

University of Windsor

## Scholarship at UWindor

---

Electronic Theses and Dissertations

Theses, Dissertations, and Major Papers

---

2008

### Care, control, custody: Neo-sovereignty and risk or the politics of exclusion

Gergely Eklics

*University of Windsor*

Follow this and additional works at: <https://scholar.uwindsor.ca/etd>

---

#### Recommended Citation

Eklics, Gergely, "Care, control, custody: Neo-sovereignty and risk or the politics of exclusion" (2008). *Electronic Theses and Dissertations*. 7968.

<https://scholar.uwindsor.ca/etd/7968>

This online database contains the full-text of PhD dissertations and Masters' theses of University of Windsor students from 1954 forward. These documents are made available for personal study and research purposes only, in accordance with the Canadian Copyright Act and the Creative Commons license—CC BY-NC-ND (Attribution, Non-Commercial, No Derivative Works). Under this license, works must always be attributed to the copyright holder (original author), cannot be used for any commercial purposes, and may not be altered. Any other use would require the permission of the copyright holder. Students may inquire about withdrawing their dissertation and/or thesis from this database. For additional inquiries, please contact the repository administrator via email ([scholarship@uwindsor.ca](mailto:scholarship@uwindsor.ca)) or by telephone at 519-253-3000ext. 3208.

**Care, Control, Custody: Neo-Sovereignty and Risk or the politics of exclusion**

by

**Gergely Eklics**

A Thesis

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

Windsor, Ontario, Canada

2008

© Gergely Eklics



Library and  
Archives Canada

Published Heritage  
Branch

395 Wellington Street  
Ottawa ON K1A 0N4  
Canada

Bibliothèque et  
Archives Canada

Direction du  
Patrimoine de l'édition

395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

*Your file    Votre référence*

*ISBN: 978-0-494-47088-6*

*Our file    Notre référence*

*ISBN: 978-0-494-47088-6*

#### NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

#### AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

---

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.



# Canada

### **Author's Declaration of Originality**

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication.

I certify that, to the best of my knowledge, my thesis does not infringe upon anyone's copyright nor violate any proprietary rights and that any ideas, techniques, quotations, or any other material from the work of other people included in my thesis, published or otherwise, are fully acknowledged in accordance with the standard referencing practices. Furthermore, to the extent that I have included copyrighted material that surpasses the bounds of fair dealing within the meaning of the Canada Copyright Act, I certify that I have obtained a written permission from the copyright owner(s) to include such material(s) in my thesis and have included copies of such copyright clearances to my appendix.

I declare that this is a true copy of my thesis, including any final revisions, as approved by my thesis committee and the Graduate Studies office, and that this thesis has not been submitted for a higher degree to any other University or Institution.

## **ABSTRACT**

Governmentality writers have been attentive to shifts in strategies and regimes in many spheres of society, including corrections facilities. As it has been already suggested, regimes often are not displaced by another, but rather they are involved in a relation of 'piling-up'; where new regimes take up strategies and/or technologies of other regimes, creating new ways of thinking about and acting on problems. This paper focuses on the Windsor Jail, and the ways in which offenders are thought about and acted upon. Documents and semi-structured interviews with correctional officers were analyzed to locate rationales, strategies and technologies that are indicative of penal regimes. The findings suggest a marked change in the problematization of remanded inmates. This change is indicative of the emergence of a neo-sovereign regime on the boundary of management of risk and management of 'bare life'.

## DEDICATION

To Molnár Imréné, my grandma. We miss you.

## ACKNOWLEDGEMENTS

So many people to thank...

First, thank you to Dan O'Connor, whose knowledge and dedication helped me through the process. His insight and resourcefulness was inspiring, and without him this thesis would have not been completed.

Many thanks to Willem de Lint and Deborah Cook for helpful guidance and advice along the way. Their help is much appreciated.

I am forever thankful to the participants who agreed to spend time with me and talk about their work and experience. Without them this thesis would not have been possible.

Thanks to faculty members who helped me along the way. Thanks to Kim for making mornings fun with her smile and helping me and others with the hurdles of everyday. Thanks to Kelley for organizing everything that needs to be organized, and for smiling when I wasn't.

I am indebted to Danielle Soulliere for her help with this project and for all the memorable moments over the last four years.

Also, I am grateful to John Albanese for his unconditional support and guidance both professionally and personally over the last four years. Thank you for letting me, and others, to excel and create new things. The journeys were amazing. Also, thank you Sandra and Peter for welcoming me in your home.

Thanks to my friends, both close and far for being there when I needed you. Thanks to all the graduate students who went through this rite of passage with me. We all had our good days, bad days and worse days over the last two years, but we stuck together and made it enjoyable. I have to say special thanks to Andrew Tuck, who was always there and whose friendship kept me on the ground. Thanks to Sandra Bortolin for her friendship and support, and the coffee breaks.

Thanks to my family, my Mom and Grandpa, who never stopped believing me. And thank you Dad, your help and encouragement throughout the years will not be forgotten.

And most of all, thanks to Dana, who was my inspiration and who kept me sane. Thanks for loving me and supporting me every step of the way.

## TABLE OF CONTENTS

AUTHOR'S DECLARATION OF ORIGINALITY	iii
ABSTRACT	iv
DEDICATION	v
ACKNOWLEDGEMENTS	vi
 CHAPTER 1 INTRODUCTION	 1
 CHAPTER 2 THEORETICAL FRAMEWORK	 7
 CHAPTER 3 LITERATURE REVIEW	 14
 CHAPTER 4 METHODOLOGY	 25
 CHAPTER 5 RESULTS	 31
 CHAPTER 6 CONCLUSION	 54
 REFERENCES	 58
 TABLE 1.	 65
 APPENDIX A INTERVIEW QUESTIONS	 66
 APPENDIX B TREATMENT PROGRAMS	 67
 VITA AUCTORIS	 68



## **CHAPTER ONE**

### **INTRODUCTION**

This study follows a governmentality perspective to examine how penal regimes operate in the Windsor Jail. Penal regimes refer to the ways in which rationales, strategies and technologies to manage offenders are developed and deployed (See Dean 1999). Penal regime in this paper is understood as the assemblage of rationales, technologies and subjects in a particular way in order to achieve particular ends. Therefore, penal regimes differ in how technologies are used to form subjects through different rationales (O'Malley 1999; Pratt 1995). Penal regimes are characterized as ideal types for the purpose of differentiating them from one another for analytic purposes.

As O'Malley (1999) reports most jurisdictions have several penal regimes coexisting in some combination. These combinations reflect different problematizations of offenders. Examination of these problematizations will 1) enable the determination of the nature of governing regime(s) in operation; 2) permit the assessment of the existence of interrelations among different penal regimes; and 3) locate the mechanisms allowing the coexistence of multiple regimes.

Each of these regimes includes different rationales (posing problems) and technologies (solving problems). Traditionally, one penal regime was viewed as dominant during any given time period (i.e. sovereign, crime fighter, deterrence, discipline, risk). However, recent research shows that custodial institutions have been characterized by the coexistence of penal regimes (Hannah-Moffat 2005; Kellough & Wortley 2002; Miller 2001; Conover 2001; O'Malley 1999; Lynch 1998). This

coexistence creates what O'Malley (1999) calls "volatile and contradictory" circumstances.

My MA thesis provides an analytical examination of how penal regimes in one carceral context are involved in a relation which O'Connor, Lippert, Spencer and Smylie (2008) and Valverde (1998: 177) refer to as the 'piling-up' of the rationales of governance. In such a system, regimes interact with one another more or less coherently depending on contextual variables, such as specific initiatives or particular aims. For example, one carceral context might focus on substance rehabilitation, where drug screening might be used, in part, to determine what types of programs offenders would benefit from the most (I.e.: alcoholics anonymous, narcotics anonymous, life skills, anger management). In this case the rationale is that individuals are treatable, and the programs can provide beneficial results. In another carceral context, individuals might be tested for drugs in order to determine their compliance with parole conditions. The rationale is that parolees may engage in substance abuse contrary to their parole conditions. The technology in both scenarios is drug screening, but its application differs in the particular aims with relation to the rationales.

Canadian provincial jails have been studied considerably less than federal prisons even though they seem to perform the same task of keeping society safe from offenders. Research on federal institutions has studied to changes in penal regimes. There has been much less research on provincial jails. A number of studies have examined inmate management in federal jurisdictions (Grant & Luciani 1998; Cormier 1997; Motiuk & Porporino 1989). However, despite its broader implications for public policy, a discussion of the provincial jail context is lacking.

In Canada, inmates in federal jurisdictions have a different profile than inmates in provincial jurisdictions. Inmates serving two years or more are housed in federal institutions (penitentiaries), whereas inmates with two years less a day are housed in provincial jails (Hannah-Moffat and Shaw 2000: 17-18). The median sentence in federal custody is 915 days, whereas provincial inmates serve 30 days (Ontario). Most federal inmates are serving time for indictable offences (crimes against the person), whereas provincially housed offenders are more likely to be serving time for summary crimes (drug and property crimes) (Statistics Canada 2006). These notable differences are indicative of the need to specifically examine provincial penal regimes and management strategies instead of attempting to extrapolate from research on federal prisons. This study identifies and analyzes such management strategies by specifically focusing on the Windsor Jail.

This thesis is informed by research which suggests that not all correctional policies are taken up by correctional practitioners. The professional knowledge that is formed by those engaged on the practical levels may not be in line with the managerial expectation to manage individuals based on policy guidelines (Ericson 2007; Liebling 2000; Lynch 1998; Bayens, Manske and Smykla 1998; Feeley & Simon 1992; Bayley and Bittner 1984; May 1981).

Liebling's (2000) research within a maximum security prison points out that there is a gap between the *official* and the *practical*. A key factor that contributes to this gap is the abandonment of the 'social' in the *official* accounts (Liebling 2000: 349). According to DiIulio (as cited in Liebling 2000: 349), prisons do not need to be run considering social elements, but rather they are governed "around" them. The 'social' refers mainly to

the traditional building blocks of the craft of corrections officer: trust, authority, communication, relationships and respect. Liebling's (2000) research shows that it is precisely the social which enables the life of the prison to continue without problems. There is a notable difference in the desired "managerialist practices ... [emphasizing] process, compliance, audit and future performance, and the sociological realities of prison life and work which are characterized by tradition, experience short-time horizons and daily survival" (Liebling 2000: 349). Lynch (1998: 861) reports on another realm of the criminal justice system where parole agents do not always practice their jobs in the ways expected by the administrative officials.

Lynch (1998) found that parole agents under a risk regime (or new penology) continue to see themselves as crime fighters - and not as "waste managers"-, as it would be expected. Under the risk regime, parole officers would be expected to categorize offenders and monitor their activities, with decreased emphasis on actual front line law enforcement. As Lynch (1998: 855) states "[parole officers] longed for hands-on, "proactive" crime-fighting role reminiscent of times gone by. And they have adopted a perspective that fits more with that role than the paper-pushing bureaucrat implied by the new penology model". Under the welfare model, or disciplinary regime, parole agents actively participated in crime-fighting, as front line law enforcement workers. This position was supposed to change as the new model of risk assessment and targeted management was introduced under the new penology.

Although Hannah-Moffat and Maurutto (2003) describe issues related to youth justice, their concerns and issues are not specific only to correctional staff dealing with young offenders. Hannah-Moffat and Maurutto (2003) argue that professional judgement

is an important element in decision-making within the craft when using risk assessment tools, although some limitations do exist in terms of accountability: "Correctional staff can face serious repercussions if they adjust a risk level and [an offender] subsequently commits a serious offence." (Hannah-Moffat and Maurutto 2003: 21). Hence there is the need to examine the craft of 'punishment professionals' in addition to the rationales and technologies of the criminal justice system.

### **History of the Windsor Jail**

It is necessary to examine the history of the Windsor Jail in order to understand its current place in the provincial correctional system. There are several institutions in Ontario similar to the Windsor Jail that articulate and act on similar problems. In recent decades there has been a move to close or reconstruct these institutions, which indicates that they continue to be subjected to processes of problematization.

