

# MOTOR TELEPHONY: POLICY RESPONSES

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## Introduction

In many respects, mobile phones have fitted into the folds of everyday life with minimal fuss. Building on the developments and experiences of telegraphy and landline telephony, people's use of the device to communicate with others at a distance has mostly been a natural and taken-for-granted progression. Yet the emergence and widespread adoption of mobile telephony has also been accompanied by unforeseen consequences. The mobile phone's use in vehicles and the effect this has on road safety is one example, and forms the focus of this paper. Tragic road deaths resulting from phone use, media coverage and an increasing amount of research attention have created concern and pushed the practice onto the public policy agenda. A number of questions have been posed. How does phone use affect driving performance? Is it a serious road safety issue? What is the best way to manage the risks? Should mobile phone use while driving be legally banned? And, if so, should both hand-held and hands-free be prohibited? Or is self-regulation a more appropriate strategy? As we explore the rationales, processes and deliberations of government in grappling with the regulation of motor telephony, we see the answers are not straightforward. This is a controversial and complex area of regulation, one which involves a diverse array of groups with different interests and motivations.

## Regulating mobile telephony: Developing a new perspective

This issue presents us with a valuable opportunity to observe some of the tensions and complexities that a new technology creates, and to study some of the particular and distinct connections between mobile phones and cars. I have termed this relationship *motor telephony*. Motor telephony presents new challenges, and new rules have been made and implemented as a result. In this sense, my work builds upon the growing scholarship looking into mobile phones. Rich Ling, who has written extensively about the adoption and use of mobiles, states that:

the newness of the device means that to some degree we are making up the rules as we go along...Beyond providing insight into innovation, it affords us the chance to see how the innovation is accepted and how it causes the revision of existing values and practices. It allows us to see who is influencing the definition process and, in effect, whose toes get stepped on. (2004, p. 22-3)

An ever-growing academic interest in the sociological dimensions of mobile phones has centred on when, where, how and what communication and interaction they afford. Hot topics include their effect on social relationships, the blurring of public and private boundaries,

changes in how time and space are experienced, the cultural and symbolic meanings of mobile telephony, and developing a typology of user groups.

However, while the aforementioned literature offers important insights, there is a need to broaden the scope of inquiry in order to more thoroughly encompass the ethical, social, legal and political dimensions and to interrogate the ‘relationship between “use” and “non-use”’ (Goggin, 2006, p. 39). Written predominantly within a sociological and psychological framework, contemporary work tends to emphasise the mobile’s ‘anytime, anywhere’ characteristics and seamless use. Yet the wider political, economic and social factors that regulate, limit and control its use, as well the disruptions this technology causes, have not been fully probed. When areas of tension are discussed, the focus has typically been too narrow. Talking about the emergence of the device and its uses in everyday life, Fortunati’s insights are instructive:

The use of the mobile in public spaces has taken concepts, norms and laws by surprise, catching them on the completely wrong foot. If up to now the approach developed by sociologists has been to analyse how good manners in social relations had been changed so radically by the use of this communication instrument, the time has come to change direction. The problem in fact is much more complex: it is not only a question of aesthetics, of good behaviour, but also an ethical, legal and political problem. (2002, p. 522)

In turn, this paper intends to broaden the scope of enquiry of current research by detailing some of the political and legal dimensions of regulating mobile phone use while driving. Indeed, unpacking the role of government is crucial to understanding motor telephony. The development and use of both cars and phones has been, and is, framed by governments at every level. They have supported, fostered and funded mobile telephony (for example, allocating frequency spectrum and providing financial incentives) and the car industry (for example, building roads and supporting manufacturers), in turn encouraging the widespread adoption and use of both of these technologies. At the same time, emerging empirical data, along with accidents associated with operating a mobile phone while driving, has raised concerns over the broader impact on traffic safety. In this context, governments have a duty to protect citizens from harm. Goggin alludes to such a tension: ‘governments have had to manage a number of conflicting roles and perspectives on technology, reflecting different views and interests of sections of the populace as well as different ministries’ (2006, p. 113). As we will see, there are distinct challenges involved in responding to this tension.

