial hardening associated with the extension of the logics and practices of the frontier and the pioneering of new governance strategies within these frontier zones.

Newness or difference of risk and the necessity of precaution at times of existential uncertainty is how decision-making is framed by policymakers and practitioners. However, the predicate is a more continuous or durable feature of liberal governance: a constant need to innovate and enhance the sovereign agent in the capacity to act. The alternative view begins with the notion that the border is a marker of sovereign limit as this is expressed or shaped deploying the existential predicate (fear of the death of the sovereign). According to Schmitt (1932/1979), deciding the exception is a capacity of a competent sovereign. In order to maintain the capacity to make competent decisions agents seek to advance opportunities where they can and with the tools and technologies that they are uniquely positioned to exploit. Competence, being “absolute and independent of the correctness of its content” (p. 15), may not be derogated and audited for particular types of decisions. Accordingly, leading agents and agencies maintain the scope of what they do by deploying, attributing, and utilizing tools, processes, and practices that conserve both imperative and discretion. The reading should not be that this is a response to the march of independent phenomena like a new catastrophic risk, a new kind of threat (global terrorism), a new insecurity, or a new way of thinking. On the contrary and to put it squarely in Schmittian terms, “a philosophy of concrete life” will always be interested in the exception (p. 15), interested in avoiding the division of executive competency and in maintaining decision-making that is “absolute and independent of content.”

Sovereign exceptionalism and liberal risk management are combined to affect an unfolding of the border in new frontier zones. Frontier zones function as technologies of governance that involve territorializing formations and knowledge functions in the sovereign aim of securing the exception. Unlike those liberal processes that secure against “known” risks (typically the task of welfare professionals), securing the exception requires that conditions are established and maintained so that the exception may materialize in space and time (to designate indices of suspicion or “out of place or time events.” As such, frontier zones serve to

reproduce sovereign capacity (to decide the exception and mark the exclusion through material formations) and develop sovereign competence (as exclusive knowledge through the enfolding of information from various sources). Once again, the enfolding of liberal risk rationalities (or precaution) into border processes may be understood in terms of border advancement initiatives that are aimed at reproducing sovereign significance as that which is given without being known, and therefore as managing “unknown risks” and “unspecified threats.” Through risk rationalities, sovereignty both survives and surpasses the “correctness of contents.” Reaffirming both its excess signifying power and capacity to decide the exception, risk affords sovereignty a new way of evaluating the border and managing its limits.

This paper is organized as follows. First, we present a way of thinking about the site of the border as an ambiguous and bi-directional fold of sovereignty. Next, we briefly describe the border as a site in which multiple agencies assemble as capacities and competencies in insertion and extraction activities, organized in terms of electronic manifests, frontier zones (of detection and ambiguity), and intelligence-produced “lookouts.” This activity does indeed find “organization” by reference to the precautionary approach. We then examine three “cases” that illustrate that capacity and reach of border agencies in a “border assembly” is accomplished for the maintenance of a sovereign reservoir and against a concrete or substantive “quotient” of insecurity. The paper draws from interviews with officials in various private and public sector agencies about their role in “servicing the border”<sup>3</sup> and policy and archival data related to bordering activities. This information was collected between 2003 and 2008.

### **Assembling Ambiguous Sovereignty**

Governmental efforts have long presupposed the capacity or necessity to finesse asymmetrical advantages within fields of visibility and knowledge.<sup>4</sup> Asymmetrical visibilities are ubiquitous in surveillance for security and are often regarded as an everyday necessity in the face of crime, disorder, and other potential threats, and therefore seem less “political” in character. Yet events (for example, normalized high crime rates [Garland, 1996]) do not, in themselves, dictate particular responses; instead they rely on discursive strategies to turn them into security issues (Neal, 2006). Threat, danger, necessity, and security are central figures in the discourses of exceptionalism; they evoke a form of legitimacy that is deep and more profound, a pre-law for the norms associated with social life and civil society (Neal, 2006, p. 39). Because these figures are associated with the governance of exchange relations (trade) and economic life generally, the discourse of “risk” also gains legitimacy by lending to the practices of exception.

As forcefully argued by Schmitt (1932/1979), deciding the exception is a capacity that is attributed to the competent sovereign. If sovereignty has exception as its primary function or reference point<sup>5</sup> and acts on the organization of life through exceptional treatment, what is of concern is how the exception is constituted through the stratification of what can be said (through discourse or information) and what can be seen (the formation and organization of matter), and through their integration as qualified substance/subjects (such as authorizing authorities and making subjects and places receptive to interventions) (Deleuze & Guattari, 1987, p. 66-67). At the same

time, however, sovereignty is a function of limits;<sup>6</sup> it is constituted as a bounded enterprise expanding and contracting through the deployment of distinctions, established through limited relations to other sovereign projects (in order to promote prosperity or ward off anarchy-war). The “limited sovereign” enabled the social to emerge as a domain of government by means other than sovereign power (Wickham, 2008), but it also establishes a margin where multiple forms of government (sovereign, surveillance/discipline, risk, and control<sup>7</sup>) meet and intermingle.

Distinctions between politics and security often appear less clear at the margins of liberal thought, most notably where liberalism rubs up against its externalities. At this limit, the idea of the liberal sovereign as a representation of a unified “general will” or as invested with the strength and capacity for deciding the exception comes up against those liberal instruments that champion process or decision-making over decisionism, or the view that in politics the final say is *not* subject to law or rule but is “wholly original to the power in question” (Lazar, 2006, p. 257). The liberal margin discloses a tension between the norms (legal, social, and technical) associated with the everyday frame of life and the need for decisive action when the limits of the everyday have been surpassed (Dean, 2007, p. 185). But it also establishes sites where the disparate logics of “risk” and “threat” form conjunctions. Sovereign capacity or competence is most thick at the cross-section or borderlands or where the challenge to that capacity or competence provides an opportunity, a “nomos of the political space”, for sovereign spectacles or “rehearsals” (Chappell, 2006).<sup>8</sup> In these marginal sites, the negative, subtractive powers of sovereignty come into contact with the more productive powers of contemporary society (see Dean, 2007, p. 157). Consequently, a *fold* is a margin or threshold where liberal and illiberal governance strategies intermingle; it can warp space-time, become more or less porous, more or less thick (through unfolding), and it can enfold or weave together mundane and other forms of government.

Within liberal domains the shaping and limiting of sovereignty has long bound knowledge (as actionable information) and power in a relationship of reciprocal presupposition (Wickham, 2008). As dependent both on limits and the breaking of those limits, the liberal-sovereign establishes a knowledge protectorate through exceptions on collection and dissemination standards: it creates a value of “national security” knowledge by feeding it through the prism of intelligence and risk management, including the strategic appropriation of the protected knowledge of others. If sovereign power is about finessing limits within an absolute system of reference, then it need not refer to a single source or location, nor does the system of reference refer to an original distinction ([state of] nature-culture), though this is often (nostalgically) claimed as its legacy. Sovereignty may be found in non-subjective intentionality or in a multiplicity (network) of delegated authorities linked by the limits of their decision-making.

The border is a site of the *folding* of liberal and illiberal government, the *unfolding* of frontier zones, and the *enfolding* of risk logics within the discourses of threat and (national) security. There are a number of instruments or methods that are deployed to effect the threshold function at such borderlands. They include the multiplication of forces, the reversal of accountabilities, and generally the monopolization of knowledge resources or politically actionable information. In the absence of counter-forces, such breaching gambits lead inexorably to the normalization of exception or

the diffusion of border agency everywhere.

### Unfolding the Border

. . . for decades literally, Canada was very proud of maintaining a special relationship with the US, in terms of our trading relationships and in terms of how the border was operated. We considered ourselves to be exceptional. If the U.S. administration was pursuing security policy, the Canada-US line was often times exempt from these. However, since 9/11, it has been very clear to us that the security policies that the US is pursuing would be applied to the Canada-US land border and Canadian citizens also. (Senior Canadian government transport official)

The Canada-US border spans 6,416 km between the Atlantic and Pacific and another 2,475 km between the Pacific and Arctic oceans. Every minute, over \$1 million of goods cross this boundary which total \$500 billion in annual two-way trade. Of this, 62% of Canada-US trade, 80% of Canadian imports and \$1.5 billion worth of goods is hauled by an average frequency of 16,149 truck crossings per day (U.S. Department of Transportation [DOT], 2008). Of this share, the Windsor-Detroit international trade corridor is the busiest. In 2008, 9,651,136 vehicles, including 2,297,445 transport trucks (accounting for 39% of all truck trade between Canada and the US) and 7,306,627 passenger vehicles travelled between Canada and the US through the Windsor-Detroit corridor (DOT, 2008).