Built in 1925 and originally called Essex County Jail, the jail was designed to house 101 inmates. The province of Ontario took over its operation in 1968, and the institution was renamed Windsor Jail. During the 1980's, new construction and the move of administrative offices expanded the number of cells to accommodate 113 inmates. In 1983, modern security devices were installed, including electronic doors, locks, and alarms. A gymnasium was added in 1985, along with space for young offenders. The institution housed youth until the Young Offenders Act was replaced by the Youth Criminal Justice Act in 2002. In 1990, as a result of increased demand for capacity, some areas were double bunked, achieving a 132 person capacity. This was followed by the changes in 1992-93 that increased capacity to 147 with the addition of a female section and isolation cells. At present it is a 140 bed facility.

According to the official jail website, the jail serves as the point of entry into the institutional system (Ministry of Community Safety and Correctional Services 2008c). It holds offenders on remand (awaiting trial, sentencing or other proceedings), offenders sentenced to short terms (approximately 60 days or less), and offenders awaiting transfer to a federal or provincial correctional facility. As all jails, this is a maximum security institution because it houses a mixed population of remanded and sentenced individuals (Ministry of Community Safety and Correctional Services 2008a). Security classification is mandated by the Ministry of Community Safety and Correctional Services for sentenced inmates in order to ensure correct placement of an inmate according to programming and custodial needs, social and personal adjustment, and the safety of the institution. The security classification of inmates sentenced for 30 days or less is optional, and inmates on remand do not receive such classification (Ministry of Community Safety and Correctional Services 2008b).

## CHAPTER TWO

### THEORETICAL FRAMEWORK

The concepts, context, the questions asked, the relationships described and the vocabulary used are determined by the theoretical orientation taken up in any research. My goal was to formulate research questions that seek answers to how provincial offenders are programmed, assessed and managed. To arrive at answers, a governmentality approach was adapted.

Problematization is at the root of this branch of analytic thinking. First, Foucault (1991a) posed questions on the problematization of government. What is government? According to the discussion by Foucault (1991a) and others (Dean 1999; Hunt and Wickham 1994; Rose and Miller 1992), government is more than just a political unit which is associated with a state. It is an entity that regulates the conduct of individuals and things and the “conduct of conduct” (Dean 1999: 10). This implies a system of agents and institutions that govern how one conducts oneself in a normative and evaluative environment (Dean 1999: 11). The governing of conduct is achieved through technologies of governance, which are in turn based on rationales. Technologies and rationales presuppose one another – but they do not determine one another. Their complex relationship is at the root of Foucault’s analysis of government. Through his analyses, he describes a symbiotic, but often contradictory relationship of key ‘players’.

There is a plurality to be noted in the ways in which the conduct of individuals is governed. As Foucault describes, discourses are in a state of coexistence, some gaining advantage, some receding at any given time (Gordon 1991: 54-56). What is of interest is

the context in which one discourse becomes dominant, and the dynamics and relations that contribute to this dominance.

The problematic of government is aimed at making things more manageable and efficient, developing technologies based upon expert knowledge, which are then formulated as rationales (Dean 1999). These rationales seek to better the workings of that which is to be governed. In order for such a goal to be reached, specific knowledges have to be employed; this is where Foucault (1995) places the emergence of social sciences. According to Rose and Miller (1992: 175) and Foucault (1995), knowledge is crucial in the working of government in the formation of its objects.

The various forms that the power-knowledge relationship takes create subjects that are reinforced and maintained by that relationship. This was the way “methods of punishment, supervision and constraint” gave way to the rise of the discipline of the soul. It was formed as a sum of the effects of a particular power-knowledge relationship and was at the heart of disciplinary power (Foucault 1995: 29). Experts who possess knowledge in a particular area are intimately involved with governmental strategies (Rose and Miller 1992: 175). Knowledge also informs rationales that are employed in governmental strategies. Foucault (1995: 27) talks about knowledge as an integral part of power, arguing that power and knowledge imply one another. The power-knowledge relationship, in this sense, presupposes an understanding of power as not absolute but contingent on its relationship to knowledge. Analysis of power, therefore, has to be based on the knowledge, and the permutations of relationships, whether as resistance or obedience. There are multiple loci of power that play on various micro levels and are occupied by different actors with various power-knowledge relations.



Foucault's (1980: 99) rejection of autonomous power at the macro level allows an examination of how correctional officers at the present take part in the power-knowledge relation that characterizes operations at the Windsor Jail. Their actions are not a direct reflection of the power of the state. Rather as Foucault (1980: 99-101) points out, they are mechanisms of power that need to be analyzed to understand how their political utility turns them into part of the social reality.

Power, then, has to be regarded as contingent on particular relations and permutations of knowledge, position, networks or other variables. The main focus needs to be on how governing is thought about "with the different mentalities of government" (Dean 1999: 16). Governmentality is not interested in the ideology of a regime; rather it seeks *how* "thought operates within ... *regimes of practices*" (Dean 1999: 18) through exploring the programmes, strategies and techniques for the conduct of conduct (Rose 2000: 322). This is done through an analysis of rationales and technologies of governing the conduct of individuals.

Rationales refer to the processes and understandings through which problems are named and thus created. Or as Carrabine (2000: 314) summarizes, "the rationality of government refers to a system of thinking about the practice of government, for instance who can govern, what is governing, and who is governed." As an example, Hacking (1991) provides a detailed account of the process of naming and performing diagnostics of certain trauma that were found on radiographs of children's bones. Before such technological advancements were available in medicine, healed fractures were not visible. Although there was discipline in the home, there was no acknowledgement of physical abuse. Only after new technology and new knowledge was available did the

notion of “child abuse” surface. The already existing behaviour of discipline in the home became scrutinized and monitored by the new technology. There was quick ‘governing’ action taken by creating institutions that became responsible for policing abusive behaviour of children. A new rationale emerged that created a new subject via the technology of the radiograph. Such rationales are influenced not by ideology, but rather a set of “successive displacements” (Foucault 1991a: 55), which result in a constant change (Gordon 1991: 22).

Governmental technologies also need to be analyzed (Rose and Miller 1992: 175). Technologies are responses to problems, such as specific programmes, calculations, techniques or procedures (ibid). These are systems designed to react to a problem with a specific aim, and are closely related to the rationality creating the problem in the first place. Through techniques “authorities seek to embody and give effect to governmental ambitions” (Carrabine 2000: 315). For example, in response to the problem of child abuse, new reporting systems and laws were deployed in every U.S. state within a very short period (Hacking 1991: 273). Also, Ericson (2007: 375) reports the development of new definitions of crimes and offences that allow for particular responses by the police. These new definitions are descriptive technologies to act on a particular event or phenomenon that has been problematized.

However, as Ericson (2007: 372) points out, the law serves as both a constitutive force in defining the problem and as a technology to act upon the problem. This description of law in a sense is similar in logic to how Agamben (1995: 15) describes *The Paradox of Sovereignty*, where the sovereign is both inside and outside the law. The paradox then can be posed as “I, the sovereign, who am outside the law, declare that there

is nothing outside the law” (Agamben 1995: 15). The duality of the law in this context, presents the possibility that police receive unprecedented powers “to ensure that security trumps justice” (Ericson 2007: 395). The way in which new rules are coupled with new technologies presents a situation where police becomes the watcher and the watched at the same time, similarly to how law is both a constituting and a constitutive element.

Once a particular conduct is problematized, technologies are created and deployed with the specific aim to act on those problems. As rationalizations change due to the problematization processes, new subjects emerge and are acted upon with various technologies of governance. According to Foucault (1991a), technologies of governance have been formulated from the 18<sup>th</sup> century to the present, and included different forms of governing. The changes in governance are not viewed as a linear historical development; rather, the techniques of government have developed according to specific constellation of factors, such as power, knowledge, politics, and economies. In other words, it is possible that penal regimes are competing with one another or they are involved in a relation of ‘piling-up’ of the rationales of governance (O’Connor et al. 2008; Valverde 1998: 177). Technologies associated with past rationalities may also be reused by new regimes, however they are deployed to achieve new “governance effects” (Valverde 2003: 237).

Following this approach, the research aims at locating rationales of governing, how problems are formulated and how technologies are deployed to act on problems; focusing on how knowledge and relations are redefined based on how they are deployed with specific aims. As Garland (1997: 174) points out, the governmentality literature

provides a framework for criminologists to locate the rationales and techniques of controlling and problematizing crime and criminality at the present.

Neo-liberalism as a governing regime emerged as a response to the problematization of the welfare state (Dean 1999, Rose and Miller 1992). The rationales and technologies of the welfare state, which focussed on the financial and social security of the population through making the state responsible, were thought to be unstable and expensive. Through innovative technologies, the neo-liberal apparatus moved towards making the individual responsible, removing the state's influence on fiscal matters and establishing a market run economy (Rose and Miller 1992).

There is indication from several authors that rationales are not in succession temporally but rather they coexist in a form that transforms previous rationales and applies them in a modified way (Valverde 1998, O'Malley 2002, Rose, O'Malley and Valverde 2006, O'Connor et al. 2008). Even though neo-liberalism is portrayed as the dominant governing regime in much of the western world, Rose (2000) and O'Malley (2002) point out that governing regimes employ a hybrid form. O'Malley (2002) reported that both neo-liberal and neo-conservative rationales and practices coexist in a governing regime and the actual application of such practices is indicative of historical transformation as opposed to simple succession:

In a conservative political rationality a strong and even intrusive state is required to enforce the moral unity that is vital to social harmony, national strength and character. Duty, obedience and self-denial figure prominently. Freedom of choice, market commodification and generalized innovative individualism appear as sometimes valuable but always suspect forces, with the capacity to erode the authority of the moral order and to threaten the discipline essential to the conservative sense of social unity and purpose. (...) While tensions always exist between its conservative and neo-liberal elements, it is held together by agreement on broad principles, notably a preference for markets and a particular take on 'freedom of the individual'. But perhaps most especially, they are linked

together by a shared opposition to the welfare state, imagined as generative of dependency, sapping of initiative and enterprise and economically draining. (O'Malley, 2002: 216).

The interaction of several governing rationales results in governance strategies that are neither neo-liberal nor neo-conservative in a political sense. Their appearance is in a form of constant development, succession and recession. A theoretical approach that takes such fluidity into account will not be reductionist attributing governance to one or the other governing rationales, but rather it opens up ways to describe and analyze how decisions create and are a result of multiple rationales and strategies.

## **CHAPTER THREE**

### **LITERATURE REVIEW**

Punishing 'the criminal' has a near 3000-year history with abundant techniques and approaches (Peters 1995). The range of punishment techniques spreads from exiling the unwanted individuals, through public shaming or execution to today's incarceration in prisons. In the following, several penal regimes will be examined in an attempt to reveal the differences among them in order to discover their reassembly in a contemporary context. There are several descriptions of penal regimes as governing regimes based on differing criteria. For example, O'Malley (1999) distinguishes six regimes, with acknowledging that there can be more, according to how one describes them. There are five regimes that can be differentiated based on classification of rationales, technologies and subject composition (Table 1), which by no means is the only way one could understand penal regimes. In this analysis, similarities and differences are teased out, without an attempt to give a fully comprehensive review.

#### **Sovereign Regime**

The sovereign regime is characterized by the sovereign's ultimate power over life and death. The subject of punishment is the 'felon' who is viewed as enemy of the sovereign. Under sovereign rule, the bodies of criminals are punished with the technology of the public execution through painful torture (Foucault 1995), which is a calculated event not a form of uncontrolled rage (Foucault 1995: 33). Moreover, it is not just the killing that is emphasized, but rather that the encounter with the sovereign marks the body for life.

Agamben (1995) in his book, *Homo Sacer: Sovereign Power and Bare Life*, presents a revised version of sovereignty. Although, “[t]he figure of the sovereign has been relegated to a repertoire of archaic images” (Hussain and Ptacek 2000: 498), Agamben (1995) places the sovereign in relation to the state of exception in contemporary political contexts. As Hussain and Ptacek (2000: 501) explain, “the capacity to decide on the exception ... is an essential and definitional feature of sovereign power”. This state of exception is where *homo sacer* appears in contemporary society. It is “life that cannot be sacrificed yet may be killed” (Agamben 1995: 82), in an environment where law is suspended and a state of exception is in effect.