Broadly speaking, a variety of social policy responses have been proposed, debated, rejected and implemented in terms of addressing the effects of mobile phone use in the car. These include legislation, fines and penalties, as well as appeals to personal, social, moral and ethical responsibility. In Foucault’s conceptualisation, the role of government concerns the ‘conduct of conduct’, which includes both ‘governing the self’ and ‘governing others’ (Lemke, 2000, p. 2). Government, Foucault suggests, is ‘a “contact point” where techniques of domination – or power – and techniques of the self “interact”’ (Burchell, 1996, p. 20). Along the lines of Foucault, I classify regulatory strategies into two broad categories: *institutional* and *social*. *Institutional* regulation refers to the restrictions imposed and enforced by governments, police and state authorities (for example, legislation, traffic regulations, fines and penalties). I define *social* regulation as measures which have no legal imperative, but instead rely on personal responsibility (for example, courtesies to be observed while driving,

moral expectations of others). This distinction serves as a useful tool in exploring the various methods which have been called upon to modify driving habits.

The aim here is to examine the introduction of legislation and prohibitions, showing how the practice of motor telephony is subject to an existing legal infrastructure concerning management of the traffic system. Aside from describing the legal mechanisms that specifically address phone use in vehicles, I consider some of the political rationales and debates, as well as pragmatic considerations, which have influenced the strategies adopted by various jurisdictions throughout the world. Investigating these influences helps differentiate Victoria's approach from that of others.

## Victorian political context concerning road safety legislation

Laws and regulations are commonly adopted in order to encourage and reinforce safe driving practices and modify driver behaviour. Their development, introduction and implementation, however, is not always a clear-cut, linear or rational process, and there is an often complicated trade-off between the personal freedom afforded by the car, and regulatory interventions that aim to reduce crashes and promote safe driving. 'The social goals of maximising mobility and maximising safety', says Johnston, 'are frequently in conflict' (1989, n.p.). This balancing act is handled in various ways by different countries and between the Australian states and territories. In general, Victoria has a record of proactive and determined legislative action addressing road safety, being the first jurisdiction in the world to introduce compulsory wearing of crash helmets for motorcyclists (1961), compulsory wearing of seatbelts (1970) and random blood alcohol tests (1976) (Joubert, 1979; Davison, 2004). Other countries have taken a different approach, focusing more on education and self-regulation.

Victoria (and Australia) has been more proactive than other jurisdictions in introducing legal measures to tackle road safety issues. In political terms, the United States has traditionally held individual rights in higher regard than Australia. According to Costar, 'rights have never occupied a privileged place in Australia's political culture' (symbolised by the absence of a bill of rights), whereas in the United States the Bill of Rights' purpose was to protect people 'by ensuring that a democracy would not infringe individual rights'. As a result, citizens have come to regard such rights as 'the highest political good' (2006, pp. 3-5). These differences in political reasoning have influenced road safety policies in a real and observable manner. As an example, the United States and United Kingdom both took until the 1980s to introduce mandatory seatbelt laws, more than a decade later than Victoria. In their analysis and comparison of five countries' experience of such laws, Campbell and Campbell point out that eight attempts in the United Kingdom at passing mandatory laws had been unsuccessful and 'opponents of the law were mainly concerned about the perceived loss of individual freedom, as has been true in the United States' (1986, p. 35). As the next section shows, a similar trend is evident in phoning and driving laws, with Victoria pioneering legal measures addressing the practice.

## Phoning and driving legislation in Victoria

As far back as the 1950's, Victorian legislation addressed motor telephony. Regulation 193 *Motor Car Regulations 1952* stated:

Except with the approval of the Chief Commissioner the driver of a motor car shall not while the motor car is in motion use any telephone microphone or any other similar instrument or apparatus in such motor car.

The wording of the law remained virtually the same up until the mid-1980s, and although these laws had been in existence for over three decades, Victoria is credited as the first major jurisdiction in the world to specifically ban hand-held phone use in cars in 1988 (Cain & Burris, 1999; Hahn & Dudley, 2002). Regulation 1505 of the *Road Safety (Vehicles) Regulations 1988* stipulates that:

- (1) Except with the approval of the Road Traffic Authority and as provided by sub-regulation (2), the driver of a motor vehicle must not, while driving the vehicle, use a hand held –
  - a. telephone
  - b. microphone
  - c. similar instrument or apparatus– in the vehicle.
- (2) Sub-regulation (1) does not apply to the driver of a vehicle that can be used as an emergency vehicle.