Trade of this enormity has been a constant pressure on sovereign relations between Canada and the US. As early as 1962, George Grant predicted the death of Canadian sovereignty with Canada's "social and economic blending into [the American] empire" (Aiken, 2007, p. 182).<sup>9</sup> However, even after the collapse of communism and the spiking of global trade in the 1990s and 2000s (including a progressive rise in economic integration between 1989 and 2002), social, political and economic forces have failed to pull Canada and the US into a regional political union. Despite the load on infrastructure with the adoption of just-in-time delivery by the automobile sector, including its reliance on a network of supply and assembly plants that spans the border, the transportation security regime was not a significant priority for American and Canadian governments until after 9/11. For the US, as Flynn (2003, p. 115) puts it, "episodic attention directed at the northern border was primarily centered on efforts to minimize any source of administrative friction that added to the cost and delay of legitimate commerce." That suited Canada, which saw the border with the United States as an opportunity to display deference to the United States through the non-imposition of impediments to American traders and tourists.<sup>10</sup> Summarizing the pre-9/11 condition, Szyliowicz (2004, p. 57) concluded that there was a lack of intergovernmental coordination [also referred to policy harmonization and institutionalization of governance, (Biersteker, 2003, p. 154)], and a dominance of law enforcement and technology rather than security and intelligence under a systems or network approach.

For many American officials, the northern border has been too porous and its security administration too lax, not only post-9/11 where false rumours that the hijackers crossed contributed to delays in re-opening of border crossings, but 2 years previously when Canadian officials failed to alert their American counterparts of the

movement across the border of the Osama bin Laden-linked Algerian terrorist Ahmed Ressay. <sup>11</sup> Although the policy environment included voices calling for a more straightforward militarization of the border or a common North American security perimeter, these options were deemed politically and institutionally unfeasible. Instead, following earlier initiatives to improve interoperability between law enforcement, <sup>12</sup> the current regime was built on proposals that developed out of a Congressional Commission Report (U.S. Commission on National Security/21<sup>st</sup> Century [Hart–Rudman Report], 2001<sup>13</sup>) that made agency coordination and information sharing the top shelf policy agenda. <sup>14</sup> The contours were set in October and November 2001, when negotiations between Canadian Deputy Prime Minister John Manley and Homeland Security Director Tom Ridge resulted in the signing of the Canada-US Smart Border Declaration (in December 2001). Following the Declaration, a 32-point implementation plan for “strengthening the border” began the process of policy harmonization in accordance with common security and trade agendas.

Under the terms of the Smart Border and the emerging Canada-US policy generally, multiple “compliance” steps were to be required from those wishing to make, or make good on, border crossings. Those wishing to take themselves or their goods across the border would be evaluated on their readiness with information provided in advance and on the measures they took to ensure the chain of custody. In particular, the Declaration called for sharing on advance passenger information, the development of secure identification cards with biometric identifiers, the reinstitution of NEXUS or equivalent (a fast lane for frequent crossers), a mechanism to transition commercial goods shipment from “load and go” to advance electronic manifests, a system of container seals and assurances, a system for sharing information on oceangoing container shipments arriving in either country, a plan to allow customs officers from either country to be posted in the other, and finally, a mechanism to bring intelligence instruments and agencies to bear on the targeting and discovery of suspicious cargo.

While Canada publicly promoted its security autonomy, plans for security interoperability followed the pattern of negotiations on economic integration: instead of institutional harmonization (a policy that could not be accepted in Canada), interoperability was to be gained at a much lower register: information-sharing, intelligence co-production, and agency cross-fertilization. Prodded by scathing reports on information sharing by a variety of public commissions and auditors (9/11 Commission, Auditor General, etc.) Canadian and American officials developed border security instruments on the idea that the circulation of security information is prefatory to identity and sovereignty. Secondly, while it was impossible to create governance, let alone law enforcement, customs or military agencies that followed the European perimeter model, the post-9/11 environment provided ample opportunity to innovate on the circulation of personnel within a common North American territory. Thirdly, intelligence-sharing and risk prevention (with previously-elaborated neoliberal responsabilization caveats on trans-border commerce and tourism) offered a basis to the post-9/11 rhetoric. If “danger” and “enemies” were now also intrinsic to the flows of people and goods, they would be countered by a mix of law enforcement operations *and* national security instruments. Furthermore, if risk prevention, intelligence-sharing, and the individual duty to

provide information in exchange for mobility rights provided a reasonable operating logic, so too did rootedness to constitutional protections on one hand and the distinction of sovereignty as a property of the nation-state on the other become less fungible. In the meantime differences could be referenced by display on uniform insignia as “fusion teams” were struck cross-nationally and cross-sectorally. These measures enfold private producers and carriers into new “secure” relations under a regime of advance information delivery.

### **Enfolding the Flow**

As noted by Aradau and van Munster (2009, p. 10), there is a confluence of thinking among academic experts spanning international relations and criminology, and policymakers spanning domestic and foreign portfolios, that has pushed “catastrophic imaginaries” and attached these to “precautionary risk,” which in turn has brought forward the institutionalization of exception in liberal states. The precautionary element configures and launches risk from the vaulted position of the existential claim (avoiding catastrophe). This “radical contingency of the future” “brings the exceptional within governmental processes.”<sup>15</sup> Precautionary risk management, consequently, is the installation of a “politics of zero risks based on imaginations of worst-case scenarios” (p. 11).

The border is comprised of an array of agencies<sup>16</sup> that produce intelligence (or actionable political knowledge) in the maintenance or enhancement of sovereign competence and capacity. Border agencies and agents seek to order and make interoperable information that is actionable and do so deploying the discursive array of risk and precaution. In this section, we review precautionary programs and also the division of the border by risk prevention into zones of inspection and detection.

### *Fronting Precaution*

Under the previous “load and go” regime, commerce and travel between Canada and the US was understood in the context of the “open” and “undefended” border. Inspections were completed on-site without advance information and secondary inspections did not sort and differentiate business and pleasure travel prior to arrival. It permitted a practice “whereby drivers could simply load, pick up their paperwork, and show up at the border unannounced” (Transport Canada, 2005). In the domain of marine security and container security prior to December 2, 2002, the US only required that a manifest be on board the vessel. Today, border agencies have been reconfigured through precautionary programs. Canada-US border security rules require that carriers submit their “paper work” in advance of arriving at the border. This is achieved through a number of complementary initiatives.

Under the Advanced Electronic Presentation of Cargo Information (AEPCI) of the U.S. Trade Act, pre-arrival information has become mandatory (i.e., one hour) before trucks arrive<sup>17</sup> at the U.S. border.<sup>18</sup> The key process of pre-arrival information acquisition and analysis is PAPS (Selectivity Pre-Arrival Processing System). PAPS is a U.S. Customs and Border Protection (CBP) border program that utilizes electronic information and barcode technology to expedite the release of commercial

shipments. It provides importers or shippers a module to electronically transmit summary *data elements* to the CBP via customs brokers. In addition, under the 24 Hour Advance Vessel Manifest Rule of the Customs Trade Partnership Against Terrorism (C-TPAT), detailed manifests are required to be provided to U.S. customs 24 hours before loading at a foreign port. The Container Security Initiative, developed shortly after 9/11, requires pre-screening of high risk containers before they are loaded and subjecting containers to gamma rays and x-rays.<sup>19</sup>

The Canadian counterpart to AEPCI is the Advance Commercial Information (ACI) program and eManifest.<sup>20</sup> According to CBSA policy documents, ACI is a risk management process coupled with “tools to identify threats to our health, safety, and security prior to the arrival of cargo and conveyances in Canada.”<sup>21</sup> The eManifest is an electronic transmission of advance cargo and conveyance information from carriers and advance secondary data from freight forwarders and importers (or their brokers) for all highway and rail shipments. Under eManifest rules, information (formerly “paperwork”) must arrive at the border in advance of persons and matter. Its effect is that the border process is doubly encoded and stratified.<sup>22</sup>

The CBSA has also developed the Partners in Protection (PIP) program. This aims to enlist “the cooperation of private industry to enhance border and trade chain security, combat organized crime and terrorism, and help detect and prevent contraband smuggling” (Canada Border Services Agency [CBSA], 2009b). Initially developed in 1995 with the purpose of “promoting business awareness and compliance with customs regulations,” the program shifted focus after the events of September 11, 2001, to the supply chain, urging members “to improve their physical, infrastructure, and procedural security” (CBSA, 2009b).