Agamben’s (1995) notion of sovereignty and the concept of ‘bare life’ can provide a significant addition to this research. Agamben (1995: 4) talks about a specific environment where the “opposition founded modern politics (right/left, private/public, absolutism/democracy, etc.) ... [is] entering today into a real zone of indistinction”. This means that in the state of exception, the suspension of law defines what is outside the law, thereby proving the existence of the law. This is what Agamben (1995) calls inclusive exclusion in the creation of the subject *homo sacer*. This individual exists in ‘bare life’ in the camp, which is to Agamben (1995: 11) “the fundamental biopolitical paradigm of the West.” In a camp, law is not completely suspended, but it is in a state of obscurity, where fact and law are confused, maintaining the possibility of any event. In this camp, “the zone of indistinction, anything is possible and power confronts nothing but pure life, without any mediation” (Agamben 1995: 171).

Rose (2001) presents another analysis of life governance. He contends that proper health is more and more dominating in popular discourse; and there is the possibility that

life has become the object and subject of health politics. As such, life can be assigned a value through measurements, based on how well one's body is exercised and how healthy one is. The concept of value of life becomes stunning with Agamben's (1995) discussion of the "camp". Rose (2001: 3) summarizes that "when the collective body of the people becomes the principal resource for politics, the purging of defective individuals becomes and essential part of the care of life."

### **Deterrence**

The deterrence regime intends to act on the minds of individuals. Training disseminated through chain gangs and boot camps is the technology aimed achieving an improvement in work ethic and behaviour. The punishment is in a cognitive form that needs to be different and specific for crimes, unlike prison which repeats the same punishment. The particular details of technologies are given great emphasis: time tables, codes and other devices were deployed to present a form of public pedagogy. The offender is not just the subject of punishment but the object of deterrence towards others.

### **Crime-Fighter**

Although predominantly discussed with in the context of policing, a crime-fighter regime seems to exist within the walls of correctional institutions (Conover 2001; May 1981). Ericson and Haggerty (1997) and Valverde (2003) describe this crime-fighter approach as a form of moral policing. The rationality of this regime is that moral individuals are partaking in the protection of the public through keeping public spaces orderly. Police actions focus on maintaining this order with technologies of policing (i.e. patrols, information gathering, surveillance). This formula aligns well with Carrabine's (2000) control discourse, which directs attention at the importance of order maintenance



within the walls of the prison and focuses on the 'troublemakers'. Conover (2001) also discusses the policing of inmates as one of the activities corrections officers engaged in. Lynch (1998) shows the existence of this regime in parole. Her findings suggest that parole officers take on the role of crime-fighters as part of their professional craft. May's (1981) account discussed everyday duties of corrections officers, one of which was policing the conduct of prisoners.

### **Discipline**

The use of prison is more frequent under the discipline regime, characterized by a transformation of the social body into a body of knowledge (O'Connor 2002: 58). As Cohen (1978: 567) states, "[t]he criminal as an object of knowledge emerges from the practice of punishment." Such knowledge permits the design to "produce deferred effects" through discipline, in order to "act on future actions and on future states of the body" (O'Connor 2002: 58). The 'soul' can be trained, since for Foucault that is the essence or basis of self consciousness, which determines behaviours and habits (O'Connor 2002: 59-62). However, the soul is less reflexive and harder to change than the mind, unless a methodical process is used, which includes constant training through the omnipresent 'gaze'. This 'gaze' is at the center of Bentham's (1995) Panopticon, which provides rigorous training through constant surveillance. Care appears in its original conceptualization within the disciplinary or welfare regime, where the aim is to train and develop the soul into wanting to do 'right' instead of 'wrong'. The welfare approach defines and creates individuals who can be rehabilitated through appropriate programs and eventually will be reintegrated into the larger society as functioning and

law-abiding citizens. This approach is problematized by a host of researchers as seen to be ineffective and unsuccessful (Murray 1984; Mead 1986, 1991).

As a result of a shift in penal strategies, Feeley and Simon (1992) state that the correctional policies are no longer concerned with the punishment or rehabilitation of offenders. Simon (1998) believes that this is a result of a historical process that was brought on by the perceived failure of the welfare regime in corrections and other social institutions. Feeley and Simon (1992) extensively elaborate on the problems and contradictions of the rehabilitative statements echoed in the welfare model of corrections, such as the perceived new way of thinking about and acting on the actions of offenders. They also discuss the alleged failure of rehabilitative programs to produce an improvement in recidivism rates.

### **Risk**

A new approach emerged, which rested on an “insurance model wherein probabilistic calculations are used to determine the likelihood of an event occurring, in this case recidivism” (Hannah-Moffat and Maurutto 2003: 19), referring to “the likelihood of reoffending *by the already convicted*” (Sparks 2001, pp. 160). Under this regime, individuals are viewed as risky, and need to be assessed and categorized, after which the most risky groups will be excluded. (Cheliotis 2006; Hannah-Moffat 2005; Sparks 2001).

Risk has emerged as a central theme within the new penology (Cheliotis 2006). Using probabilistic statements, markers are sought for prospective risks for certain groups of individuals. It is “forward looking, predictive, oriented to aggregate entities and concerned with the minimization of harms and costs, rather than with the attribution of

blame or the dispensation of individual justice” (Garland 1997: 182). Consequently, this ‘new penology’ calls for the use of new technologies, such as electronic monitoring systems, global positioning systems and drug/alcohol testing facilities to manage ‘risky’ groups, to achieve ‘social sorting’ (See Lyon 2006).

Prisons are also used as a technology by this regime, but its application is conceptualized differently than that of the disciplinary welfare regime. Prisons are not used to provide training and rehabilitation for reintegration; rather they are used to house those who are too risky to be released into the general public.

This new approach to corrections is characteristic of a postmodern shift, which is signalled by an assemblage of practices that reflects a new way of thinking about and acting on offenders. Feeley and Simon see actuarial techniques replacing the discipline of individuals (O’Malley 1999: 180). However, Feeley and Simon (1992) and Bayens et al. (1998) highlight that a new penology approach to corrections has not been fully adopted on public and political levels, primarily because of a lack of integration of policies in practice. However it is likely that this has changed in the past few years.

Garland (1996) and others (Feeley and Simon 1992; Simon 1998) note that there has been a shift in how criminality is approached by criminal justice practitioners. Policies have shifted away from treating and transforming criminals to an assessment based system of calculating one’s risk of reoffending, eventually placing the focus on risk vs. discipline. Therefore, discipline has been replaced by risk assessment, which is not interested in the rationale of criminal involvement. Punishment for actions is abandoned and replaced with management of aggregates on a group level (Kellough & Wortley 2002; Simon 1998).

The priority of the individual that grew out from past understandings of offending has been increasingly, although not completely, taken over by the use of statistical assessments (Simon 1998; Hannah-Moffat 2005). The approach of social construction of crime and crime control is completely lacking in this regime. The pessimistic description of the “old penology” as having failed in addressing the criminal activity led to a complete abandonment of a moral rationale for punishment.

Risks and needs have been treated as two different penological regimes that have very little in common (See Hannah-Moffat 2005; Feeley and Simon 1992). Needs are usually associated with the welfare approach to corrections. Thinking about the offenders in this regime included the designation of criminality as dependent on dynamic factors, or criminogenic factors. These factors were thought to be changeable and correctable. The solutions for these problems therefore included discipline which was meant to reform habits. Risks on the other hand are viewed as static factors in criminal offending that cannot be changed. Therefore, the solution to the crime problem under such a regime is to keep individuals who risk reoffending away from society. Under a risk regime, criminals do not change; rather their safekeeping is the top priority. It seems that the new penology and subsequent actuarial risk assessment recognizes only two kinds of people: those who are in the penal system, and those who have not yet been caught.

There is another approach to risk assessment, which relies more on subjective judgement, influenced by professional assessment and experience. This form of assessment is also used in correctional settings, usually in combination with actuarial risk assessment tools (Maurutto and Hannah-Moffat 2006). Brown (2000) contends that there are a number of - often contradictory - ways in which risk assessments are conducted.

Several conceptualizations of risk exist, such as fluid and categorical, which are indicative of the ways risk is problematized and assessed. "It is on the grounds of these different conceptions of risk ...that penal strategies as diverse as three-strikes laws, intensive therapeutic programmes and indefinite sentence find their justification" (Brown 2000: 93).

However, more recent accounts of application and evaluation of risk management tools paint a somewhat different picture. Lynch (1998) provides an account of parole officers viewing themselves as crime fighters, rather than 'waste managers'. From this research it is evident that professionals create a picture, about how they see themselves in the machine of correctional services. Shearing and Wood (1999) provide an important discussion on how the role of intellectuals has shifted recently, and craft knowledge arising from practice and 'seasoned judgement' has come to replace or at least complement sound research. Maurutto and Hannah-Moffat (2006) and Hannah-Moffat (2005) present a new understanding of risk assessment. According to their analyses, needs are increasingly included in assessment tools, which signals a shift in penal approaches to offender evaluation. If needs are added as variables in risk evaluation, the offender is no longer portrayed as 'waste' to be managed, but rather as a hybrid entity that can be corrected and rehabilitated. This reformation creates a subject that is more than a sum of its variables (risks); the subject becomes a newly defined problem, which can be acted upon with new technologies to achieve new aims.

### **Recidivism**

Recidivism is used in the professional and academic literature as a measure of failure and success. Feeley and Simon (1992) have reported that the perceived failure of

the disciplinary regime was evident in the constantly high recidivism rates, as the goals of rehabilitation through programming were not achieved. Hence, recidivism under the disciplinary regime was a measure of failure, and was, in part, responsible for a shift in practices that abandoned discipline as the dominant penal regime. Under the subsequent risk regime, high recidivism rates are interpreted as signs of success. High recidivism rates, ostensibly, show that the risk regime needs to be employed to recognize those who are posing risk of reoffending.

### **Research on correctional institutions**

Carrabine (2000) argues for the development of analysis on prisons that takes into account the interrelatedness of rationales and techniques of government through discourse. He argues that analyses have to follow the discursive connection of the macro (political rationales) and micro (technologies of governance) levels. Through the discursive relations among these levels, power becomes contingent upon the “translation of thought and action from ‘centres of calculation’” (Carrabine 2000: 319). His analysis provides a helpful framework to understand the processes of individuals who are required to process the political rationales through the technologies of governance, within a framework of an institution that has particular properties. These variables have to be attained to in order to provide a conceptually sound analysis of relations of power, in this case, the penal regimes in the Windsor Jail.

It is crucial to the development of this thesis that the roles of corrections officers to be located and analyzed in the Windsor Jail. The relationships of such roles to one another is a determining factor in locating which penal regimes coexist, along with the relationship of that coexistence. Bentham’s (1995) Panopticon had a special role for

corrections officers, or “inspectors” (p. 35). The perception of a continuous gaze was meant to instil discipline the souls among segregated offenders deprived of freedom of movement, privacy and communication. Today the roles of correctional officers are complex. Based on the literature, there seems to be no unilinear progression in the role of correctional officers, but rather their role is dependent on the location and surrounding context of the institution. In the UK, correctional officers are required to take part in advanced training under the framework of human rights. In that setting the primary role of prison staff is to safeguard the humanity of prisoners, namely that they are treated with dignity and respect, regardless of their status as offenders. (Coyle 2002: 14). Other sources describe roles as crime fighters (Conover 2001; May 1981), waste managers in a risk regime (Lynch 1998; Conover 2001) and programming specialists in a disciplinary regime (Fabiano, Porporino, Robinson 1990).

Professional knowledge, or the ‘craft’, of corrections officers is an important variable. Based on literature on police craft (Bayley and Bittner 1984; Ericson 1994, Ericson and Haggerty 1997, Ericson 2007) and on corrections officers (May 1981, Conover 2001), it is clear that professionals are expected to perform multiple roles. The classroom style training does not pass on all the knowledge needed to perform well in the job. There is a large amount of knowledge that is ‘picked-up’ on the job, which may even be contrary to what is taught in the academic setting (Bayley and Bittner 1984: 35-36, Ericson 2007). Ericson (2007) further notes the embedded effects of rules on police behaviour. For example, administrative rules and communication in mandatory formats serve as both as rationales and technologies, in which police are required to make decisions, which bear the mark of such factors. These examples and precedents predict

that the complex system of training and expectations makes it unclear how corrections officers engage in the process of problematization.