Up until this point, the regulation was in practice limited to a small number of people using two-way radios and was a rarely encountered or prosecuted offence (Road Safety Committee, 1994). As mobile telephony grew in popularity during the 1990s, phone use in cars became much more common. In turn, activity and discussion began to centre on enforcement and penalties associated with the regulation. A Victorian parliamentary Road Safety Committee report into the demerit point scheme warned that the ‘rapid expansion of car and mobile telephones has created a new situation and there is growing community concern about the road safety implications’ (1994, n.p.), subsequently recommending that using a hand-held device incur a fine as well as three demerit points.

## Policy debates

As evidence of car crashes and fatalities caused by use of hand-held phones mounted during the 1990s, governments have been pressured by various groups (including opposition politicians, road safety organisations, academic institutions and members of the public) to increase penalties and create more effective deterrents. Andrew Brideson MP, for example, called on the state government to ‘implement harsher monetary penalties for drivers who use handheld mobile phones’ (*Road safety: Mobile phones*, 2003, p. 1248). However, the growing number of empirical studies attempting to document the road safety effects was fragmented, and there remain large gaps in knowledge. This makes it hard to justify regulatory changes. VicRoads<sup>1</sup> Road User Behaviour manager describes the paucity of quality information as ‘an area of frustration for many of us policy developers’ (Road Safety Committee, 2005, p. 2). The former general manager of road safety made the same point:

we do not have reliable research evidence [concerning the number of crashes in Australia where mobile telephone use is a contributing factor]. That is a problem, because without that information it is very difficult to formulate recommendations. There is plenty of research that shows it has a detrimental effect on driving. We know that retrieving and sending text messages does that as well, and we know that mobile phone use is associated with a higher risk of crash involvement – a fourfold increase.

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<sup>1</sup> VicRoads is the registered business name of the Roads Corporation, a statutory corporation within the Victorian government infrastructure portfolio. Its purpose is to manage the state’s arterial road network, implement road safety strategies and programs, and provide vehicle registration and driver licensing services.

However, the problem in linking that to actual crash numbers is there. (Road Safety Committee, 2005b, p. 4)

As we can see here, caution remains when it comes to interpreting research and making further alterations to the law, as shown in the debate around whether to prohibit hands-free phones while driving.

In recent years a growing chorus of researchers, road safety advocates, police and members of the public has called for an eventual ban on hands-free use. Responding to the findings of McEvoy et al. (2005) who found no difference in crash risk between hand-held and hands-free, the Victorian Transport Minister's spokesperson said:

previous research into mobile phone use has indicated...hand-held use is significantly more dangerous than hands-free...however, the Government is prepared to look at any new research which may provide insight into how the road toll can be further reduced. (Silkstone, 2005)

In August 2005 the government changed its tack, proposing to prohibit all mobile phone use for learner and probationary drivers as part of a graduated licensing scheme (VicRoads, 2005). This received a mixed reception.

On the one hand, the public and a range of stakeholders were generally supportive.<sup>2</sup> Other organisations, such as the Royal Automobile Club of Victoria (RACV) and Australian Mobile Telecommunication Association (AMTA), adopted a more conservative approach. The RACV (2005) called for more research into the associated risks before introducing such measures. General manager Ken Ogden thought there was insufficient evidence to justify a restriction of hands-free phones, describing it as 'a fairly draconian measure' (Road Safety Committee, 2006, p. 3). The Australian Transport Council (2005) echoed this view, stating that 'evidence is accumulating that use of hands-free units also involves a significant increase in crash risk but there is debate about the extent to which further legal restrictions would reduce serious crashes'.