Since 2002, enrolment in PIP is a prerequisite to participate in Fast and Secure Trade (FAST), a joint initiative between the CBSA and U.S. Customs and Border Protection that enhances border and supply chain security while expediting legitimate trade across the Canada-U.S. border. And as agreed in the SMART Border Declaration, FAST programs, ostensibly provide expedited border clearances for pre-approved importers, carriers, and drivers (CBSA, 2009b).<sup>23</sup>

Again, participation in PIP/FAST requires private producers and carriers to supply CBSA with information in the form of a “Security Profile” every three years. This is to provide the specific “Security Measures” that they and members of their international supply chain have undertaken. The information obtained by the profile is used to determine their eligibility for membership in PIP. Security measures are defined as “physical objects, actions, procedures, processes and policies *employed as precautions* against theft, espionage, sabotage etc.”(CBSA, 2009b)

Canada has advance notification for air and rail cargo, and has a similar precautionary program for marine security called the Prior Arrival Information System (PAIS) as well as a bilateral Canada-US program called the Joint Vessel Inspection Team program (JVIT). These programs, according to a senior marine transport officer, require “any ship 96 hours outside of Canadian waters” to supply information (such as the goods, the crew, the last 10 ports of call) to the central Canadian Coast Guard Stations. According to a senior officer, “We have an extensive overseas network where we have people actually doing screening of good and persons before they come to Canada.”

### *Division by Risk*

Precautionary programs extend the time and space of the border and, thereby, of exceptionalism into the routine of everyday or quotidian practices. Weighted by this ballast—a “radical contingency of the future”—liberties or mobility choices must be prescreened and agents and agencies vetted in pre-crime and threat evaluations. In addition to precaution, the space-time of the border is extended through risk divisions in zones of detection and inspection.

For instance, not only is Canadian border security defined in terms of risk targets, many frontline border agents are referred to as “targeters.”<sup>24</sup> Targets, and also, it would seem, targeters, are evaluated in terms of hit/miss ratios. Preliminary or precautionary systems process data and divide targeting by risk level, through programs like TITAN™.<sup>25</sup> While the National Risk Assessment Centre (NRAC) reviews data for threats to national security (e.g. radioactive materials) regional targeters focus on contraband and other threats. Targeters divide risk spatially and temporally.

A senior official of CBSA characterized their risk assessment as follows:

On every shipment, a risk assessment is done on every component of the shipment itself, including; the driver; the importer, which is different sometimes than the actual carrier; the company; the exporter; where it's coming from; the type of goods that are being transported; the routing. Every component is taken into consideration in assessing the risk of the shipment coming in. It is also profiled and cross-checked with other databases.<sup>26</sup>

The eManifest system is also accounted for using risk assessment. According to a senior official, when fully implemented,

eManifest . . . will take into account: your company history against your past; similar companies importing the same goods; your transportation company and if your transportation company has been involved in incidents with other companies. It will be much more linked and holistic in its analysis and then there will be some kind of scoring and anything over 70 out of 100 gets examined, anything between 50 and 70 gets recommended.

### *Zones of Detection and Inspection*

The border is enfolded or doubled up through data streams that may be referred to as zones of detection and inspection. Zones of detection are inserted<sup>27</sup> variously to stream, disaggregate, and recombine matter and information, applying spatial and temporal ordering regimens. They encompass *zones d'attentes*, loading zones, and transit zones and have evolved from the template of primary and secondary inspection.

Primary inspection is a means of matching manifests to the “material double” of cargo, truck and driver. It is a check that paperwork related to the material and drivers are in order. It involves a set of screening operations (or looking for indicators) according to a simple binary operation where the presence of indicators

(some “hard” or non-discretionary, some “soft” and discretionary) will essentially indicate “fail” and where the decision is made to make a referral to secondary inspection.

With respect to those “soft” indicators, officers have a great deal of discretion and, according to one official, “officer selections” or “cold hit referrals” from their position in primary inspection booths remains an important zone of detection.

We continue to have success with officer selections based on human observation, what we call non-verbal indicators; nervousness; sweaty; lack of eye contact. We continue to have success with dialogue and “this doesn’t look right.” We count on the border officer sitting on a needle in a haystack. That’s how some of our bigger investigations get underway, based on some cold hit, chance encounter. Sometimes it’s as simple as a phone number that you find in a car somewhere. That’s relevant, because you can check that number against other criminal groups. Sometimes these groups are fairly loosely put together and they don’t even know themselves if they are overlapping. That’s the only way for you to make a link.

Secondary inspection, also called “enforcement actions,” results from primary inspection referrals and entail further interviews and/or searches, both physical and informational. Physically, travellers, drivers, vehicles and cargo may be subject to comprehensive searches using a variety of scanning technology.<sup>28</sup> Informationally, secondary operations access more data-bases such as Interpol and American and Canadian criminal records. In addition, they act as screens for further data insertions: “As well, our agency has a lookout sharing initiative where we share lookouts with homeland security and they share their lookouts with us” (senior officer interview).

Inspection includes non-routine indices. In other words, the information collection includes passive and active knowledge production. Innovation on the collection parameters is understood as active production. The CBSA, for example, engages in random searches known as “compliance surveys.” According to an official in the agency,

What we do periodically is compliance surveys, where we randomly select, with no cause, shipments for examination. From that we derive a non-compliance ratio. We then test that against what we discover in our normal operations, and then we know how far off we are. That’s a more legitimate test than the “secret shopper events;” these are just contrived and mostly they are probably for the press. They are not really a statistically valid way of testing compliance. Because we are measured against the unknown; no one knows how many people we don’t know about.

In the commercial environment compliance surveys carried out through random samples adjust the parameters: “We can adjust the random referral rate; our system can generate a system hit so that one in every hundred vehicles be referred [to secondary inspection].” All vehicles are potential subjects of random secondary inspections, including FAST shippers and NEXUS travellers.<sup>29</sup> Indeed, contrary to the expectation of NEXUS travellers, it is *systems testing* that is prioritized:

We probably over-sample our trusted shipper programs because we are a little paranoid about saying this is a trusted traveller. So if you have a Nexus card, chances are you are going to be examined more often. In trying to maintain such a high integrity of those programs, the end result is that they don't actually provide the convenience level.

While random examinations are commonplace in both the commercial and traveller (or non-freight) environments, there are occasions where all cars are examined.

In a traveller's environment we do some random sampling, but we also do stints where we try to examine everyone in a certain period . . . because it gives you a really good picture of threat for a certain date and time. So, on a Friday night, if you examined everyone you got over an hour, it will give you a pretty good picture of what your non-compliance is on a typical Friday night.

The same senior official characterizes the risk and identifies its primary sources:

The highest risk of "non-compliance," as we call it, is with the driver. A single guy, who crosses the border three times a day for [company x] and brings something like auto parts across very routinely, might decide he needs to buy his Christmas booze supply, and so he picks up a case of whiskey or whatever. We do find that the drivers are a higher risk than the importers, exporters, or corporate entities . . . We find a higher non-compliance with certain source countries; we find certain source countries have a very high risk for very high-risk commodities, like drugs and weapons.

To summarize, zones of detection are deployed in the service of at least three objectives. First, they are a means of enfolding or re-ordering the flow of material and data for the purposes of discovering and seizing contraband or identifying targets. Second, they are a means of evaluating the effectiveness of that "primary" purpose or the relationship between "hits" and "misses." Finally, they are deployed to push out a competent sovereign capacity, including its manifestation as unpredictable action on action.

### *Lookouts and Bulletins*

A "watch-for," "target" or "lookout" refers to the "identification of a person or good to be intercepted based on pre-arrival information" (CBSA, 2008). The interception is the direction to secondary processing and the lookout also stipulates the "level of examination that may be warranted."<sup>30</sup> In most cases the lookout is an electronic entry that resides within a database that directs that a person, vehicle, or shipment of goods is to be held or otherwise further processed at a port of entry. However, the basis of the entry is various. Lookout information the CBSA receives comes from law enforcement and intelligence agencies (as well as Transport Canada) and is generally received in the form of an electronic transfer. It includes but is not limited to suspicions that infractions have been made or are taking place with respect to

customs, immigration, currency, drugs, and national security laws or regulations.<sup>31</sup> As we noted, lookouts are passed on to border agents at primary and secondary inspection booths and are shared with American counterparts in Homeland Security in accordance with foreign data-sharing rules and regulations.<sup>32</sup>

In addition, “lookout indicators” (typically based on the *modus operandi* of successful hits), provide the logic for “cold hit referrals.” Indicators include behavioural cues. A senior official describes how enforcement actions can be transformed into lookouts:

Let’s say the border officer gets a “cold hit” with no intelligence information [and] we discovered some contraband or some kind of violation. [The officer] can say, based on this: “I think we should look at shipments that have these commonalities.” So an intelligence official can say: “that’s a good idea” and takes the information and creates a *lookout* based on what the border officer discovered.