In sum, several possibilities emerge based on the literature. In correctional settings, several penal regimes exist at any given time, even across different sectors of the criminal justice system, from police, through courts to the correctional apparatus. Also, such regimes may act as oppositional in their rationales and aims, or they may act in a system of piling-up, where discourses, rationales and technologies become instrumentalized or subordinated by another. For example crime-fighting as a technology may be instrumentalized by risk management. It is quite possible that corrections officers engage in policing prisoners in order to 1) maintain security and 2) to profile risky behaviour and place individuals in certain risk categories based on their behaviour *in* the prison. As a practical outcome, certain prisoners are placed in solitary confinement or other forms of segregation as a result of their risky behaviour. This process would not only affect prisoners directly, but also influences official evaluation of their conduct during official reviews (i.e. parole hearings).



## CHAPTER FOUR

### METHODOLOGY

My research question focused on how offender management operates in the Windsor Jail and the consequences to the inmate population and the correctional staff. The hypothesis states that risk management is implemented as a result of judicial decisions, resulting in an increased proportion of remanded individuals and increased workload for correctional officers.

Critical discourse analysis of government reports and policies pertaining to inmate management was adopted in this research. There are numerous definitions of discourse, and there is a real issue with the oversimplification of the process of scientific analysis (Cheek 2004). As a working definition, Parker's (as cited in Cheek, 1992: 1141) definition is a good start: "discourse ... is a system of statements which construct an object". Discourse is grounded in institutions and organizations, within which relations of power manifest in particular ways. Such manifestations will be noticeable by dissecting the themes and elements embedded in official texts, following by their careful allocation and analysis. From such analysis an insight can be gained on the governing aims in penal policies. The goal is to locate the meaning of concepts within the relationship to a wider assemblage of ideas in a particular discursive framework (Atkinson 1999: 62).

As Foucault (1991b) observes "[i]t is not a matter of composing a *global history* ...but rather of opening out a field of *general history* within which one could describe the singularity of practices, the play of their relations, the form of their dependencies" (64). Following this statement, the goal of analysis in this study is exactly to focus on the singularity of the context, and to decipher how a set of relationships in a discursive

formation manifests itself. This is not to say that context is deterministic. Van Dijk (2006: 162) argues for a sociocognitive approach to discourse that goes beyond “a ‘free’ contextual account [with] no obvious boundaries”. Such traditional approaches provide an inadequate link between situational, societal and discursive structures (Van Dijk 2006: 163). Foucault’s conception of a “general history” that is adopted in this study allows for such approach, although a sociocognitive analysis of context is not within the scope of the present paper.

The critical discourse analysis undertaken in this study is informed by postmodern and poststructuralist notions of language. Language is connected with relations of power and it is possible that through language the regimes of power can be located. Foucault (1991b: 54) talks about the problematic of individualization of discourse, and that discourses go through successive displacements with different thresholds that allow one or another to gain momentum.

Problems facing a researcher when using discourse analysis are well summarized by Cheek (2004). Some of the issues that were encountered during this research include the extent to which one has to ‘dig’ into the context in which the text or talk is located. This issue is closely linked to the next one, which concerns the researcher as not only analyzing discourses but also creating them. Another point to discuss, which will have a significant impact on this study, is generalizability. It is not the aim for this research to create a description and analysis that will be generalizable to all jails or correctional institutions in Ontario. Rather, the aim is to produce an interpretation of the context and discourse within that context. This interpretation may only be valid if the method is

grounded in a solid theoretical framework, and it is clearly described why particular texts were chosen for analysis (Cheek 2004: 1147).

Adopting the framework outlined above allows the detection of discursive frameworks with few limiting parameters. The documents included in the analysis were examined in order to locate particular narratives that pertain to neo-liberal and neo-conservative discourses. These discourses were the focus of attention due to their impact on the penal policies and practices that have informed penal regimes in the last couple of decades. The indicators of neo-liberal discourses were calls for effectiveness, efficiency, reliability, accountability. These concepts center around the hallmark of neo-liberal thinking that sets the market as the center of governing. Neo-conservative indicators were mainly identified as focussed on family, discipline, moral integrity and a code of proper conduct (O'Malley 2002). These concepts follow from traditional morals and values that echo decreased tolerance towards and exclusion of the 'different'.

The documents collected and analyzed were chosen based on their relevance to the penal policies and operations. These are documents from both federal and provincial government levels. Having a conservative federal and liberal provincial government presents an interesting situation, with political rationales that may be delineated with one another on several fronts. However, rationales pertaining to penal policies and strategies seem to be in alignment, at least to some extent. Although neo-liberal and neo-conservative rationales may be competing against one another, there are factors that bind them together, one of which is their internal opposition to the welfare state (O'Malley 2002). Processes and qualities of the welfare state are targeted by both of these regimes to

change them to efficient and market based (neo-liberal) and disciplined and morally tight (neo-conservative) governing regime.

This duality is noticeable in the present situation with the Windsor Jail, which operates under a dual influence of a neo-liberal provincial governing regime and a neo-conservative federal governing regime. The aims of these political regimes can be paralleled with penal regimes in part of their aims and technologies. Regimes that follow the logic of neo-liberal governance emphasize actuarial risk assessments with aims to reduce cost and increase effectiveness. Penal regimes with a neo-conservative stance are entrenched with morality and righteousness in forms of reforming delinquents who have morals in need of adjustment.

Part of this methodology is the importance of oral discourses (Holstein and Gubrium 1995, Silverman 2003) Semi-structured interviews with correctional officers were conducted to learn how policies formulated on the managerial level are taken up and implemented on the practical level. The relationship between correctional management and correctional officers were investigated. Subsequent analyses revealed the extent to which policies and discourses that are circulated in political levels are realized and seen on the practical level.

The semi-structured interviews with three corrections officers from the Windsor Jail were conducted using a non-random sampling technique. Since the research is analytic in nature and specific to the Windsor Jail, a larger sample size was not crucial. These interviews aimed to discover and locate the specific ways in which correctional professionals treat policies that are introduced on a managerial level. For the outline of the questions, please see Appendix A. These questions were formulated to capture

detailed accounts of practices and rationales of correctional officers working at the Windsor Jail. The interviews ranged from 90 to 120 minutes in length.

The aim of the questions was to analyze the contemporary logics and rationales behind the management of offenders in the Windsor Jail. As stated earlier, the existing literature shows that there are several penal regimes that coexist at any given time. The questions were formulated and probed in an attempt to explain how such regimes relate to one another and how they are implemented.

Government documents, statutes and position pieces are good sources to find indication about the penal discourses currently used by the governing agencies. By utilizing discourse analysis, it is possible to locate the main elements of policy in terms of its emphasis on different elements. Emphasis on toughening sentences, reducing the application of temporary absence passes, and calling for “no frills” prisons are indicative of a more punitive, and less rehabilitative approach. Also, publications and reports of community agencies, such as the John Howard Society, provide reviews of policies and actions in the correctional sector. Publications from such agencies are valuable sources of information.

From the interviews, themes were identified and sorted, namely the actions and interpretations of correctional professionals, which help them to do their jobs on a daily basis. Close attention was paid to the positions correctional officers took on government policies, specifically how they were implemented and evaluated in the field. The analysis followed a “Foucauldian approach...to address the substance of these [rationales] and the practical programmes that they support” (Garland 1997: 186). The aim of this kind of analysis concentrates on describing “how agents, knowledges, powers and techniques are

assembled into specific apparatuses for the exercise of [...] new ways of governing...” (Garland 1997: 186). The combination of macro and micro levels of analysis in this context will yield results that are favourable to Carrabine’s (2000: 326) call for an integrated or “symmetrical understanding of the complex phenomenon of punishment”.

## **CHAPTER FIVE**

### **RESULTS**

A governmentality analysis permits a close look at how the Windsor Jail functions within the broader network of inmate management. The contemporary context within which jails, such as the Windsor Jail, operate seems to be a volatile environment. There are apparent indicators that jails and the broader correctional sector are governed by neo-liberal guidelines, but the rationales, technologies and subject compositions are not clearly defined. The Windsor Jail operates in a specific place with a specific mandate that has gone through a marked change in the last decade or so. This change is indicative of a shift in correctional direction, with specific effects on rationales, technologies and subject compositions. However, this shift has not produced the expected turn, leaving the Windsor Jail in a situation where staff and management have to deal with competing external and internal pressures that lead to compromised safety and effectiveness.

#### **Neo-liberalism in the current political climate**

The analysis of political documents, government reports, position pieces and media accounts reveal how the current governing regimes operate. However, to understand the situation of the Windsor Jail, attention has to be paid not only to the federal and provincial political system, but also to the two different governments that have occupied the government offices in Queen's Park. The Progressive Conservative party was in power from 1995 to 2003 under the leadership of Michael D. Harris (1995-2002) and Ernie Eves (2002-2003). The official party website credits this period with implementation of "unprecedented change in [the government's] efforts to create jobs

and restore prosperity to Ontario by establishing a customer service-driven government. To date, [the government's] achievements include welfare reform, health care restructuring, major reductions in public spending and more efficient government. And, for the first time since the 1950's, an Ontario government has reduced personal income tax rates." (The Ontario PC Party 2008a).

The same sentiment can be seen in the party leader John Tory's recent speech at the Annual General Meeting on February 23, 2008. Although the majority of the speech was geared towards the members' vote on whether to keep him as the leader, the political rhetoric included plenty of neo-liberal and neo-conservative concepts. The party leader emphasized the importance of individual freedom in an economic sense, encouraged risk taking by offering rewards, called for smaller and more responsible government, emphasized religious morals and a renewed effort to position the party as a customer-service party, with voters at its center (The Ontario PC Party 2008b). The Federal Election Platform 2006 of the Conservative Party of Canada has numerous examples that echo the concepts outlined by the Ontario PC party. The biggest platform presented deals with accountability, displaying a core characteristic of risk management in the system of punishment. Also, accountability is one of the flagships of neo-liberal discourse, where control and governance at a distance is achieved by streamlined procedures with predictability and accountability. This, at least in part, replaces the welfare state's reliance on bureaucracy and expert knowledge.

The current provincial government has been in the hands of The Ontario Liberal Party since 2003 led by Dalton McGuinty. The party's main governing principles can be seen in the following excerpt on its website:



The McGuinty-led Ontario Liberals inherited a province deep in debt, with the public education and health systems struggling from years of neglect and much of the province's infrastructure in decay. The McGuinty Liberals turned that around by bringing peace and stability to classrooms, shortening wait times in hospitals and making major investments to support and strengthen the economy. ...Liberals today continue in the tradition of the early party - fighting for Ontario families on issues to make Ontario strong - success for our students and young people, better and more accessible health care, protecting our natural environment, respect and dignity for our seniors, opportunities for new Ontarians, and strong people prospering in a strong and vibrant economy (The Ontario Liberal Party, 2008).

The two parties oppose one another in their views about the size of government, taxation and welfare services, among others. This difference has had an effect in the government policies and strategies, including funding, resources and professional training, within the provincial correctional system.

As stated earlier, however, it is possible to detect other than neo-liberal rationales in governing regimes. In particular, a neo-conservative approach to corrections is clear from both the federal and provincial government positions on crime fighting and crime legislation. According to the Federal Election Platform 2006 entitled Stand Up for Canada, the Conservative Party of Canada states that the rising homicide rates, gun violence, drug offences and lax deportation practices have left Canadians unsafe. The plan to combat such a reality includes the introduction of minimum mandatory sentences for gun crimes, drug trafficking and other serious violent crimes; the replacement of statutory release with earned parole; and the elimination of giving extra credit for pre-trial detention (Conservative Party of Canada 2006, MacCharles 2006a). This is an important point because it indicates that it is not remand that is problematized, but rather the pre-trial credit that is given to remanded individuals at sentencing. Remand is problematized in this discourse only to the extent of eliminating pre-trial credit.

So far the conservative federal government has passed two Bills in 2007 to amend the Criminal Code: Bill C-9 provides that persons convicted of an indictable offense for which the maximum term of imprisonment is ten years or more are not eligible for a conditional sentence; and Bill C-10 prescribes minimum penalties according to the number of previous convictions for firearm-related offences (Parliament of Canada 2008). These bills represent the start of a legislative move towards changes to the Criminal Code and other related statutes to produce a tough-on-crime environment to satisfy the political plans outlined in the election race in 2006. The tough-on-crime approach may lead to exclusionary practices, such as increased mandatory life sentences and longer prison terms for certain crimes. This approach is coupled with a move towards no-frills jails: As Ernie Eves, former conservative Ontario Premier, suggested jails were never intended to be luxury hotels (Tyler 2003). Management of offenders in no-frills jails in a state of exclusion can be conceptualized as the management of 'bare life', as described by Agamben (1995).