Of course, decisions about legal regulations are not determined solely by empirical research. They need to be viewed in a broader context which situates mobile phone use amongst other traffic safety issues, as well as other regulatory options (such as education and driver training). Some members of parliament, for example, have expressed a reluctance to ban the practice in the context of other driver distractions. Bruce Atkinson wondered whether using a phone was any more dangerous than reading a street directory, eating or drinking, suggesting caution when prescribing 'one behaviour as a dangerous situation' while excluding other potentially risky behaviours that may 'equally contribute to accidents', while John Vogels questioned the broader repercussions of 'bringing in regulations for everything' in terms of

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2 According to VicRoads senior policy advisor Russell Scott, copies of the discussion paper were sent to stakeholder organisations by the Minister for Transport inviting them to respond to it and the proposed measures. These included members of Victoria's Road Safety Reference Group, youth and community organisations, local government, schools, TAFE colleges, universities, parent groups, emergency services, medical organisations, legal organisations, and industry groups with an interest in road safety issues. The public comment given in confidence could not be provided and, in turn, I cannot be specific about the feedback received from these groups. Nevertheless, the responses did indicate widespread support and stakeholders were generally positive about the proposed measures (VicRoads, 2006).

‘making life more difficult’ (*Road Safety (Amendment) Bill: Second reading*, 2003, pp. 1573, 1585).

There are also pragmatic limitations concerning the enforceability of legislation. In opposing the Victorian government’s proposal to restrict hands-free use, the AMTA’s chief executive officer Chris Althaus declared the association:

Would not support any recommendation to ban the use of hands-free mobiles by P-plate drivers. The difficulty of enforcing a total ban would make it unworkable and may lead to young drivers taking risks to use mobiles surreptitiously to avoid detection. (AMTA, 2006, p. 1)

This comment alludes to the fact that seemingly beneficial controls may lead to unintended outcomes. It also hints at another important factor: the need to gain a basic level of community acceptance. As Assistant Commissioner Bob Hastings of the Victoria Police put it:

if you are seeking compliance, then you have to take the community with you. I am not sure just hitting them over the head all the time is the best way to go, and saying, ‘You cannot do this’. (Road Safety Committee, 2005a, p. 16)

In the same way, David Healy, general manager of road safety at the Transport Accident Commission (TAC), contends that it is important to adopt a ‘staged approach’. He says that ‘it would be important, before considering a total ban, to educate the community about the level of risks associated with any mobile phone use while driving’ and to encourage voluntary compliance. Then, ‘once the community understands and accepts the dangers...consideration could be given to a wider ban’ (TAC, 2005, p. 16). In turn, the Victorian government has invested in advertising in order to foster community acceptance of current bans.

In May 2005, the Road Safety Committee<sup>3</sup> released a report on their inquiry into the country road toll. This provides a useful insight into the process of negotiation, illustrating how legal measures operate alongside other strategies. The inquiry found mobile phones and driving to be a significant issue during extensive public meetings with a broad range of stakeholders (including state government departments, Victoria Police, the TAC, local government, the vehicle industry, road safety groups and the public). Committee member Barry Bishop described the debates as ‘tough’, ‘difficult’ and challenging in terms of striking the right balance in the community (*Road Safety (Further Amendment) Bill: Second reading*, 2005, p. 1267). Although there was a general recognition that phone use in cars was both widespread and risky, suggested methods for tackling the situation differed. Some witnesses had preferred technological solutions, others stronger financial penalties, and many saw educational programs as the best answer. Several displayed a resignation that in-car features such as phones were ‘here to stay’ (Road Safety Committee, 2004a, p. 183), that it was a ‘difficult issue to respond to...in a society where it [mobile phone use] is all pervasive’ (Road Safety Committee, 2004c, p. 815), and that ‘people will transgress if they think they can get away with it...you need other approaches’ (Road Safety Committee, 2004b, p. 776). All told, legal enforcement by itself was not regarded as an adequate solution. As the general manager of road safety at VicRoads put it:

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3 The Road Safety Committee comprises a cross-party representation of Victorian state members of parliament.

I think education offers the best chance of dealing with this because enforcement is very difficult and if we get the community to the point where there is large acceptance of the risks and there is compliance – people decide they will not use the phones in the vehicle – then I think that is the best chance in the short term of getting changed behaviours (Road Safety Committee, 2004c, pp. 815-16).