Lookouts are passed to other line officers in the form of intelligence bulletins. As one senior officer stated, “Any time there is an enforcement action in our region, we broadcast that to all the other officers to let them know what was found how it was found, what were the indicators. Every week we have bulletins that go out.” Intelligence bulletins are specific tools that line officers both contribute to and use to make enforcement decisions. The practice is also noted as a driver of (illegal) innovations:

Once we discover a pattern or MO [i.e., *modus operandi* - method of operating] and we pick off a few shipments, we can almost count on putting ourselves out of business in that particular line of inquiry. They [the perpetrators] figure it out just as fast as we do, that we know enough and that this [particular practice] becomes very dangerous. They have real time information that says: “OK, that’s not working too good anymore, so we need to change that.” And they do. So, I think we drive the change. So long as we don’t discover a particular MO, it will be used, since there is no loss involved. In fact, it is the loss that drives them to become more creative.

In this respect, information collection and knowledge production is more or less proactive. Intelligence bulletins provide CBSA line officers with information on offence patterns typically used to thwart border regulations. The information is generated and generalized from prior enforcement practices in other zones of detection of the CBSA.

All government departments take data from the collected pool. CBSA may say: “What’s the cargo? Who is on board?” Manifest information is vetted through intelligence liaisons stationed in the Marine Security Operation Centers (MSOCs), including representatives from Transport Canada, the Department of National Defence (DND), RCMP, and other agencies. Acting alongside Canadian officials at the MSOCs are American officials that Canada has signed bilateral agreements with. A senior official explains this *pushing out* of the border:

What we have in place, in various loading ports around the world, is officers of Canada Border Services Agency. For instance, there's one in South Africa, in Australia.... In places where containers are loaded for destination to Canada, we get that information prior to loading and the officer there will actually screen shipments and say which should or shouldn't go on, and which, when they are on, are high risk. So, when they arrive, we are going to be looking at them.

As we have said, the border is a sovereign fold or a site in which liberal and illiberal practices converge. Lookouts are not only a means of re-assembling information and material flows at a given point. They are also a means of inserting or asserting a connection between material and informational flows. The insertion or assertion is accomplished all over the network of agencies in the border security assembly. Trolling and tolling is carried out in order to differentiate and prime a target and to provide a preliminary determination of the nature, authorities, and coordination of the countermeasures to the (risk or threat) values.<sup>33</sup>

At first blush by the accounts of the practitioners themselves, we find confirmation that the principle of precaution is what connects and drives the pushing out of the border. The detection events are driven by the benchmarking of the “dark figure” of non-compliance, the risk sorting and profiling of the temporal environment of the border, and the targeting of high risk mobilities. However, it is also apparent that there are multiple authorities under which collection, registration, and positive insertions are enacted, or to put it in other words, where liberal and illiberal practices are enfolded. These authorities traverse the whole panoply of mandates from the particular and quotidian (e.g. proper refrigeration and packaging, licensing and registration of vehicles) to the existential (the terrorist threat to “national security”). The effect of this production of a zone of detection is also the pushing out of a “zone of ambiguity”<sup>34</sup> or the normalization of a condition in which it is the authorities but not their targets that may or must have a sufficient reservoir of “unknown unknowns.”<sup>35</sup>

### **Advancing the Frontier: Assembling Authorities**

The assemblage of border security agencies project a set of priorities, protocols, and practices that affirm both the ambiguity of their purpose and the efficiency of their method.<sup>36</sup> These apparently contradictory themes find justification, first, in the need to protect actionable knowledge about security, (in intelligence parlance, in maintaining disclosures that are strategic and information that is productive through strict control) and second, in the need to protect the capacity or competence (including the possibility of decisions against the grain) of the sovereign as a security knower. Sovereign competency or capacity is expressed by making exceptions at points of contestation.

Expansion follows as other agents or “petty sovereigns” seek the application of a new “governance normal” in arrangements or procedures in novel sites or settings, marking outposts farther from the traditional centre or home base (asserting the transcendence of both risks/threats and the practices used to combat them). Given that the state of security is already idealized and prioritized as a means of policy distinguished from, for example, the state of justice (Brodeur & Shearing, 2005),

expansion is consolidated through further claims to expediency, necessity, value, and mission. However, the harmonization or interoperability of linked agencies (a “security continuum” as per Neal, 2009, p. 252) according to an extant ideology or policy discourse follows, but that objective is suspended, dodged, or avoided wherever it draws too near to boxing in the sovereign. Ultimately, it is the capacity of sovereignty, the *process* of security (Zedner, 2009) and not the explicit content or ends of a re-clarified sovereign-subject relation that may stand for what harmonizes the assemblage. In sum, the border security assemblage is justified action on action on the basis of the assertion and the detection of out of place or time occurrences, the innovative replication of processes (redundant risk avoidance), and the conversion of common information sources into exclusive knowledge resources. The “handshake” between agencies and the population (as information sources) enables the extrapolation of the assembly and the forging of the new governance normal.

Expansion is checked through observance of best practices and peer evaluation, which also serves to aid distribution of resources within the assembly. It is also checked through the status of the agency in the information chain and the strategic resources to which the agency has differential access. Finally, it is checked by pushback against the adoption of the new practices by extant traditional interests and agents (traditional political power) and retrenchment of rights belonging to traditional liberal subjectivity. Avoidance of pushback is essential because successful blockage of an initiative somewhere on the frontier of the assembly may provide countering interests and institutions with a strategy to take against the assembly at other outposts as well as assisting their attempt to reconfigure the resistance to attract greater popular and political support.

However, while the replication of arrangements, procedures and protocols into institutional domains is pushed forward to achieve sovereign capacity and competence, there is also a measure of “draw back.” This is because the successful subordination of all issues of social or public policy as security matters (a process called “securitization” – see e.g. Neal, 2006, p. 33) would lead to a condition in which security and securitization would be evacuated of meaning (nothing left to distinguish targets, no object or condition of security). What would be the incentive to securitize where there is no object or process (“security” is known as process, see Zedner, 2009), nothing left to register, or no “difference with a difference” left to convert? On the contrary, it is important that fears and dangers are continuously (and deliberately) revived and countermeasures are branded as “new” and “different” and also that structural, procedural, and administrative gaps remain as an object-lesson: securitization will never be complete, but there must nonetheless be a marching on toward completion. Political and individual rights claimed by citizens in constitutional democracies certainly present an obstacle, but they also represent a necessary counterweight without which the forces of securitization would lack a teleology or common purpose.

### *Example 1: ISSCs*

As with other components of the assembly, the CBSA pushes out to position itself as the leading edge and to overcome resistances of traditional institutions. CBSA is

positioned to do this perhaps like no other agency because it is already a product of previous expansionary gambits. In particular, it assumes a dual role of police agency and customs and border control agency, with the doubling up of the powers of each of these distinct roles. It has powers of arrest and warrant issuance, the power to detain and operate detention centres, and expansive powers of search and seizure. As one senior CBSA official stated, “We can search randomly; we can search without probable cause; we can search without warrants.” In general, the CBSA has appropriated the coercive authority of a rights-based regime but has avoided being subject to its typical stipulations and accountabilities.

The capacity to initiate investigations because things do not appear to “look right” becomes a powerful tool for managing risks or non-compliance. Line officers have access to databases that enable them to risk assess someone upon arrival. According to a senior officer, “The officer has the ability to initiate a name query, as well, the licence plates are captured. We rely on officers in the primary line to screen those licence plates and screen the travellers by name through the systems that we have.”

An illustration of how these powers have been utilized to advance the frontier as a “zone of ambiguity” is provided in the case monitoring that CBSA was empowered to do of individuals subject to Security Certificates, or ISSCs. After the security certificate procedure was declared unconstitutional by the Supreme Court in February 2007, the CBSA was charged to oversee the court-imposed restrictions of house arrest on four ISSC men released from prison, including GPS monitoring by electronic bracelet, taps on their phones, monitoring of all incoming and outgoing communications, CCTV monitoring outside their houses, random searches and seizures by government agents, and trips outside the house (allowed only with CBSA escorts).