These new bills have received both criticisms and endorsement from political and professional circles. Overwhelmingly, lawyers' and judges' comments as represented in written media have been critical of the changes. The root of criticism centered on the rationalization of the need for such changes and questioned the expected results as questionable (Powell 2005). Political figures, such as federal ministers, police professionals and Ontario Premier McGuinty welcomed the bills which will help making streets safer in Ontario communities (Canadian Press 2006).

These reports show an interesting interplay of opinions and struggles in political and professional spheres that have very significant implications on the state of federal

and provincial correctional institutions. The plans proposed by the Conservative Party of Canada call for tougher sentences and more police officers, which will allegedly result in a safer Canada. The financial commitment to such plans does mention funds available for police forces; however there is no word of how the requirements for harsher sentences will be accommodated with financial sources. The get tough-on-crime plan does not extrapolate on the outcomes, and only slowly do governmental officials talk publicly about numbers. These include estimates of financial and human costs. The minister of public safety and security, Stockwell Day, hinted that according to preliminary predictions, there will be minimal need of an increase in prison capacity (MacCharles 2006b). He also stated that the increase of the number of individuals in federal institutions will be around 300-400 with costs of \$220-\$240 million. This was quickly clarified by Day's communications director, saying the numbers were not calculated at all, it was the minister's own guess (MacCharles 2006c). These figures do not take into account the number of offenders who are also expected to enter into the provincial system. Some estimates forecast up to 3600 more offenders in the provincial system (The Toronto Star 2006c).

The discourse employed in public announcements and position pieces centers around a few distinctive phrases: accountability, safety, and security. The Throne Speech of 2007 includes these concepts:

"Canadians ... want ... a government that is accountable ... Canada was founded on the principles of peace, order and good government ... yet Canadians feel less safe today and rightly worry about the security of their neighbourhoods and the country." (Governor General of Canada 2007)

The throne speech suggests that crime is on the rise, Canada is less secure and Canadians are in fear. Only an accountable government is capable of providing the safety

and security needed. The New Democratic Party's justice critic, Joe Comartin said, the throne speech's suggestion is misleading, and it is contrary to recent statistics (The Toronto Star 2006b). Statistics Canada (2006) reports that the crime rate was at its lowest point in 2006 in the last 25 years. Although there was an increase in the rate of some serious violent crimes, the overall violent crime rate has remained stable, and homicide rates dropped 10%.

The perception seems to be that crime is on the rise, even though the overall rate of crime has been decreasing. Some violent crimes have increased, but also the public's sensitivity towards those crimes has been heightened by the reporting of such crimes in media outlets. Garland (2000: 348) contends that "new politics of crime control are socially and culturally conditioned and [...] the content, timing and popular appeal of these policies cannot be understood except by reference to shifts in social practice and cultural sensibility".

The political response to this heightened perception has resulted in the tough-on-crime agenda, with the initial implementation of changes to the Criminal Code. The response of criminal justice agencies is what Garland (1996: 455) has described as 'Adapting to failure'. It refers to the inability to deal with increased workload on all levels of the criminal justice system, and searching for alternate ways to deal with the failure. This is the limit of the sovereign state, which Garland (1996: 448), in part, defines as the inability to provide "protection of citizens from criminal depredation".

The 'criminology of the other' "represents criminals as dangerous members of distinct racial and social groups which bear little resemblance to 'us'" (Garland 1996: 461). What to do with such groups in a criminal justice system that has failed to provide

security by implementing welfare policies? "The only practical and rational response to such types is to have them 'taken out of circulation' for the protection of the public" (Garland 1996: 461).

Such action can be seen in the contemporary Canadian criminal justice system in the form of remand, which may be conceptualized as Agamben's (1995) 'camp', where individuals are excluded in an environment with little relationship between 'fact' and 'law'. The result on the provincial level, as seen in statistical figures, is an increase in the remanded population. Since 1996/1997, the admission of remanded individuals to provincial custody has grown by 22%, whereas the number of individuals in sentenced custody decreased by close to 28% (Statistics Canada 2008). In terms of numbers, in 2005-2006, the number of sentenced inmates in provincial custody was 77,630, whereas remanded inmates amounted to 131,375. Along with the increased proportion, the length of remand has increased substantially. This is the case because of the changes in sentencing laws, the characteristics of the accused and the completion times of court proceedings (Statistics Canada 2008).

### **Remand**

What is remand? Remand is a tool used by the courts to place individuals in custody who are awaiting trial or sentencing and who are considered a flight risk. The decision to place someone on remand is made by a justice of the peace or a judge, depending on whether the process is in a pre-trial or pre-sentencing phase. Pre-trial remands are usually meted out because the accused is not able to post bail, committed a serious crime, or is a flight risk because of lack of employment or trustee. Remand is the responsibility of provincial

governments, and as such are remanded individuals are housed in provincial jails or detention centers.

Remand is a technology that has been used to detain individuals who are risky to be released on their own recognisance, or individuals who are likely to be classified as dangerous offenders (See Kellough and Wortley 2002). It is legal to remand an individual during any part of the court proceedings, as it is prescribed in 516(1). of the Canadian Criminal Code, which states that

“[a] justice may, before or at any time during the course of any proceedings under section 515, on application by the prosecutor or the accused, adjourn the proceedings and remand the accused to custody in prison by warrant in Form 19, *but no adjournment shall be for more than three clear days except with the consent of the accused* (emphasis added)” (R.S. 1985, c. C-46).

However, as it will be shown in the following, remand has been increasingly used, while the rates of incarceration have remained stable, targeting a new offender population.

The Department of Justice Canada recognizes the issue of the growing remand population in provincial jails. Number five on the total list of six priorities in the sustainable development strategy states that

“[t]o respond to provincial concerns about the growing remand population, the cumulative impact of the proposed criminal law reforms, and more generally, to concerns about the burden on the criminal justice system, the Department will develop initiatives to streamline and improve the administration of Justice. As well, the Steering Committee on Justice Efficiency – comprised of representatives from governments, judges and the private bar – will be looking at options for operational changes to the justice system in support of improving efficiency and effectiveness without compromising its fundamental values. Finally, the Federal/Provincial/Territorial Working Group on Criminal Procedure will look at options for improving bail provisions (Department of Justice Canada 2006).

This plan was prepared for the years 2006-2007, but there has been little change in the numbers of remanded individuals. In the Windsor Jail, on average, about 60% of individuals in custody are on remand (Interview 2).

The characteristics of those on remand include younger, less educated, personality and emotional problems, criminal history, substance abuse, employment problems and family problems. These problems have been reported at a higher rate for remanded individuals than sentenced individuals in provincial correctional institutions (Statistics Canada 2008). The increase in the number of remanded individuals, along with the numbers of sentenced individuals being stable means that a certain demographic of the Canadian population, namely those who are younger, less educated, have personality and emotional problems, suffer from substance abuse and lack employment are being introduced to the criminal justice system at higher proportions than before. Moreover, they are being held longer in jail awaiting trial ostensibly because of the large volume of cases that are in front of the courts.

Risk assessment tools are used on inmates in federal institutions to classify them as minimum, medium or maximum risk for placement in an institution with a corresponding security level. What has not been stated before is that the risk assessment process does not start at the prisons. It seems that some risky populations are identified at the level of the courts in the criminal justice proceeding. Those who are a flight risk or a risk for reoffending, those who are deemed to be dangerous because of substance abuse, those who have no stable employment and family ties are separated from the general public. Others, who are also awaiting trial, but do not fit into the above mentioned risk categories are allowed to be included in society. Therefore, the risk regime does exist in

the realm of remand, although the extent to which it penetrates the operations of a jail is not as clear.

### **Overcrowding**

The higher numbers of remanded inmates lead to one very important problem that faces many jails in Ontario (John Howard Society of Ontario 2002). As one respondent said “One of the big problems in Windsor right now, and the Toronto area, are the institutions are so overcrowded, that they are getting 2 or 3 [inmates] per cell... When I started out in the institution, we had 96 cells, for 96 inmates. One inmate per cell. We now have double and sometimes close to triple the number of inmates. And they put bunks in, so we had one person per cell, now we have 2 sometimes 3 people in a cell” (Respondent 1).

This increased number has a number of consequences that have been reported both by media and professional sources. Deterioration of buildings, cells and equipment is one major problem. As the John Howard Society of Ontario (2002: 3) states, overcrowding leads to compromised health status for both prisoners and staff. The continuous turnover is problematized as a public health risk where offenders and staff may transmit infectious diseases to the community because of the lack of screening and treatment. A recent article in the Windsor Star raised concerns about sanitation issues at the Windsor Jail (Williamson 2008). One respondent agreed that there are problems, although not to the extent to which the media report it.

The jail is a filthy place; there is no outside cleaning company because of security reasons. The janitor doesn't do it; he says it is not his job. We [correctional officers] say it is not our job, although we keep our lunch area clean. But the inmates... walls are caked with months old oatmeal ... We have what we call sewage flies, around garbage cans...sometimes you have to swap them constantly



from your face (Respondent 2).

An overcrowded institution holds increased levels of danger towards prisoners and staff. The more people are locked in an institution, cell block and cell, the higher the chances of tensions that may escalate to violence. "The consequence is filling up our institutions with remanded people causing ... more tension for staff members who are working there [resulting in] stress, violence towards staff, injuries towards staff" (Respondent 1).

One consequence that has received more attention from the media is crediting inmates with two or sometimes three days for one day spent in pre-trial detention at sentencing decisions. Such occurrences were present in Windsor as corroborated by the interviews with correctional officers. According to media reports, such decisions were influenced by the living conditions in many institutions that are at least inadequate and some are judged to be in violation of the Canadian Charter of Rights and Freedoms and international conventions, such as the Standard Minimum Rules for the Treatment of Prisoners (O'Neill 2004). The Standard Minimum Rules for the Treatment of Prisoners (Office of the United Nations High Commissioner for Human Rights 1957) states that "84(2): Unconvicted prisoners are presumed to be innocent and shall be treated as such; and 85(1): Untried prisoners shall be kept separate from convicted prisoners". In the Windsor Jail, remanded and sentenced individuals are treated the same way. They have the same access to resources, visits and exercise.

Everyone is treated the same ... inmates, sentenced inmates, are allowed two visits a week. The others [remand] are allowed one. Well, to simplify, instead of going through checking who is sentenced and who is remanded, it is easier and fair to give everyone 2 per week. So when it comes to who is sentenced or remanded there is no real big difference. (Respondent 1)

This seems to be the same situation as reported in other provincial institutions (John Howard Society of Ontario 2007).

Official sources and the interviews both have highlighted that the number of individuals on remand have increased significantly in the last decade, where now the majority of individuals in the Windsor Jail is on remand. The overcrowding and the reduction of the number of sentenced inmates have lead to the increasing use of remanded individuals as kitchen and yard helpers, which is contrary to past practices. It is mandated by the Canadian Criminal Code and the Standard Minimum Rules for the Treatment of Prisoners (Office of the United Nations High Commissioner for Human Rights 1957) that individuals awaiting trial to be assumed innocent and treated differently than those sentenced. Again, this is not the case, as one of the respondents explains:

Years ago, before the conservative government came in...sentenced inmates were the only inmates who could work in the kitchen, or who could be helpers in the institution. ... We would use inmates to take garbage out; you would take an inmate out to shovel snow on sidewalks, and whatnot. Remanded prisoners were never taken out because they were a higher risk than sentenced. And you would use a sentenced inmate, usually someone who had less than 10 days remaining of their sentence, because the chance of them taking off was minimal... Not anymore, because as you can see from the numbers, our kitchen would not run because we don't have enough sentenced inmates. So we have to resort to using remanded inmates (Respondent 1).