Recognising drivers' continued use of hand-held phones despite the threat of legal penalties, the report concluded by again recommending increased penalties together with a 'broad education strategy' (Road Safety Committee, 2005c, p. 264). While this appears a sensible and balanced recommendation, it is worth remembering the at-times competing interests of various stakeholders. Certain groups, in particular, the car and phone industries, do not support an increase in legal penalties, but favour self-regulatory approaches. In contrast, police and some road safety advocates are more supportive of broadening prohibitions to include the use of hands-free mobile devices, as well as increasing fines.

In summary, the legal deliberations around mobile phone use in cars provide a prime example of the non-linear trajectory of the policy process. Responding to a question concerning whether legislation is lagging behind technology in cars, VicRoads chief executive officer David Anderson said 'we would prefer to follow a process of "Here is the new technology; what does it mean for us in terms of safety?" Then, "what is the legislative response to that?"' (Road Safety Committee, 2005b, p. 9). This linear progression can be conceptualised in three stages: technology, research and response. A technology becomes available and is adopted by people, research is conducted in order to evaluate evidence of risk and the threat to road safety, and then a response is developed. As the general manager of road safety at VicRoads stated, 'one of Victoria's characteristics over the years has been tweaking the legislation as the evidence provides...we have never really leapt into something without strong evidence' (Road Safety Committee, 2005b, p. 9). Whilst it offers an overarching principle, in practice this logic is subject to a much more fluid and disordered environment. Each of the stages described above are in flux: mobile technology is constantly evolving and changing form, empirical evidence remains unclear, and when legislation has been enacted it has been hard to enforce. In addition, the ways in which various stakeholders respond to these challenges differs.

Having canvassed the deliberations in Victoria, we now move on to compare the state's legislative approach with that of other countries.

## Phoning and driving laws in other countries

Laws similar to those in Victoria (and Australia<sup>4</sup>) have been enacted in a range of countries, although there remains a large discrepancy between when laws were introduced and the level of restriction. While a very small number of nations – such as Israel, Portugal and Singapore – have chosen to ban *all* forms of phone use in cars (Land Transport Safety Authority, 2003), the most commonly adopted strategy is to restrict hand-held use. Table 4.2 shows the nations currently prohibiting hand-held use. The ten year gap between Australia and the next country to introduce similar legislation (Denmark) highlights one distinct variation in how the issue

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<sup>4</sup> In 1999 all Australian jurisdictions agreed to abide by a nationally uniform set of regulations, the Australian Road Rules. Rule 300 addresses the use of hand-held mobile phones: (1) The driver of a vehicle (except an emergency vehicle or police vehicle) must not use a hand-held mobile phone while the vehicle is moving, or is stationary but not parked, unless the driver is exempt from this rule under another law of this jurisdiction (Office of Legislative Drafting, 2003).

has been tackled. Some countries have been reluctant to use legal means to combat the practice and have chosen not to implement any regulations. This group includes Canada, China, Indonesia, New Zealand, Sweden and the United States.

**Table 4.2: Countries prohibiting hand-held phone use while driving, and year of introduction (where known)**

Country	Year ban was introduced	Country	Year ban was introduced
Australia	Uniform as of 2001	Malaysia	
Austria		Netherlands	
Belgium		Nigeria	2005
Brazil	2001	Norway	
Bulgaria		Philippines	
Chile		Poland	
Czech Republic		Portugal	
Denmark	1998	Romania	
Egypt		Russia	2001
Finland	2003	Singapore	
France	2003	Slovak Republic	
Germany	2001	Slovenia	
Greece		South Africa	
Hong Kong		South Korea	2001
Hungary		Spain	
Ireland		Sweden	
Isle of Man		Switzerland	
Israel		Taiwan	
Italy		Thailand	
Japan	1999	Turkey	
Jersey	1998	Turkmenistan	2003
Jordan	2001	United Kingdom	2003
Kenya	2001	Zimbabwe	2001

Source: Dizon (2004a); *Countries that ban cell phones while driving* (2006).