The CBSA handled this role by creating a tripwire for a wider regime of out of place or time occurrences. For example, it requires that a trip to the grocery store by the arrestee be preceded by notice 72 hours before the event. It also produced a manual for use by CBSA officers, “Security Certificate Case Monitoring,” which pushes the displacement of the rights-based regime. One of the subheadings reads: “There is No Zero Risk Situation.” It defines risk broadly as “the chance that something bad will occur.” It instructs officers to be “on the lookout” for any behaviour or action that might constitute “a threat to national security” and asks officers to assess whether “the surrounding area pose(s) a risk to national security in any way.” The purpose of the Manual is clear: it is intended to discipline CBSA officers to a perspective that there is widespread opportunity for action in the expanded frontier.

The CBSA also innovated on the replication of security processes. The ISSC supervisors are those persons who have been “responsibilized” to vouch for the ISSC. In the diametric opposite of the legal protection against forcing inculpatory spousal testimony, family members become “supervisors” whose duty to the security regime is so onerous that one of the wives asked that her husband be returned to prison in order to rescue her children the intensive and extensive interference with the most basic quotidian events.

Finally, the CBSA innovated on the collection or reach of the assembly by producing exclusive knowledge resources. For example, the CBSA conducts “integrity checks” on ISSC “supervisors”. The CBSA manual also recommends that officers extend the surveillance beyond the ISSCs to their “associates” and that it use

the regime to find “additional targets.” The manual states that “even when a breach of condition is not apparent, the information may be beneficial for intelligence purposes.” Also: “where possible, monitoring officers should attempt to gather intelligence for use by headquarters, the regions and other government departments.”

*Example 2: Shiprider, Community watch*

While bringing multiple authorities to bear under one program is one gambit in advancing and maintaining sovereign capacity and competence, another is the bringing together of multiple agencies under a single task, project, or objective. A leading example of this is are Integrated Border Enforcement Teams (IBETs), comprised of five partner agencies, CBSA, RCMP, U.S. ICE (Immigration and Customs Enforcement), U.S. Coast Guard, and U.S. Border Patrol. IBETs are “force multipliers.” Because CBSA has customs authorities of search and seizure (warrantless searches) that the RCMP does not enjoy, and the RCMP has some authorities (specifically in their range beyond the border) that do not belong to the CBSA, a team of both of these acting as one on out of place or time occurrences is far superior to each agency acting singly. This multiplication of authorities is even more powerful when it involves transnational partnerships and intelligence linkages.

With respect to transnational partnerships, an innovation that is awaiting a full roll-out is transborder law enforcement authority. In 2007, a two month pilot program called Shiprider gave Canadian law enforcement officers the authority to make arrests in U.S. territory and U.S. law enforcement officers the authority to make arrests in Canada. In October, 2007, on the St. Lawrence River, a boat carrying a U.S. Coast Guard officer and an RCMP officer apprehended a vessel heading toward Canadian waters and seized 47 kg of marijuana and made arrests of the smugglers. (Kieserman, 2008)

With respect to intelligence, the IBETs overcome some of the restrictions on information flows that are established to prevent “fishing expeditions” because they each are in attendance at the occurrence that one of the agencies has the authority to investigate. In addition, the IBETs are connected through Joint Intelligence Groups (JIGs) with all the significant intelligence and law enforcement agencies with whom they meet regularly to share information and intelligence. Thirdly, beginning in the 1990s and aided with a hugely expanded intelligence complement of about 800 officers (Shultz, 2009, p. 196) and a brochure that informs residents of the signs of actionable activities, IBET agents generate a “community watch” program or a web of local contacts and sources that vastly multiplies each conduit in a network of watchers and listeners.

In a different variation of community watch, a recent plank in the Northern Border Project, a border security initiative of U.S. Homeland Security and the Secure Border Initiative, involves the deployment of surveillance towers (including day and night cameras, radar, and unattended ground sensors) along a 60 km long stretch of the St. Clair and Upper Niagara rivers on the Canada-US border, as well as the deployment of a 18 m long helium surveillance balloon, with attached high resolution camera, owned by the Sierra Nevada Corporation (technology which it hopes to sell to Homeland Security), over the border area near Sarnia, Canada. The objective of the

project is to “prevent illegal entry of persons, materials, and terrorists into the United States,” according to U.S. Customs and Border Protection, as well as to “demonstrate the integration of air, land, and marine capabilities into a Common Operating Picture, and deploy proven surveillance capabilities along selected areas of the Northern Border” (2009). As a way to push back against what is considered by some an intrusive form of governance, residents of the community of Sarnia protested the deployment of the surveillance balloon in a “Moon the Balloon” event held on August 15, 2009 (The Observer, 2009; The Canadian Press, 2009).

An additional illustration of agency multiplication and expansion of the frontier is provided in an event that took place in the Winter of 2008 when one of the authors was approached while walking his dog by two police from the Windsor-Detroit IBET at Colchester Harbour on Lake Erie in south-western Ontario. An unmarked SUV drove into the parking lot of the marina and an Ontario Provincial Police and RCMP officer emerged from the vehicle. The RCMP officer approached the author introducing himself as part of the IBETS program, asking if the author knew anything about it, confirming that the author is a resident of the community (walking his dog), and then stating that he was interested in any unusual behaviour or people frequenting the marina.

The RCMP officer asked to take the author’s name to which the author asked if that was really necessary, to which the RCMP officer replied that it was, to confirm that the author had no outstanding warrants. The author queried this, asking if this was not a matter for local police from which also the initiative to follow up on warrants might stem, to which the RCMP officer replied that the RCMP has jurisdiction throughout Canada and could follow up on warrants in conjunction with the local police. The author’s name was provided after which the officer asked for date of birth. At this point the author asked again how this was necessary and assured the officer that no warrants were outstanding. The officer allowed the author not to provide the date of birth. The RCMP officer provided the author with his business card.

Once again, we can see that the assembly is being advanced through forays or interstice approaches that both discover and build capacity to recover out of place or time events. A community resident walking his dog is a potential informant, a public relations opportunity, and in the displacement of the law enforcement standard of search and seizure by the border standard, a means to assert, piecemeal, the rights-based regime as the “new normal.” Note how this is accomplished by discrete, volitional actions on the part of agents exercising discretion in an ambiguous terrain crossed by multiple agencies.

The processes that are being replicated or innovated on here stand at the very heart of liberal governance and the sovereignty of the liberal subject. Part of what the author was being asked to do was report on out of place or time occurrences where what constituted “unusual” was something that the interviewee him or herself was being exploited to guess at according to his or her own viewpoint. This is an extension of “eyes and ears” not quite through responsabilization (as the ISSC family members are responsabilized), but through the assertion of national security/border security authority farther down the supply or information chain to the source in ambiguous, unknown “population,” information, or risky data points.

Lastly, common information sources are being converted into exclusive knowledge resources. It is noteworthy in this context that the RCMP considers

Canada a leader in the field of human intelligence and the RCMP itself is launching a significant drive to build “community intelligence” on the assumption that there is an extraordinary law enforcement capacity that may be tapped to feed the national security knowledge coffers.

*Example 3: Department of Foreign Affairs and International Trade/Justice Department*

Our final example brings us back to regime substitution. Ericson (2007) hypothesized that neoliberal politics is increasingly possessed with security, uncertainty, and innovating systems to manage risks. Countering uncertainties and risks results in the exchange of the rule of law—regulations that follow or are predicated on constitutional principles and protections—for “counter-laws”—laws that seek to criminalize behaviour and explicitly undermine conventional legal practices (p. 24-25). We have suggested that the sequence: danger/fear → precautionary measures + risk assessment → threat aversion is found in practices pursued by an assembly of agencies and that the effect is a new governance normal. That new normal makes carriers and travellers responsible for the duties of risk prevention as it spreads a precautionary ethic throughout the frontier, shunting aside the duties to protect both juridical subjects and the rule of law. In the expansion of the frontier as a zone of ambiguity, we have concentrated on mechanisms that may be defined as more instrumental than symbolic, but some of the work to normalize a radical shift from the supremacy of constitutional law (enfolding it in the border logos) is undertaken directly as a matter of public policy, democratically debated and resolved.<sup>37</sup>

Canadian citizen Abooufian Abdelrazik travelled to Sudan to visit his ill mother in 2003 and was arrested upon arrival on a request by the Canadian government which provided information to the Sudanese that suggested links to al-Qaeda. He was imprisoned twice for long periods and tortured, and according to a standard operating procedure that also ensnared Maher Arar, Abdullah Almalki, Ahmed El Maati, and Muayyed Nureddin interrogations by the Sudanese were based on questions fed to them by Canadian and/or American intelligence agencies. In 2004, he was released by the Sudanese but was unable to return to Canada or leave the Canadian embassy in Sudan because his name appeared on the United Nations Security Council’s 1267 no-fly list. The Canadian government wrote to the UN Security Council in December 2007 to request that his name be removed, following the threat assessment of the Canadian Security Intelligence Service (CSIS) and the RCMP (likely from information gained through torture) that cleared Abdelrazik, finding that there was no reason for him to be on it.