### **The problem of remand**

Agamben's (1995) concept of indistinction is employed in this thesis to understand the situation of remanded individuals. It is argued that spaces of indistinction are created within jails where there is little difference in the management of sentenced and remanded inmates. These spaces are created systematically by the specific deployment of court proceedings and risk assessment, resulting in increased amount of

remanded inmates, along with increased average length of remand. The current practice of housing remanded inmates does violate some laws, as noted earlier, although it is not within the scope of this paper to further investigate whether the practice is understood as lawbreaking by professionals within the criminal justice system. However, the crediting system is an indication that there is some acknowledgement of misuse of remand, which seems to be the only practical solution at this time.

Remand, then is a problem within the criminal justice system. As a technology it has legal boundaries that are detectable in past applications. However, currently it seems to be employed as a technology under the neo-liberal and neo-conservative correctional policies, with ambiguous results in terms of legality. Kellough and Wortley (2002) found that “risk reasoning” has not totally replaced the disciplinary focus, which is mostly based on the moral composition of the accused. Also, the authors stated that remand was more of a “resource” for the prosecution to bargain guilty pleas than it was a risk management tool. They cite moral characters (as provided by police officers to the courts) and demographic factors as deciding features in remand decisions, which is indicative of the disciplinary focus of the court system (Kellough and Wortley 2002: 203). However, it seems that these demographic features, which are ultimately related to moral character, are the risk factors that are warranting remand because of contributing to flight risk of posing danger to the public.

#### **Anonymity of inmates**

Correctional staff have little knowledge about what the inmate is sentenced or held in custody for. There is a technique implemented at the Windsor Jail, namely that the name list that is displayed at each unit is complemented with coloured dots,

corresponding to the status of the offender. However, based on one account, correctional officers have little actual knowledge of the status of any one offender, because they pay little attention to it, and they treat all offenders with the same care. "Most of the time I don't know who is remanded. The name list has an ID number and a coloured dot next to his name. One is for sentenced, one is for remanded, and the third is for immigration I think" (Respondent 2).

It appears that the jail presents a zone of indistinction, where there is no difference with respect to treatment and care among those who have been tried, convicted and sentenced and those who are awaiting trial in custody. The fact that all individuals in the jail receive the same care points to an intersection of law and space, where although the law recognizes individuals as different, this difference appears to dissolve in the space of the jail. Agamben (1995) uses the example of the concentration camps of the Second World War to illustrate that law and fact can enter into a space of inclusive exclusion. The experiments on camp prisoners are examples of trials of the limits of life, where killing is not within the realm of law, and hence it is not murder. In such an environment it becomes possible to ask questions, such as: what are the necessities to maintain bare life in the state of pain?

In a jail, where individuals are not recognized by the law the same way they are viewed outside the jail, another experiment becomes possible. How many bodies can be placed in a jail while maintaining bare life in the state of pain? As mentioned earlier, overcrowding becomes problematized only at sentencing when extra credit may be given by judges. While remanded individuals are within the jail walls, they are not

problematized as individuals deserving of differential treatment, because they are in a zone of indistinction.

## **Programs**

The past couple of decades have seen a shift in correctional practices pertaining to programs provided at jails. Political decisions to create 'no frills' jails have resulted in reduced or eliminated programs in jails, which also changed the function of these institutions. As one respondent put it

"I have been there 25 years, and the programs have changed dramatically. Over the 25 years. Depending on what government is in power and what their mandate is. The Conservatives, and under Mike Harris... it was a 'no frills' type of jail, which we already had. But they started to take away core programs, such as Alcoholics Anonymous, that were there when I started" (Respondent 1).

The benefit of programs in correctional institutions is to provide some form of rehabilitation to offenders. This is done extensively at federal institutions where inmates are sentenced for at least 2 years. As the Correctional Services Canada website states "[t]here is solid evidence that programs based on sound research significantly contribute to the safe reintegration of offenders following release. This is because offender programs are designed to address those risk factors related to reoffending" (Correctional Services Canada 2008). The Ontario Ministry of Community Safety and Correctional Services runs fifteen programs in institutions across the province (See Appendix B). However, there is no indication where these programs are run, nor any other information about them. The current list of programs that are available at the Windsor Jail is short; most of them are run by volunteers: Alcoholics Anonymous, Narcotics Anonymous, Catholic camps and other religious programs. There are other activities which are considered programs. As one respondent stated:

“They call our library a program, but yes it is. I think a lot of people would be amazed that how many inmates actually read books. Because there is nothing else to do. Yard is considered a program. You are entitled to 20 minutes of fresh air every day. ...they consider visits a program” (Respondent 1).

There is one program that is run by the Ministry of Community Safety and Correctional Services, which teaches life skills to female offenders. According to one respondent, this is a pilot project that is evaluated by a ministry employee, and it is possible that it will be expanded to other groups.

The way in which programs and inmates are understood in the Windsor Jail can be described using Agamben’s concept of ‘bare life’, and what is the threshold between life and death. Life is governed in the Jail that it represents an environment where activity only encompasses the fulfillment of minimal needs to maintain life in a state of pain. Offenders in the jail are provided care that is necessary following their exclusion. Correctional officers do “a lot of little things that ... need to be done. If you lock yourself into a room, think how many things you can’t get to that you need? If my phone is broken, I need someone to fix that, or if my toilet is broken, I need someone to fix that.... That’s why we are there” (Respondent 2).

Individuals spending time in jails are not targeted for rehabilitation or safer and successful reintegration into society. This situation does not only prevent remanded individuals from participating in programs that are meant to help offenders, but it also excludes those who are serving short sentences. The result is a revolving door effect, which leads to individuals returning to the jail time after time.

In a smaller institution, like we are, we will know [a] person. When one walks in, we know that person, we know who they are affiliated with; we know who they have problems with... And some of the inmates I have known ever since the first day I walked into the jail. They are returning, the break and enter people,

impaired drivers, the usual drunks that you...street people. Mainly, B&E and theft are return people. Those who do not have jobs, that's how they make their living. (Respondent 1).

In 20 years I have seen a lot of the same people come back, 70-80% of people I have worked with I see again (Respondent 2).

The large number of returning offenders to the Windsor Jail is indicative of the failure of the disciplinary regime and its attempt to rehabilitate offenders. Furthermore, it is unlikely that the revolving door effect will be eliminated by introducing larger number of people to the provincial correctional system. The more people are housed in jail, the more strain is placed on inmates and correctional staff: "We just don't have the ability and the manpower to do what we should be doing. And we are cutting corners all the time to get the work done" (Respondent 1). This leads to an overcrowded, unsafe and unproductive environment which seems to have only one function: 'warehousing'.

### **Inmate management**

The John Howard Society of Ontario (2006: 9) reported that "the lack of programs and meaningful activity" at the Maplehurst Correctional Complex resembled 'warehousing' of individuals. One respondent in the present study stated "Yes it is warehousing, and I think it started with the Conservative government in 1995, when they came in with cut and slash, save money; that's when the gymnasium got slashed, when other programs got slashed. They tried to go after staffing... they tried cutting staffing". There was a reduction of time when the inmates were released from their cells. In the past, inmates were locked in their cells from 11 pm to 6 am, (length of 7 hours) (Respondent 1). Today, they are locked in from 7 pm to 8 am (length of 13 hours), which some might consider unnecessary and a contributor to stress because of the lack of mobility and interaction with others. Another unintended consequence of this long period

of lock-up is that correctional staff have less time to do their work that involves inmates. "It went from having inmates out at certain times, now they wanted them to be locked up for 12 hours and be out for 12 hours. And that created the problem of trying to cram 18 hours of work into 12 hours now. And it just doesn't work" (Respondent 1). This is a good example of 'abandonment of the social' (Liebling 2000), where care understood under the welfare model is abandoned on the official level and replaced by the maintenance of bare life with little or no social interaction.

There is a large amount of inmate movement, which seems to take up most of the workday. Remanded inmates are moved to court dates, video court, visits, and occasionally programs. There are also doctor visits, medical appointments, and numerous other incidents which require constant attention from correctional officers. The reduced hours when inmates are unlocked and the increased number of inmates who have constant a need for such movements make it very hard to manage the day-to-day operations of the jail.

The inmate movement is incredible. They tell you that you are only supposed to have 4 inmates loose in the jail at one time. But it does not always happen that way. You can have an inmate going for yard and if yard is down that floor, you may have one going to the visit room, which is on the second floor, one to the doctor's office on the third floor (Respondent 2).

Such a dense workday is not without its strains. Correctional officers have very busy days where they have to perform well every time. There are expectations from management that certain things have to be done certain ways. One way these expectations are translated is a bureaucratic system of forms to account for everything: from the number of inmates at any given time on a cell block to the number of disposable razors handed out. Depending on the area of the jail, there are at least 10-15 forms that need to



be filled out constantly and there are a number of forms that are used for certain incidents. The admission and discharge area is notorious for an incredible amount of forms that are filled out and filed for every individual that enters the jail. This high level of accounting through paper trail is indicative of the goal of management to monitor the actions of correctional staff.

And they [management] want us to do more and faster, you know you are not supposed to move that many inmates, but they say it is fine and move them. But if something happens, we are the ones who have to write the report, and get in trouble. So you have to walk a fine line (Respondent 2)

The expectations from management along with the large number of inmates and their accompanying needs are putting increasing demand on correctional officers. This can result in a 'disconnect' between management and staff. There is more expected from staff to deal with the higher numbers of inmates. One example was given by another respondent to illustrate the disconnect between management and staff.

Well, I am running video court. When we do video court our admitting area is shut down. We don't bring in new arrivals; we don't do anything else, just one thing in that area. I have inmates in there; I can't bring other inmates in...My operational manager walks in and says that he wants an inmate sent out on a medical escort. Well, I can't bring someone into my area and strip search them while other inmates are out, and run video court at the same time. But he wants it done... "I don't have a problem, you are the boss, I do what you tell me. If you want me to shut down the court, then you go and tell the justice of the peace that we have to shut down the court, so your inmate can go on medical escort. I do whatever you tell me, you are the boss" (Respondent 1)

It is clear that the expectations continue to rise, along with the inmate population, however there is limited amount of support for correctional officers to tackle these expectations. They have to perform more, which may lead to 'bending the rules'. However, if something goes wrong they are fully accountable for 'bending the rule'.

“And the minute I break a rule and something happens, they will say I broke rules. So I do not bend or break rules. Because that will be used against me” (Respondent 1). There are attempts to make expectations and performance meet, but it such attempts are not always successful.

### **Care, Control and Custody**

What is the function of the Windsor Jail? Correctional officers responded to this question with the same three words: care, control and custody of the inmates. The main reason, aside from the obvious institutionalized response, is to protect society by keeping dangerous individuals off the street. “In my opinion... what is the main reason? To protect society. Is it a punishment? Umm, maybe because I have been in this institution for so long, I don’t see it as a punishment” (Respondent 1).

There seems to be no institutional rehabilitation embedded in the operation of the Windsor Jail. The three words - care, control and custody - do not imply that there is any mandate to change offenders for the better. In fact, one respondent noted the common reference to jails as “Con College: “[W]hat do they learn? ‘Hey I met so and so and he will show me how to break into houses’” (Respondent 1). Another respondent stated that aside from keeping people off the street “... there is not a whole lot we can do because of the size and age of [the jail]. Until we get a building large enough, we will not have any success” (Respondent 2). There was recognition among all respondents that there is an urgent need for a new building to replace the old Windsor Jail. A new building would be built to accommodate the increased demand for space and it would provide the needed facilities for proper accommodation, programming and a positive environment.

In terms of deterrence, only occasional examples are mentioned by the respondents, depending to a great degree on the way correctional officers treat offenders. Nevertheless, it is rare and it is not the dominant regime in the Windsor Jail.

You don't see [deterrence] that often. But you have the odd one, who broke the law for the first time. And you can show them that "You see that person there? You will look and live like them." And that person never comes back. I don't want to sound like a bleeding heart, but if you can save one person it was worth it. It is better for that person to be a productive person for society than a dread (Respondent 1).

Showing respect and treating offenders respectfully was a key concept that emerged from the interviews. The respondents believed that treating offenders as human beings is the first very important step in a good direction, and offenders recognize such behaviour, and most of them return it. "[W]hen they come into an institution, they are a human being, and if I treat them how I would want to be treated, I find 98% of the time they will do the same thing to you" (Respondent 1).

### **Offenders as Problems**

Foucault's (1995) conception of the power-knowledge relationship can be applied to account for the ways in which offenders are created as subjects. Based on the findings, there are a few ways that offenders are constituted as problems in the Windsor Jail.