In some countries, bans are enforced in individual states, provinces or cities. New Delhi (India), Mexico City (Mexico), Islamabad (Pakistan) and the Canadian province of Newfoundland are examples of this. The United States typifies such a piecemeal approach. Cell phone related Bills were first listed on the National Highway Traffic Safety Administration's (NHTSA) *Legislative Tracking Database* in 2000 (which documents the tabling and implementation of Bills in each state). Despite constant lobbying and the tabling of a large number of Bills, as of 2005 only three states (Connecticut, New Jersey, New York) and the District of Columbia had passed laws banning hand-held phones that relate to *all* motorists (NHTSA, 2005). More specific limits apply in other states, such as restrictions for

bus, transit and novice drivers. Other variations have included moves to ban cell use in specific situations, such as when ‘turning on to or off of highways’ or moving through school zones or in ‘congested parking lots’, though none of these have been enacted (NHTSA, 2005, n.p). Several states have introduced laws preventing local jurisdictions from regulating cell phone use in order to stop an even more fine-grained set of legal restrictions. According to Matt Sundeen, a policy analyst with the National Conference of State Legislatures, this reflects an attempt to prevent a patchwork of rules within states (Roberts, 2006).

Table 4.3 shows the number of Bills relating to cell phones that were introduced in the United States between 2000 and 2005 pertaining to prohibitions and changes to fines and charges. As the last line indicates, these have had a very poor success rate: from 2000 to 2003, less than 4 per cent were enacted into law. A slight shift is discernible in 2004 and 2005, with this proportion increasing, although more than 90 per cent were still rejected by the various state senates and committees involved.

**Table 4.3: Number of Bills rejected and enacted by type, United States, 2000-05**

Content of bill	2000		2001		2002		2003		2004		2005	
	R*	E	R	E	R	E	R	E	R	E	R	E
Restrictions for bus drivers	3	0	12	0	5	3	4	2	3	2	11	1
Restrictions for novice drivers	0	0	10	0	10	0	12	1	20	0	29	7
Local jurisdictions	0	0	1	1	3	1	2	3	2	0	1	0
Research into cell phone issues	3	1	9	1	3	2	1	1	1	0	0	0
Prohibiting cell phone use and increasing penalties	37	0	69	1	64	0	79	0	37	2	55	1
Tracking information re: cell phones and car crashes	8	0	17	1	10	1	8	0	7	1	5	1
Education of drivers	2	0	2	2	3	0	3	0	2	0	0	0
Establish cell phone use as criminally negligent	2	0	8	0	5	0	3	1	4	0	3	0
Miscellaneous	7	0	5	0	2	0	3	0	1	0	4	0
<i>Total**</i>	61	1	124	6	97	7	105	8	69	5	95	10
<i>Percentage of Bills passed</i>	2%		5%		7%		7%		7%		10%	

Source: NHTSA (2005).

Notes:

In the time period 2000-05, Bills were proposed in all states.

\*R stands for ‘rejected’ Bills, and E for ‘enacted’ Bills.

\*\* The totals are less than the number of Bills shown, because some Bills include two or more types of action (for example, recommending prohibition for novice drivers *and* bus drivers).

These differences raise some important questions which have not been explored in detail. Why does there remain such a notable discrepancy between countries? On what basis have approaches differed?

The differences between jurisdictions in adopting, delaying or rejecting legislation as a regulatory option can be partly explained by the various styles of political reasoning of

different governments and social institutions. In this regard, debates in Western countries (such as Australia, New Zealand, the United Kingdom and United States) have centred on a number of points. Delays in passing specific laws are partly explained in terms of the scope for managing phone use via existing legislation. In the United Kingdom and New Zealand, for example, proposals to introduce new regulations were countered with the argument that drivers using their phones could be charged under current laws (the United Kingdom has since gone on to ban hand-held use, but New Zealand has not). United Kingdom motorists caught using a phone may be charged with reckless or dangerous driving, 'carrying out activities while driving which negatively impact the operation of a vehicle', or failing to maintain proper control of their vehicle (Cain & Burris, 1999, n.p.). Difficulty in enforcing the bans provides an additional disincentive.