However, also in a move similar to the pattern in Arar, the US objected to his removal. Given this, Abdelrazik needed an “emergency passport.” The Canadian government provided assurances that if Abdelrazik was able to obtain a confirmed flight reservation it would provide that passport. However, once Mr. Abdelrazik did obtain this flight reservation the Minister of Foreign Affairs in April 2009 refused a passport under section 10.1 of the Canada Passport Order, which states that “the minister may refuse or revoke a passport if the minister is of the opinion that such

action is necessary for the national security of Canada or another country.” The Department of Justice filed a claim in federal court stating that the 1267 UN travel ban “prohibits other states” from allowing anyone passage through its airspace. The claim also added: “the requested remedy of repatriation would interfere in matters of Crown prerogative, foreign affairs and high policy and risks putting Canada in breach of its international obligations” (Koring, 2009). In fact, the blacklist is easily overcome with a routine exemption. Abdelrazik began his journey home on the 30<sup>th</sup> day after a ruling of a federal court judge ruling that the Canadian government was in breach of Abdelrazik’s Charter rights and had a positive duty to repatriate him.<sup>38</sup>

We have been arguing that the border security assembly is justified action on action on the basis of the discovery of out of place or time occurrences, the innovative replication of processes (redundant risk avoidance), and the conversion of common information sources into exclusive knowledge resources. In this example we see how both the vertical and horizontal relations of the assembly are finessed for these discoveries, innovations, and exploitations. Discovery slips between national and transnational agencies (UN, US), whose findings may very well align with the preferences of the national agencies. Discovery also slips vertically between the national bodies (Foreign Affairs, CSIS, RCMP), such that the locus of decision-making remains ambiguous. Because the locus is ambiguous or shifty, innovation is a property that also may shift between “lead” agencies. Of course, part of this shiftiness pertains to the movement of information from common sources into exclusive resources. Here, there was an implicit claim by Foreign Affairs and International Trade Canada (DFAIT) that “trumped” a security clearance based on information that is ostensibly more exclusive than that of CSIS or the RCMP. In this case, the “old normal,” the rule of law as interpreted through the Canadian Charter of Rights of Freedoms and the federal judiciary, was able to assert pushback, a consequence, if it holds, that clarifies the boundary in just the way that assembly agents may have wished to avoid. Nonetheless, the gambit an effort to assert decision-making that is “absolute and independent of content.” Here it can be added that intelligence serves as the *sine qua non* of that sovereign capacity of government.

## Discussion

The cross-border detection/inspection regime, consisting of instruments for insertion and subtraction, is predicated on the necessity of the sovereign exercise, but its applications do not cease with the exercise of sovereign power. It remains the case that, under the auspices of “the border,” rights are converted into authorities, mobilities into territorialities, and ambiguities into certainties. However, as an instrument of conversion, the border is a zone of exception that has, with the sovereign itself, been retemporalized, reterritorialized, and reauthorized. Mobility, as purposive action or enterprise across space, both challenges and reconstitutes the territorial fix, dominion, or sovereign utility.

Reviewed from the point of view of effects, the border instrument codes flows of information and inserts positive and negative attributions. Zones of detection are insertion points that stratify the flow of whatever from wherever. The unfolded border enables the conversion of “raw data” (data elements) into advanced signals for intelligence operations. Discrete data elements are then traced through the

intelligence grid in order to code them, that is, to establish structural couplings and see if they make a difference.<sup>39</sup> This process takes time without taking time away from the material flow because it occurs within the expanded frontier of intelligence operations. Signals that are not received within the temporal security horizon or in the appropriate condition, result in exclusions, or “turn backs” at the border. Stratifying matter and information thus enables the conditions for intelligent controls to be developed alongside material or visibility controls.

It is in the space-time of intelligence operations that signals are combined into the intelligence objects called “lookouts.” Lookouts serve as *indices of risk* and direct the attention to codes in the flow. They produce distinctions and differentially organize and order matter and information to indicate and extract contraband from the flow. Contraband<sup>40</sup> is indicated through response to questions, through intelligent lookouts, and through secondary searches in the zones of detection through the organization of visibility and the order of words. Contraband is the negative encoded object or that which is subject to the ban or the exclusionary decision. It provides a structure to the relation of the ban and is a measure of both the knowledge competency and capacity of the sovereign. Lookouts encode an excess signification for the sovereign decision and its continued rehearsal albeit in a capacity limited by the risk-managed frame. While unfolded in the expanded spatial temporal frontier, the border prevents the piling up of matter and information but facilitates the piling up of power-relations (sovereign, disciplinary, and risk-based).

In this respect, the border involves the “folding” of liberal governance. The folding consists in the convergence of two planar flows, one material, one informational, and the establishment of conjunctions of the stacked or stratified flows (of what can be seen and what can be said). The surface of the material plane comprises observable dimensions and representations and what is made visible through surveillance machines, inspection protocols, and the various orchestrations of the spectacles of liberal rule, including juridical relations, observance of rights, etc. The surface of the bottom plane comprises information that moves through a subterranean network of agencies and comprises the security intelligence substrate of the frontier assembly. Information tracks toward the border ahead of the matter flows of both people and goods where it is captured, sorted and coded, tagged with caveats, and pushed to agencies throughout the frontier. The conjunction of flows serves as the measure of the security-value of the assembly and of its convergent governance strategies.

## Conclusion

For many decades, the Canada-US border has inserted itself and subtracted its due from the flow of coded goods in motion in terms of tariffs and duties.<sup>41</sup> Tariff extraction, as a form of negative power governing the border, has been supplemented by a new emphasis on contraband.<sup>42</sup> The primary aim has undergone a transformation from a concern with the extraction of tariffs based on the value of goods to the recording of actionable differences based on the (threat/risk) value of contraband. In this regard, the border is a mechanism for *capture and insertion* or negative and positive power. In particular, it provides a set of tools for the sovereign capture or enabling of capital flows so that they may be subject to tariff, redirection,

or requalification and for the capture of and insertion into labour flows similarly in the negation and production or management of labour pools.

However, the contemporary border produces a margin of uncertainty (danger/risk) and a site for sovereign multiplications. Rendered not in terms of traditional tariffs or duties subtracted by a singular sovereign competence and capacity, but in terms of the mobile and multiple array of decision-makers, the border mechanism also remains a policing capacity, or a means of protecting or asserting sovereignty for its own sake. In this regard, the border stands in for the idea of liberal rule as rehearsal of or on limits (Chappell, 2006; Rose, 2007). The border as a contact point or insertion of the liberal enterprise and rule is a productive enterprise. It affords exceptional practices of insertion, registration, and extraction. It affords the uptake of information that then becomes the “content” of exclusive sovereign knowledge advantages. It is a site for selective feedback, where selective representative “petty spectacles” may be launched to “prove” the mode of contact and maintain it for the mode of government that is presumptively exercised (liberal democratic), as for instance in “border closures” or “contraband displays.” It is exploited to prove the capacity of the sovereign to know and to act.

There is tension in the use of the border in these means and ends. On the one hand, there is an expansion of frontier processes, practices, and mentalities to an expanding array of sites. As we have seen, information tolls are pushed out. Bordering-at-a-distance means that security governing agencies are enlisted to private sector partners in the development and maintenance of spatially diverse and reterritorialized border zones located throughout the supply chain. Private “partners” do more of the implementation of border security<sup>43</sup> and pay an increasing financial and information-toll through their participation in CBSA Security Profiles.<sup>44</sup> Production zones of suppliers, of parts and other finished products are encompassed and surveyed into increasingly fortified zones (with newly developed conditions of visibility and organizations of matter). In exchange for coding and controlling the flow of people and goods through their facilities, companies are promised expedited access across nation-state boundaries and to world markets.

On the other hand, there is the formation of parallel information norms. The conjunction of security surveillance and security narratives form the basis for the intelligent controls and precautionary aims associated with these border efforts. The assembly of border security agencies and the decision-making practices that unite them may be understood in terms of “making counter-law” (Levi, 2009) in a response to unease, catastrophic uncertainties, or a breakdown in the logic of compensation. However, we have advanced an alternative reading. We find the predicate in the clash of economy and sovereignty, specifically in the demand for *both* prediction and uncertainty, or in the ambiguity that is essential in the relationship (aka liberal politics) between the flow of sovereign and commercial enterprise. Thus quotidian decision-making involves the allocation of common and exclusive knowledge about security, the contest over the attribution of out of place or time occurrences, and the development of practices in the constant attempt to produce a “new normal.”