The justice of the peace, upon first contact with an individual charged with an offence, will consider the level of 'trustiness' of the accused person. He or she may consider risk factors in deciding whether this person will be released until the next court proceeding, or whether this person belongs to pre-trial detention. Such risk factors are determined based on research on recidivism, and the characteristics of past offender populations. The court system, then, constitutes accused persons as risk subjects, who can

be placed in risk categories and according to the level of risk posed, the next action is determined.

The respondents in this study constituted offenders as individuals who need to be excluded from society in order to protect it. In addition, however, they emphasized that offenders are human beings, which in turn turns offender into subjects that can be approached differently than risk subjects, as constituted by the courts. Addressing and treating offenders as human beings seems to be less coherently connected to the expectation of correctional management, which is geared towards efficiency and increased workload. There seems to be little room provided for jail administrators to accommodate offenders as human being subjects, which is evident in the way jails are described as warehouses.

As Foucault (1995:53; 2000) notes, the eighteenth century public execution was a political operation, so was the management of the population through discipline. So we can look at present correctional policies as political operations as well. In the eighteenth century, every crime was viewed as potential regicide committed against the sovereign. Today, crimes are viewed as inflicting damage on the values shared widely by the members of society. Such values and the definition of the offence breaking those values are ultimately political decisions or constructs. The appropriate responses to these offences are politically charged responses that involve a power-knowledge matrix. We can ask 'Who has power?'

Foucault (1980: 122) asserts that the state has a very peculiar place in systems of power, where it could be viewed as the ultimate decider, or "meta-power" over life and death, justice and injustice or right or wrong. However, there has to be an existing power

structure, upon which this “meta-power” can operate. This is the basis of Foucault’s analysis, where he guides attention to these mobile networks (Shiner 1982: 390). In the case of the Windsor Jail, certainly correctional officers share some of the micro-positions of power, as they administer “punishment, supervision and constrain” (Foucault 1995: 29), along with care, custody and control. Their local position within the network of punishment encompasses the power-knowledge relation, which is applied in the care, custody and control of inmates.

## CHAPTER SIX

### CONCLUSION

Establishing the political rationality behind decisions in law making and resource allocation on both the federal and the provincial level makes it possible to analyze the penal regimes at work in the Windsor Jail. Several accounts are available that describe the ways inmate management is practiced after sentencing (Grant & Luciani 1998; Cormier 1997; Motiuk & Porporino 1989). Most often the focus falls on the processes by which correctional institutions deal with inmates according to their classification levels, which is in essence a risk management operation. However, this research sheds light on another important aspect of risk management within the court proceedings, along with the crystallization of a new regime in operation.

The number of remanded individuals in Ontario, and in the Windsor Jail has been steadily increasing both in absolute number and proportionally to sentenced inmates. This increase that has been observed since the early 1990s reached the threshold of equal number of remanded and sentenced individuals in 2000-2001 (John Howard Society 2005). Also, the average number of days spent in remand has increased by twelve since the early 1990s. This may not seem like a lot, but coupled with the increase in admissions, it signifies a shift in practices. Across Canada the trend is similar: “as the number of adults held in remand grew since 1996/1997, the number of adults sentenced to provincial/territorial custody dropped.” (Statistics Canada 2008).

Based on the interviews, statistical data and official discourses, it seems that jails, which are the smallest institutions in the correctional system, are being transformed into holding centers for remanded individuals. The numbers have been steadily increasing

with no additional capacity provided by governments, which has resulted in a position where jails are overcrowded. The Ontario government is slow to follow up its commitment to build new institutions to accommodate the increasing number of remanded individuals. The proposed changes to the Criminal Code also warrant an expectation of increased number of individuals in the correctional system.

As a result, remanded inmates receive two-, or sometimes three-for-one credit for their time spent in remand. While the credit system is criticized both by professionals (judges, lawyers and correctional officers) and policy makers, there is little attempt to deal with the root problem of overcrowding through increasing capacity at the courts to process cases faster to trial in order to reduce the time spent in remand. However, the decisions to remand are indicative of the power of judges to exclude risky individuals before entering the correctional system. The effect of overcrowding is a reflection of the objective and the tools used to achieve social sorting.

The situation that the Windsor Jail and undoubtedly other institutions across Canada are facing shows a marked change in the way those believed to have offended and to be risky are thought about and acted upon. Agamben (1995) talks about *homo sacer* living a 'bare life' in a state of exception where law and fact are confused. It is this duality of inclusive exclusion that is at the heart of politics, according to Agamben (1995). Those on remand can be considered to be in such a position. Individuals who have not been tried, and as such shall be considered innocent, are in fact detained in a correctional institution. This detainment places them outside the law that protect rights of those awaiting trial. They are in a state of exception where law is suspended and their detainment is made possible by that act of suspension. They are excluded from the

general population: those that are free; yet they are not included in the offender population: those who have been tried, found guilty and sentenced. This place, the state of exception, permits actions that are not seen as lawbreaking. Treating remanded individuals as if they were sentenced offenders is against the law, but in a state of exception such treatment is tolerated. Using remanded inmates for work in a correctional institution is not permitted by law, yet it happens, and it is not considered lawbreaking.

The results suggest that the dominant regime in the Windsor Jail is a neo-sovereign regime, which focuses on excluding individuals based on risk evaluation by the courts during judicial proceedings. The risk regime exists in its effect of social sorting, assigning risky individuals to be remanded in the jail. Therefore, the neo-sovereignty regime and the risk regime share a boundary in the form of exclusion. They also share the technology of the prison in order to perform exclusion. However, the technology of prison is very different under this regime from the technology of prison under the disciplinary welfare regime. This difference can be seen in the conceptualization of care provided to inmates. While care under the disciplinary regime focuses on rehabilitative programs and training for reintegration to society, neo-sovereign care resembles the maintenance of bare life.

The deterrence effect that was expected by the federal government (The Conservative Party of Canada 2006) from the changes in law and policy does not seem to materialize. As noted earlier, there is a large proportion of offenders who return to jail because criminal activity is their source of income or because of substance abuse. Although not stated as a policy, rehabilitation and discipline do function on a micro level between correctional officers and inmates, but with very limited success. Risk



management is detectable in the jails mostly in terms of violence prevention (both towards inmates and staff). Risk is more prevalent in this context in the decisions of judges to deny bail and place individuals on remand.

This paper has contributed to the literature on a theoretical level by noting that rationales are involved in a piling-up relation, where rationales do not move along a continuum, and old regimes may re-emerge coupled with new technologies to achieve new aims and tackle new problems. The approach utilized in this paper allows for the avoidance of reductionist descriptions, and contributes to useful analytical accounts with practical applications. This thesis has also added to the literature by providing a detailed account of the ways in which correctional officers approach their profession, the challenges they face, and the success they achieve.

Future research should expand on the forms of exclusion in correctional institutions, with an aim of policy development and review. A governmentality approach is useful in providing a toolbox, which is capable of discovering alternative discourses and strategies in order to provide comprehensive solutions to complex problems.

## REFERENCES

- Agamben, G. (1995). *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.
- Atkinson, R. (1999). Discourses of Partnership and Empowerment in Contemporary British Urban Regeneration. *Urban Studies* 36(1), 59-72.
- Balucci, D. (2002). *Technologies of Governance: The Convergence of Risk and Discipline in an Open Custody Facility for Young Offenders*. MA Thesis, Department of Sociology and Anthropology, University of Windsor.
- Bayley, D. H. and Bittner, E. (1984). Learning the Skills of Policing. *Law and Contemporary Problems*. 47(4), 35-59.
- Bayens, G.J., Manske, M.W., Smykla, J.O. (1998). The Impact of the 'New Penology' on ISP. *Criminal Justice Review* 23(1), 51-62.
- Bentham, J. (1995). *The Panopticon Writings*. New York, NY.: Verso.
- Brown, M. (2000). Calculations of Risk in Contemporary Penal Practice. In Brown, M. and Pratt, J. (Eds.) *Dangerous Offenders: Punishment and Social Order*. 93-108. London: Routledge.
- Canada (1992) *Corrections and Conditional Release Act*. C. 20.
- Canada (1985). *Criminal Code*. C-46.
- Canadian Press (2006, May 4). Tory crime bills may jam jails.
- Carrabine, E. (2000). Discourse, governmentality and translation. *Theoretical Criminology* 4(3), 309-331.
- Cheek, J (2004). At the Margins? Discursive Analysis and Qualitative Research. *Qualitative Health Research* 14(8) 1140-1150.
- Cheliotis, L. K. (2006). How iron is the iron cage of new penology? *Punishment & Society* 8(3), 313-340.
- Cohen, S. (1978). The Archaeology of Power. *Contemporary Sociology* 7(5), 566-568.
- Conover, T. (2001). *Newjack: Guarding Sing-Sing*. New York: Knopf.
- The Conservative Party of Canada (2006). *Stand Up for Canada: Federal Election Platform*. Retrieved on May 15, 2008 from <http://www.conservative.ca/media/20060113-Platform.pdf>

- Cormier, R. B. (1997). Yes, SIR! A stable risk prediction tool. *Forum on Corrections Research* 9(1).
- Correctional Services Canada (2008). *Programs*. Retrieved on May 22, 2008 from <http://www.csc-scc.gc.ca/text/prgrms-eng.shtml>.
- Coyle, A. (2002). *A Human Rights Approach to Prison Management: Handbook for prison staff*. London: International Centre for Prison Studies.
- Dean, M. (1999). *Governmentality: Power and Rule in Modern Society*. London: Sage.
- Department of Justice Canada (2006). Change is in Order: Sustainable Development Strategy 2007-2009. Retrieved on May 12, 2008 from [http://canada.justice.gc.ca/en/dept/pub/sds/07\\_09/index.html](http://canada.justice.gc.ca/en/dept/pub/sds/07_09/index.html).
- Ericson, R. (1994). The division of expert knowledge in policing and security. *British Journal of Sociology*. 44(2), 149-175.
- (2007). Rules of Policing: Five perspectives. *Theoretical Criminology* 11(3), 367-401.
- Ericson, R. and Haggerty, K. (1997). *Policing the Risk Society*. Toronto: University of Toronto Press.
- Fabiano, E.; Porporino, F.; Robinson, D. (1990). Canada's cognitive skills program corrects offenders' faulty thinking. *Corrections Today* 53(5), 102-
- Feeley, M. & Simon, J. (1992). The New Penology: notes on the Emerging Strategy of Corrections and Implications. *Criminology* 30(4), 449-474.
- Foucault, M. (1980). "Two Lectures." In Gordon C. (ed.) *Power/Knowledge: Selected Interviews & Other Writings*, 78-108. New York: Pantheon Books.
- (1991a). "Governmentality." In Burchell, G., Gordon, C. and Miller, P. (Eds.) *The Foucault Effect: Essays on Governmentality*, 87-104. Chicago: The University of Chicago Press.
- (1991b). "Politics and the study of discourse." In Burchell, G., Gordon, C. and Miller, P. (Eds.) *The Foucault Effect: Essays on Governmentality*, 53-72. Chicago: The University of Chicago Press.
- (1995). *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.
- (2007). *Security, Territory, Population: Lectures at the College de France*. New York: Macmillan.

- Garland, D. (1996). The limits of the sovereign state. *The British Journal of Criminology* 36(4), 455-471.
- (1997). 'Governmentality' and the problem of crime: Foucault, criminology, sociology. *Theoretical Criminology* 1(2), 173-214.
- (2000). 'The Culture of High Crime Societies: Some Preconditions of Recent 'Law and Order' Policies. *British Journal of Criminology* 40, 347-375.
- Gordon, C. (1991). Governmental Rationality: An Introduction. In Burchell, G., Gordon, C., Miller, P. (Eds.) *The Foucault Effect: Studies in Governmentality*, 1-52. Chicago: The University of Chicago Press.
- Governor General of Canada (2007). Strong leadership: a better Canada – speech from the Throne: October 16, 2007. Retrieved on May 15, 2008 from <http://www.sft-ddt.gc.ca/grfx/docs/sftddt-e.pdf>.
- Grant, B. A. and Luciani, F. (1998). *Security Classification Using the Custody Rating Scale*. Research Branch, Correctional Service of Canada.
- Hacking, I. (1991). The Making and Molding of Child Abuse. *Critical Inquiry* 17(2), 253-288.
- Hannah-Moffat, K. (2005). Criminogenic needs and the transformative risk subject: Hybridizations of risk/need in penalty. *Punishment & Society* 7(1), 29-51.
- Hannah-Moffat, K. and Maurutto, P. (2003). *Youth Risk/Need Assessment: An Overview of issues and Practices*. Report submitted to the Research and Statistics Division, Department of Justice Canada.
- Hannah-Moffat, K. and Shaw, M. (2000). Introduction: Prison for Women – Theory, Reform, Ideals. In Hannah-Moffat, K and Shaw M. (Eds.) *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing
- Holstein, J. A. & Gubrium, J. F. (1995). *The Active Interview*. Thousand Oaks, CA: Sage.
- Hunt, A. & Wickham, G. (1994). *Foucault and Law: Towards a Sociology of Governance*. London: Pluto Press.
- Hussain, N. & Ptacek, M. (2000). Thresholds: Sovereignty and the Sacred. *Law & Society Review* 34(2), 495-515.