Another common argument is that it is unfair to single out mobile phones when drivers are distracted by a variety of activities such as changing the radio station or smoking. According to this perspective, law-makers can't ban every kind of distracting activity. As an example, Jim Champagne from the Governors Highway Safety Association in the United States said: 'It is simply not good public policy to pass laws addressing every type of driver behavior' (Cook, 2006, n.p.). This comment hints at the relationship between personal responsibility and state regulation: To what degree should governments regulate different behaviours within the vehicle? In reference to in-vehicle behaviour, how specific should laws be? Ted Balaker, from Reason Foundation (a libertarian think tank), opposes banning cell phones on the grounds that 'you can embark on a slippery slope. You can ban eating in your car, drinking coffee in your car. You have to ask yourself, "where does this end?"' (Lawhorn, 2005, n.p.). This shows that, at least in the United States, reluctance to infringe upon individual liberties is an obstacle to introducing laws addressing phone use.

## The New Zealand experience

New Zealand provides a useful comparison to Australia, being a nation which has not regulated phone use in cars but is currently debating the issue. The New Zealand Automobile Association (AA), equivalent to the RACV, has advocated the restriction of hand-held phones (New Zealand Automobile Association, 2004a, 2004b) and recent surveys have found support for restrictions: 75 per cent of 750 respondents to a newspaper poll supported banning their use in cars (Dearnaley, 2005) and 63 per cent of AA members were 'extremely concerned' about the issue (New Zealand Automobile Association, 2004a, n.p.). In contrast to Australia, where public opinion has also been supportive of a ban, at this stage no laws have been introduced.

The issue has been bubbling along for a number of years, with a string of Land Transport Safety Authority reports addressing the topic. As part of consultations undertaken in 2002 regarding changes to the *Land Transport (Road User) Rules* (Land Transport Safety Authority, 2002), it was decided not to proceed with legislative restrictions. Reasons given for this decision included:

- Lack of consistency in terms of allowing motorists to hold other objects such as a cigarette or food;
- Difficulties in enforcement;
- Research remaining inconclusive in demonstrating the effectiveness of laws in reducing phone-related crashes;
- An assertion that current police powers are an adequate means of monitoring the activity (it was reported that some motorists had been prosecuted under existing road

rules for impaired driving due to cell phone use; see Land Transport Safety Authority, 2003).

The report goes on to claim that, over the past five years, cell phones were, on average, implicated in 23 crashes per year. This constituted 'less than half of one percent of all reported injury and fatal crashes' and 'relative to other road safety risks, cell phone use does not constitute a serious road safety problem... By contrast, alcohol contributes to around 1200 reported injury and fatal crashes a year' (Land Transport Safety Authority, 2002, p. 49). Implementing and enforcing bans was not a high priority when compared to the other major contributors to road accidents.

The New Zealand government has remained reluctant to implement bans, instead directing the Land Transport Safety Authority to undertake 'further analysis on the issue' (New Zealand Automobile Association, 2004a, n.p). Transport Safety Minister Harry Duynhoven said that, despite strong public support, the cabinet would not be rushed into a decision, hoping that a new rule could be put in place in 2006 'after substantial public consultation' (Dearnaley, 2005, n.p.). In spite of publicity generated by a road death that was attributed to mobile phone use in late 2006, which renewed calls for a ban, as of early 2007 no law had been introduced.

The comparisons between the United States, New Zealand and Australia highlight some important features of legal debates. It is significant that the driving public, who would feel the constraints on their freedom, actually favour bans. This indicates that arguments based on appeals to the public good, or individual liberties, tend to come from governments and particular social institutions, each with their own interests and motivations. The concepts of personal freedom and state regulation (via laws and regulations) have been drawn upon by countries (and certain organisations) in different ways to support their position. Australia has been more willing to use state intervention as a means of protecting the public good, whereas in the United States the defence of individual rights has meant that legislative measures have failed to gain widespread approval. This difference in political rationales is but one part of the picture. As seen in New Zealand, pragmatic considerations (such as the enforceability of regulations and the lack of reliable empirical data) have also been drawn upon to cast doubt on the usefulness of legal intervention.