Ambiguity and access are key: ambiguity inasmuch as there is a contest over decision-making authority; access inasmuch as reconfiguring frontier government into “a new normal” requires enabling agencies and agents to broker new arrangements: border security, the “war on drugs” and similar policy initiatives may

be understood as a moving intermediate target. The object is not immunization against risks or harms, be they from illegal goods or persons. The object is the continual *re-tooling* of quotidian decision-makers so that the very *chance* of a competent sovereignty that has the capacity to act and re-enact the ambiguous registrations of existential dangers is kept alive and kicking.

## Notes

- <sup>1</sup> Both authors contributed equally to the theoretical and substantive development of this paper. Lead authorship rotates with each paper derived from our research collaboration. The authors would like to thank the Social Sciences and Humanities Research Council of Canada for its support of research for this paper. We would like to thank two anonymous reviewers and the editors of *Studies in Social Justice* and all the participants in the workshop in October 2008, also supported by the Social Sciences and Humanities Research Council. The authors would also like to recognize and thank our research assistants, Catherine Brooke and Kara Brisson, for their significant contributions toward the completion of this work.
- <sup>2</sup> Some notable recent works include Ericson (2007), Ewald (2000, 2002), Beck (2006), Levi (2009), and O'Malley (2008).
- <sup>3</sup> Since this is a very difficult area to study in term of gaining access to security personnel and security strategies, a chain-referral technique was used to enable the authors to trace the dimensions of border governance. This ascending methodology provided us with an expanding set of potential contacts and proved especially useful in identifying and studying the interactions among the various agencies involved with border security. In accordance with ethical guidelines, and to protect the confidence of our interviewees, we have made the transcribed interviews anonymous by removing all identifying information associated with placements in departments, agencies, programs, and projects. In accordance with the national Tri-Council Statement on "Ethical Conduct for Research Involving Humans," this study received ethics clearance by the University of Windsor's research ethics board.
- <sup>4</sup> "[P]olitical power always implied the possession of a certain type of knowledge. By the fact of holding power, the king and those around him held a knowledge that could not and must not be communicated to the other social groups. Knowledge and power were exactly reciprocal, correlative, superimposed" (Foucault, 2001, p. 31, cited in Wickham, 2008, p. 35).
- <sup>5</sup> Other diagrams of power have different functions such as care, training, punishment, etc.
- <sup>6</sup> According to Wickham, "limitless authority can only be maintained if it is prepared to limit itself; the more it checks and limits itself, the stronger its potential power, a power it needs to display on fewer and fewer occasions" (2008, p. 36).
- <sup>7</sup> The frontier/border is also a site of "humanitarian governance" (see Walters, forthcoming).
- <sup>8</sup> The fold modulates the norm and the exception in a "zone of indistinction" (Dean, 2007, p. 94). Sovereignty enters into zones of contact with the productive powers of contemporary society (p. 157.) Sovereign power is delegated to agents and derogated within certain domains (p. 157).
- <sup>9</sup> A more recent poll found that only 42% of Canadians believed that Canada "probably will" exist in 25 years (Macleans-L'actualité (CROP) poll, Macleans Magazine, September 9, 2002).
- <sup>10</sup> It might be said that as pertains to the discourse of the border, Canada's rhetoric has been more liberal and less influenced by deterrent protectionism than that of the US. For Canada, there has been a strong affirmation of its unique government institutions, most especially the Canadian Charter of Rights and Freedoms and also, recently, its own "brand" of security priorities that were made official with the publication in 2004 of its first national security strategy document *Securing an Open Society* (Canada, 2004). Canadians have taken pride in multi- or bilateral relationships (Hristoulas, 2003, p. 24), and have tasked the Department of Foreign Affairs and International Trade and supported the Canada Border Services Agency (CBSA), the Ministry of Transportation, the Canada Food Inspection Agency, and federal, provincial and municipal law enforcement as well as the agencies invested with the national

security portfolio with what might be termed a holistic approach to the border.

- <sup>11</sup> Ressay was questioned on the American side a customs inspector “on suspicion” and given a secondary inspection whereupon it was discovered that he had bomb-making equipment in the trunk of his car and was then found to be plotting an attack on LAX.
- <sup>12</sup> In Canada after the Kaufman Commission, the Campbell Commission, and in anticipation of the Air India Commission. In the US following steps to glean advance information of foreign airline passengers.
- <sup>13</sup> That report was commissioned in 1998 by the U.S. Congress and led by Senator Gary Hart and former senator Warren Rudman on strategic challenges that the US would face. The Report made recommendations with respect to how the border should be rethought including an insistence that there be an information and organizational revolution that would balance trade with security, openness with information awareness. In particular, it called for the borders to be pushed outward in a “layered defence” that involved information sharing with foreign countries to analyze threats before they arrived at the “last line of defence.” It also involved responsabilizing private industry in the duty to avoid being unwitting conduits of contraband or illegal entries and exits. Lastly, it called for investments in intelligence gathering and sharing among government agencies to enhance the targeting of high risk goods.
- <sup>14</sup> It is noteworthy that already by 2000, under the auspices of airline security, the US was getting APIS data from 67 airline carriers or 2/3 of all incoming air passengers into the US (Alden, 2008, p. 29) and that this system of advanced information also applied to domestic flights, allowing all 19 terrorists to be identified within 45 minutes of the attack (p. 32).
- <sup>15</sup> “The imagination of dangers as catastrophic and the precautionary measures needed to deal with their radical contingency... have led to a particular deployment of exceptionalism” (Aradau & van Munster, 2009, p. 11).
- <sup>16</sup> Now headed by the U.S. Customs and Border Protection, Homeland Security, United States Food and Drug Administration, United States Department of Agriculture, state and federal Departments of Transportation, U.S. Department of Transportation and state, municipal and federal law enforcement and supported by a pronouncements about a “new world order” and “paradigm shift” the United States seized upon the border as a front in the global war on terror and thus also as a vehicle for the transitioning of law enforcement, military, and intelligence instruments into a powerful array of countermeasures.
- <sup>17</sup> The process requires customs brokers to enter 69 required data elements into the CBP computer system. “Once you add customs broker transaction times, the pre-notification time can increase to two hours . . . . In some instances, the time between submitting the shipment information to the customs broker and the customs broker then submitting the information to CBP can take up to three hours” (Transport Canada, 2005). In addition, the U.S. Public Health Security and Bio-Terrorism Preparedness and Response Act of 2002 require that the U.S. Food and Drug Administration receive prior notice of two hours for food imported or offered for import into the United States (Transport Canada, 2005).
- <sup>18</sup> “The reason for this is to allow risk management targeting and to permit a red light or a green-light decision upon arrival [at the border]” (Transport Canada, 2005).
- <sup>19</sup> Western Hemisphere Travel Initiative (ID initiative for border crossing), Intelligent Border (Ontario), NAFTA, Land Pre-Clearance Initiative (from Security and Prosperity Partnership-extraterritorial location of customs-Canadian in US and vice versa), U.S. VISIT, National Security Entry-Exit Registration System –requiring all persons from men aged 16-45 from Muslim countries to be fingerprinted and photographed (now U.S. VISIT does same), Border Information Architecture—to coordinate how information technologies get used and how to whom it is sent, legislation including Bill C3 mandating any infrastructure (bridge to be approved by federal government), S. 6 of the Customs Act.
- <sup>20</sup> Developed under the Fast and Secure Trade (FAST) harmonization scheme.
- <sup>21</sup> “The ACI program is about providing CBSA officers with electronic pre-arrival cargo information so that they are equipped with the right information at the right time to identify health, safety, and security threats related to commercial goods before the goods arrive in Canada” (CBSA 2009a).
- <sup>22</sup> Security production involves the stratification of flows and their conjunction (as a form of normalization, organizing, ordering). Primary stratification involves distinguishing discursive formulations and non-discursive formations. These strata of expression (speaking) and visibility (thinking) are irreducible. “The statement does not relate to the

visible (as presumed by propositional logic), and the visible is not a mute meaning that must be realized in language (as in phenomenology)" (Deleuze, 1999, p. 64; cited in Juniper & Jose, 2008). Statements and visibilities are governed discrete conditions namely, the conditions of enunciation (what can be said) and conditions of emergence (what can be seen/imagined). Stratification and the conjunction of strata (of statements and visibilities) are rendered by power relations to produce indices (of risk/threat in this case). Indices are force relations that direct attention and action toward particular emergent objects.