- John Howard Society of Ontario (2002). *Fact Sheet #18 Conditions in Ontario Provincial Prisons: A troubling Picture*. Retrieved on February 21, 2008 from <http://www.johnhoward.on.ca/Library/Fctsheet/fctsh-18.pdf>.
- (2005). *Remand in Ontario: A backgrounder*. Retrieved on February 21, 2008 from <http://www.johnhoward.on.ca/Library/remand/remand.pdf>
- (2006). *The Superjails in Ontario*. Retrieved on February 18, 2008 from <http://www.johnhoward.on.ca/Library/reports/superjails.pdf>.
- Kellough, G. & Wortley, S. (2002). Remand for Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions. *British Journal of Criminology* 42, 186-210.
- Liebling, A. (2000). Prison officers, policing and the use of discretion. *Theoretical Criminology* 4(3), 333-357.
- Lynch, M. (1998) "Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity." *Law and Society Review* 32(4), 839-869.
- Lyon, D. (2006) Airport Screening, Surveillance, and Social Sorting: Canadian Responses to 9/11 in Context. *Canadian Journal of Criminology and Criminal Justice* 48(3), 397-411.
- MacCharles, T. (2006a, April 4). Tories hint at more prisons. *The Toronto Star*.
- (2006b, April 7). Tories still working on cost of crime plan. *The Toronto Star*.
- (2006c, May 5). Tories target gun crime. *The Toronto Star*.
- Maurutto, P. and Hannah-Moffat, K. (2006). Assembling Risk and the Restructuring of Penal Control. *British Journal of Criminology* 46, 438-454.
- May, E. (1981). A Day on the Job – In Prison. In Ross, R. R. (Ed.) *Prison Guard/Correctional Officer: The Use and Abuse of the Human Resources of Prisons*. Toronto: Butterworths.
- Mead, L. (1986) *Beyond Entitlement: The Social Obligations of Citizenship*. New York: Free Press.
- (1991) The New Politics of the New Poverty. *Public Interest* 105, 3-20.
- Miller, L. L. (2001). Looking for postmodernism in all the wrong places. *British Journal of Criminology* 41, 168-184.

- Ministry of Community Safety and Correctional Services (2008a). *Facilities*. Retrieved on May 12, 2008 from [http://www.mcscs.jus.gov.on.ca/english/corr\\_serv/adult\\_off/facilities.html](http://www.mcscs.jus.gov.on.ca/english/corr_serv/adult_off/facilities.html)
- (2008b). *Inmate Classification*. Retrieved on May 12, 2008 from [http://www.mcscs.jus.gov.on.ca/english/corr\\_serv/adult\\_off/inmate\\_class.html](http://www.mcscs.jus.gov.on.ca/english/corr_serv/adult_off/inmate_class.html)
- (2008c). *Windsor Jail*. Retrieved on August 12, 2007 from <http://windsorjail.com/history.htm>
- Motiuk, L. L. and Porporino F. J. (1989). *Offender Risk/Needs Assessment: A Study Of Conditional Releases*. Research and Statistics Branch, Correctional Service of Canada. Research Report No. R-01.
- Murray, C. (1984) *Losing Ground: American Social Policy 1950-1980*. New York: Basic Books.
- O'Connor, D. (2002) *Mediated Associations*. Montreal: McGill-Queen's University Press.
- O'Connor, D.; Lippert, R.; Spencer, D.; Smylie, L. (2008). Seeing Private Security like a State. *Criminology and Criminal Justice* 8(2), 203-226.
- Office of the United Nations High Commission for Human Rights (1957). *Standard Minimum Rules for the Treatment of Prisoners*. Retrieved on May 19, 2008 from [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm).
- O'Neill, J. (2004, October 30). Corrections ministry, jail system go on trial. *The Ottawa Citizen*.
- Ontario (1990). *Ministry of Correctional Services Act*, R.S.O., Chapter M.22.
- The Ontario Liberal Party (2008) *Party History*. Retrieved on May 15, 2008 from [http://www.ontarioliberal.ca/pages.aspx?id=party\\_history](http://www.ontarioliberal.ca/pages.aspx?id=party_history)
- The Ontario PC Party (2008) *History of Our Party*. Retrieved on May 15, 2008 from <http://www.ontariopc.com/history.asp>.
- (2008) *John Tory Speech to PC AGM*. Retrieved on May 22, 2008 from <http://www.ontariopc.com/documents/speeches/John%20Tory%20Speech%20-%20February%2023,%202008.pdf>.
- O'Malley, P. (1999). Volatile and contradictory punishment. *Theoretical Criminology* 3(2), 175-196.
- (2002). Globalizing risk? Distinguishing styles of 'neo-liberal' criminal justice in Australia and the USA. *Criminal Justice* 2(2), 205-222.

- Parliament of Canada (2008). *House of Commons Government Bills* Retrieved on January 12, 2008 from <http://www.parl.gc.ca/EGISINFO/index.asp?Language=E&List=list&Type=0&Chamber=C&StartList=2&EndList=200&Session=14>.
- Peters, E. M. (1995). Prison Before the Prison: The Ancient and Medieval Worlds. In Morris N. and Rothman D. J. (Eds.) *The Oxford History of the Prison*. 3-48. Oxford: Oxford University Press.
- Powell, B. (2006, May 5). Tough-on-crime plan draws fire. Longer sentences no deterrent, critics say. May satisfy political needs, some contend. *The Toronto Star*.
- Pratt, J. (1995). Dangerousness, Risk and Technologies of Power. *Australian and New Zealand Journal of Criminology* 28(1), 3-32.
- Rose, N. (2000). Government and Control. *The British Journal of Criminology* 40, 321-339.
- Rose, N. (2001). The Politics of Life Itself. *Theory, Culture & Society* 18(6), 1-30.
- Rose, N. and Miller, P. (1992). Political power beyond the State: problematics of government. *British Journal of Sociology* 43, 173-205.
- Rose, N., O'Malley, P., Valverde, M. (2006). Governmentality. *Annual Review of Law and Social Sciences* 2, 83-104.
- Shearing, C. D. & Stenning, P. C. (1985). From the Panopticon to Disney World: The development of Discipline. In Doob, A. and Greenspan E. (Eds.) *Perspectives in Criminal Law*. pp. 335-349. Ontario: Canada Law Book Inc.
- Shearing, C. D. & Wood, J. (1999). Reinventing intellectuals. *Canadian Journal of Criminology* 41(2), 311-319.
- Silverman, D. (2003). Analyzing Talk and Text. In Denzin, N. K. and Lincoln Y. S. (Eds.) *Collecting and Interpreting Qualitative Materials*. pp. 340-362. Thousand Oaks, CA: Sage
- Simon, J. (1998). Managing the monstrous: Sex Offenders and the new Penology. *Psychology, Public Policy, and Law* 4(1/2), 452-467.
- Sparks, R. (2001). Degrees of estrangement: The cultural theory of risk and comparative penology. *Theoretical Criminology* 5(2), 159-176.
- Statistics Canada (2006) *Adult correctional services - Summary Table*. Retrieved on Oct. 1, 2007, from <http://www40.statcan.ca /101/ cst01/leal30p.htm>

- (2008) *Adult correctional services*. Retrieved on June 9, 2008 from <http://www.statcan.ca/Daily/English/080606/d080606b.htm>.
- Tyler, T. (2003, December 21). Bail system 'Cruel', says judge. *The Toronto Star*.
- Valverde, M. (1998). *Diseases of the Will: Alcohol and the Dilemmas of Freedom*. Cambridge: Cambridge University Press.
- (2003). Police science, British style: pub licensing and knowledges of urban disorder. *Economy and Society* 32(2), 234-252.
- Van Dijk, T. A. (2006). Discourse, context and cognition. *Discourse Studies* 8(1), 159-177.
- Williamson, D. (2008, May 21). No New Jail till 2012. *The Windsor Star*.



**Table 1.**

Regime	Rationale	Technologies	Subject
Sovereign	Power over life and death Suspending law	Public execution Camp, prison	Felon Bare life
Deterrence	Rational judgment based on costs/benefits	Public works, chain gangs	Rational Individual
Discipline	Rehabilitation to implement good morals	Prison	Delinquent
Risk	Managing Groups/Aggregates	Prison	Risky population
Crime-fighter	Orderly public space	Policing	Moral Individual

## **APPENDIX A: Interview Questions<sup>1</sup>**

### **Correctional Officers**

#### **Theme 1 – Situating the Interviewee**

1. What is your job title?
2. Please explain your responsibilities.
3. How long have you held this position?

#### **Theme 2 – Personal Background**

4. Why did you become a correctional officer?
5. What are you getting out of this job?
  - a. What in your opinion are 3 major advantages and disadvantages of being a correctional officer?
6. How does a regular day look like for you?
  - a. How many primary clients do you have?

#### **Theme 3 – Correctional Officer Training**

7. What training have you received?
  - a. How do you deal with job-related difficulties, such as stress?
  - b. Do you feel that you acquired an “on-the-job” training?

#### **Theme 4 - Programming**

8. What programs do you predominantly implement?
9. What are the goals of that program?
10. What sort of interaction do you have with your clients?
  - a. How often would you say you meet with a person?
  - b. Is there a regular schedule that you follow or is it more on an *ad hoc* basis?
11. What is the process of program design that you engage in?
12. How do you define program/treatment needs?

#### **Theme 5 - Risk**

13. How do you identify risks?
  - a. Do you integrate family members into the treatment program?
  - b. Do you engage offenders in the design process?
  - c. Do you observe offenders prior to the design process?
14. What types of guidelines do you have to follow when designing treatment programs?
  - a. Do you encounter problems in trying to follow policies and regulations when implementing/designing treatment programs?
15. What roles do medical, psychological reports and risk profiles play in the program design?
16. What do you do when you have little information about the offender?
17. How do you deal with discrepancies in the offender’s file?
18. Do you find risk assessment tools useful?

#### **Theme 6 – Personal rationale**

19. What, in your opinion, is the main reason for putting offenders in prison?
20. Why, in your opinion, do people commit crimes?

---

<sup>1</sup> Some of the questions are based on the interview guide used by Balucci (2002)

## **APPENDIX B**

### **Treatment Programs**

The ministry provides offenders with many kinds of treatment programs, including:

- anger and aggression control;
- anti-criminal thinking programs (Change is Choice);
- assertiveness training;
- communication skills;
- domestic violence groups;
- rehabilitative work experience programs
- job-readiness training;
- life management skills;
- literacy;
- parenting skills;
- sex offender programs;
- sexual abuse counselling;
- stress management training;
- substance abuse groups; and
- victim awareness

Source: The Ministry of Community Safety and Correctional Services

[http://www.mcscs.jus.gov.on.ca/english/corr\\_serv/adult\\_off/treat\\_prog.html](http://www.mcscs.jus.gov.on.ca/english/corr_serv/adult_off/treat_prog.html)

## VITA AUCTORIS

NAME: Gergely Eklics

PLACE OF BIRTH: Kapuvár, Hungary

YEAR OF BIRTH: 1981

EDUCATION Kazinczy Ferenc Gimnazium, Győr, Hungary  
1996-2000

University Windsor, Windsor, Ontario  
2002-2006 B.A.

University of Windsor, Windsor, Ontario  
2006-2008 M.A.