At the same time as highlighting the differences between countries, it is important to recognise the nuances and complexities within various states' and nations' approaches. Although it can be said that Victoria has pioneered the enactment of road regulations in a number of areas (including telephone use in vehicles) and that this tendency to embrace legislation has been informed by a particular political tradition, the process of making policy decisions has not been entirely straightforward, logical or linear. The legislative response to mobile phone use while driving has been dealt with in a piecemeal manner in negotiation with public opinion, interest groups and scientific research, and although Victoria has adopted a unique approach in terms of implementing road safety countermeasures, there has been no general philosophical or conceptual reconciliation of these issues.

## Social regulation

Having outlined the deliberations surrounding legal measures, let me briefly touch upon efforts to restrict mobile phone use while driving via *social* means, or self-regulation. Another pivotal strategy for reducing risky driving practices is based on mobilising the self-governing capacities of citizens. Attempts to do this take a range of forms, including appeals to moral

and ethical responsibility, as well as education and publicity campaigns. Nikolas Rose talks of these strategies in terms of the responsabilisation of individuals and organisations. This means that 'the management of risk' involves the 'deployment of a range of novel technologies for acting indirectly and at a distance on the objects to be governed', and that 'it is not solely the state that should make...risk calculations: individuals, firms and communities should manage their own riskiness' (Rose, 1999, pp. 236-7). This has been described as governing through freedom. 'The government of freedom', Rose contends, 'may be analysed in terms of the deployment of technologies of responsabilization' (1999, p. 74).

Aside from legal measures, governments also have an interest in developing the ability of citizens to modify their own behaviour, whereby drivers are encouraged to take personal responsibility for their actions. Traffic safety education and media campaigns highlighting the risks involved – to name two examples – focus on the agency and ethical capacities of motorists to modify their own behaviour and minimise risky driving practices. There are also strategies pitched at a societal level which aim to alter social norms. Each of these initiatives have been employed in attempting to change driver's use of hand-held phones, both by government and other groups.

Indeed, a range of institutions, from the car lobby to mobile phone companies and private business, have adopted a rhetoric which emphasises self-regulation. The underlying current is that self-regulation is sufficient (in contrast to more laws and more severe punishment), and that people can be relied upon to make good choices while driving. This style of reasoning is driven, in particular, by private industry. Former AMTA chief executive officer Graeme Chalker contended that 'by adhering to...simple common-sense practices, drivers can make full, productive and safe use of mobile phones' (AMTA, 2004, n.p.). In the United States, the spokesman for the Cellular Telephone and Internet Association states that 'it has to be up to the driver to determine when is a good time and a bad time to make a call' (Dizon, 2004b, p. N17), while Motorola encourages people to 'practice good driving judgement' (2005, n.p.). Put another way, Dizon says that 'those who believe that driving while calling is generally a safe practice say society can't legislate common sense' (2004b, n.p.).

## Conclusion

Australian – and in particular, Victorian – governments have a tradition of regulating drivers' behaviour via laws and enforcement in the interests of the public good. Other countries have a stronger history of protecting privacy and individual liberty: as a result, legislators tend to favour less formal approaches which emphasise personal responsibility, such as education, media campaigns, appeals to morality, and changing habits and social norms. But this distinction should not be over-stated: even though Victoria has displayed more willingness than other jurisdictions to tackle the issue via legislative measures, this has not come without debate. There is a complex relationship between the rationales of legislative development and the enforcement of laws. Moreover, there remain a diverse range of groups with differing opinions: public policy decisions are subject to a variety of interests. It is noteworthy, for example, that the general public does not tend to draw on the notions of the public good and private liberties in the same way as other stakeholders. This style of reasoning is predominantly drawn upon by governments and by organisations which have a vested interest in the use of mobile phones while driving (such as the telecommunications industry). In this way, the description of deliberative processes in this paper opens up new empirical and theoretical questions about the relationships between private industry, individual motorists, legislators, government ministers and bureaucrats, who each maintain different roles, objectives and spheres of influence. This kind of analysis of debates concerning regulation

can also inform issues raised by developments linking other emerging technologies and vehicles, such as in-car navigation systems.

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