<sup>23</sup> *Customs Trade Partnership against Terrorism* is a program equivalent to PIP and is administered by U.S. Customs and Border Protection.

<sup>24</sup> The CBSA refers to staff involved in using advance information to identify travelers or goods posing potential risks as "targeters."

<sup>25</sup> According to the Treasury Board of Canada Secretariat's website:

One of only two automated risk-assessment systems in the world, TITAN™ provides the CBSA with the ability to automatically screen all marine commercial shipments for indications of risk prior to departure for Canada; marine carriers no longer submit paper documents as shipments are assessed electronically. By using risk management as the guiding principle for border management, TITAN™ identifies high- or unknown-risk cargo while promoting the flow of legitimate low-risk trade. This provides the CBSA the time to assess risk more effectively and to make informed decisions on directing resources to shipments posing the highest risk to Canada's health, safety and security. TITAN™ forms the cornerstone of CBSA's risk-management regime. ([http://www.tbs-sct.gc.ca/rma/dpr1/04-05/bsa-asf/bsa-asfd4502\\_e.asp](http://www.tbs-sct.gc.ca/rma/dpr1/04-05/bsa-asf/bsa-asfd4502_e.asp))

<sup>26</sup> As one officer described the Joint Vessel Inspection Team program: "Transport Canada officials and U.S. Coast Guard go on a ship in Montreal and do a security inspection if it is going into the Great Lakes. Once this ship is checked, it is entered into our database; it is entered into the U.S. missile database; U.S. Coast Guard has access to it; Transport Canada has access to it, so when the ship comes in, we can opt if it's already been checked. But the Great Lakes MSOC [Marine Security Operation Center] and the MSOC East, they then can start profiling ships and from that profile we can say: 'I think we are going to board that ship; that's a ship of interest.'"

<sup>27</sup> According to Amoores (2007), a form of watchful politics underscores this monitoring—a constantly vigilant mode of looking that produces a "ubiquitous border."

<sup>28</sup> In terms of physical searches, cargo is subject to an on-the-fly inspection process, where the truck moves through a *Vehicle and Cargo Inspection System* (VACIS). The system is self-described as a "state-of-the-art technology that assists officers in examining dense freight in order to detect contraband, weapons, and other potentially dangerous goods." Using a "Cobalt 60 energy source" VACIS emits a gamma-ray beam that produces an image similar to X-ray systems. Using this optical machine, VACIS operators view radiographic images of goods to determine the consistency of the commercial cargo image with the order-words of the document manifest." VACIS can "see" through 6.5 inches of steel to determine the consistency of the object in terms of what is seen and what is said about it and so in the inconsistency indicative of the presence of contraband, disorder, or matter out of place. According to a senior transport official "it's like an MRI, I mean, it's just amazing—it gives you a three dimensional view of everything that's in there. They can pick up piles of marijuana in the middle of a truck . . . if there are people hidden in the truck, they see that too."

<sup>29</sup> Nexus reterritorializes the borders in that it also enables the collection and analysis of information in advance of the border. The program for "pre-approved clearance" involves, background checks (criminal, immigration, etc), a personal interview, fingerprints, iris scans, facial recognition, and RFID cards. The Nexus RFID Card - computer chip containing a reference number to a data base, is imbedded into the card, along with tiny RFID antenna. "The Nexus card holder presents the card to an RFID reader mounted a few feet in front of the custom agent's booth. The information associated with the reference number is instantly displayed on a computer monitor inside the customs agent booth. If the

photo displayed on the monitor is that of the driver and passengers, they are authorized to proceed” (RFID, 2009). As of March 1, 2004 Niagara Region Whirlpool Bridge was reserved for NEXUS approved travellers only (Niagara Falls Bridge Commission, 2009).

<sup>30</sup> Border lookouts (or flags) also encompass issues of food security, as one official noted: “If it’s commercial, it could be the type of goods that we flag; sometimes we have concerns such as the salmonella outbreaks in spinach. We can target all spinach imports from California, and we could flag them for a more detailed examination.”

<sup>31</sup> According to the senior CBSA officer, lookouts are “continually reviewed to make sure [that they] accurate and relevant, that we’re not just continually targeting someone for no reason.”

<sup>32</sup> According to a senior CBSA official, lookouts shared under circumstances such as “if we knew there was a threat to the US. For instance, a lot of times we’ll be investigating a conspiracy that involves importing contraband to Canada and exporting contraband to the US. As a result or our investigation, we might discover that.” In addition, generic information about patterns or MO are also shared: “We obtain information from homeland security, and we share our information with homeland security, in the generic sense; you know, we’re seeing an increase in this, this, and this.”

<sup>33</sup> A senior border officer described the complex blending of sovereign, enforcement, and regulatory authorities as follows: “All of the information is vetted for intelligence purposes to find out if that ship or the containers on that ship are a threat. . . . If we feel the ship is a threat, we will go to a “Priority 1,” which is an armed boarding. DND will send out a ship with RCMP enforcement teams, most likely tactical teams or ERT teams, Emergency Response Teams, they will board the ship just prior to getting into Canadian waters. You have to understand, as we are doing that, the Americans are also monitoring us. The other [Priorities,] 2, 3 and 4, are more inspection processes that we would take against the ship. For instance the ship is coming from an area that we are not so sure . . . for instance Darfur. Any ship that comes in from Darfur we pay attention to, from a regulatory point of view, not from an enforcement point of view . . . we are the regulatory group. Because of our delegation of authority by the Minister, we do not need warrants to go on ships. We don’t even need reasonable grounds to go on ships. We can go on a ship and do security inspection.”

<sup>34</sup> Agamben also insists on an ambiguity in the state of exception where the connection between space (territorialization) and order (law/norm) breaks down (see Dilken, 2002, p. 291).

<sup>35</sup> As per Donald Rumsfeld, this is a category of unknowns that, due to a lack of knowledge, may fail to categorize.

<sup>36</sup> As in Walters (forthcoming) we envision the assemblage as a complex arrangement of forms of reason, forms of authority, and technologies of government (see also Haggerty & Ericson, 2000).

<sup>37</sup> This is not to suggest that policy-making, because it is subject to the required democratic processes, is sufficiently democratic.

<sup>38</sup> Indeed, the duties of the Canadian government are stipulated. Canadian legislation includes section 19(1) of the Immigration & Refugee Protection Act, which states that “Every Canadian citizen [ . . . ] has the right to enter and remain in Canada [ . . . ] and the officer shall allow the person to enter Canada if the officer is satisfied [ . . . ] that the person is a citizen or a registered Indian” and section 6 of the Citizenship Act which states that “A citizen, whether or not born in Canada, is entitled to all rights, powers and privileges [ . . . ] to which a person who is a citizen under paragraph 3(1)(a) is entitled [ . . . ].”

<sup>39</sup> In these systems, the assumption is that it is possible to “build a complete picture of a person,” to quite literally see who they are before they board a plane or transfer money, by relating them to the norms of a wider population and identifying their degree of deviance (de Goede, 2006; cited in Amooore, 2007).

<sup>40</sup> Contraband, in the broadest sense is of that which has been banned, and the activities that render it from the flow, tie together territorialization and coding, matter and information, the non-discursive and the discursive as reciprocally related actions. Contraband and its related activities serve to produce and reproduce the territorializations within which the ban holds (see Agamben, 1998, p. 29). These exceptions/subtractions are now made as a continuous mode of action on the flow (i.e., by “control”) by petty sovereigns (through regulatory or administrative functions).

<sup>41</sup> As one official noted; “Twenty or thirty years ago, there wasn’t a whole lot of checking citizenship or looking for contraband at the borders; it was: “how many things have you

bought that you need to pay taxes and duties on.” Another senior official characterized the border as a system of accounting: “The only system was the accounting system. They want to pay you 120 dollars? We put the 120 dollars here [in this column], so at the end of the day we added how much we took in.”

<sup>42</sup> Part of the transformation of border practices is explained by the development of new trade policies. As one senior official explained, “One of the effects of the Free Trade Agreement with the United States is, especially in Windsor [the major land border for trade with the US], is that most of the trade that we are talking about over this border is U.S. origin and is no longer dutiable... If I was in Vancouver, a lot more of the trade is dutiable.”

<sup>43</sup> This is consistent with Dean’s (1999) analysis of neoliberal governance.

<sup>44</sup> It is estimate that the impact of the U.S. border security measures on the Canadian trucking industry is estimated to range from \$179 million to \$406 million (Transport Canada, 2005).

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