

**The Truth to Sentencing:
Analyzing the Construction of Truth in Bill C-25**

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To Trevor who stood by me when I wasn't sure if I could make it.
To Isla who made me want to be better for her sake.
To Jon who made me better for my sake.
To Mum and Dad for teaching me not to quit.
To my family and friends who encouraged me to make it happen.

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Abstract:

Bill C-25, *The Truth in Sentencing (TIS) Act* legislates the reduction of credit awarded for time served in pre-sentencing custody. The Act is but one initiative that reflects a shift toward punitiveness by the West. In reading the literature, a gap was identified concerning TIS activities in relation to the current Canadian predicament of crime control, and a socio-legal perspective provided a creative means of looking at this gap. The primary data was coded and analyzed using sensitizing categories derived from a leading theoretical framework. This framework posited the existence of conflicting criminologies and resulting strategies together forming the present regime of truth. This thesis concludes that ‘truth’ in sentencing is premised upon contradictory understandings as defined by the framework, that conflicting rationalities are reproduced within TIS and that although the Act is touted as an administrative reform, it also reasserts sovereign power over issues of crime and its control.

Chapter 1: Introduction

Truth in Sentencing (TIS) initiatives are commonly employed in first-world capitalist nations such as the United States (US), Australia, the United Kingdom (UK) and Canada. TIS generally signifies efforts to ensure that offenders ‘do their time’. Measures vary but are generally associated with restrictive “tough on crime” ideologies (Grimes & Rogers, 1999, pp.745-746; DiIulio, 1995; Hatch, 1994; Shepard, 2002, p. 531).

Most frequently, examples of the TIS phenomenon range from the “three-strikes” legislation in the US (California) to increases in time spent under supervision, as is the case in the UK (Secretary of State for the Home Department, 2006, *passim*). One of the most recent Canadian TIS endeavors was the passing of Bill C-25, an amendment to the Criminal Code, also referred to as the *Truth in Sentencing Act*, which received Royal Assent on October 22nd, 2009.

Officially, Bill C-25 represents the dissolution of ‘two-for-one credit’ for time spent in pre-sentencing custody as determined through judicial discretion¹. Beyond this, however, there is a deeper, more nuanced ‘reading’ of the Bill, which this thesis will develop. Previously, in Canada those accused of a crime who were not released on bail, were eligible for a credit, the extent of which was determined by a judge upon conviction and sentencing. The basis for this was namely that the conditions of pre-sentencing detention facilities were so deplorable that it was equated to double the time of a formal sentence. This was exacerbated by the fact that those serving in some of the worst

¹ Bill C-25, *The Truth in Sentencing Act* also represents a move towards increased punitiveness and administrative reform in sentencing. To be discussed at length throughout the next four chapters, are the impacts of this shift and what this means in the Canadian context.

conditions had not yet been convicted of a crime. The two-for-one credits are no longer an option and, as of February 22nd, 2010, the standards have been amended to grant one-for-one and, in extenuating circumstances, 1.5-for-1, the latter of which must be clearly justified as judicial discretion is curtailed (LS-638E Bill C25: *The Truth in Sentencing Act* [2009]. Library of Parliament, pp. 1-8).

TIS initiatives are contentious ones and, as will be demonstrated in what follows, typically involve heated debates concerning for-and-against arguments and all those values in between. Proponents such as Hatch (1994) attribute lower crime rates and increased levels of public safety to the development and implementation of these initiatives. Though largely speculative, he suggests that although challengers to TIS measures advocate sentences that are “proportional to the seriousness of the defendant’s conduct” they are responsible for allowing “violent offenders” to serve “too little time” and commit “more heinous crimes when released too early” (pp. 33-35). To Hatch and other TIS supporters, advocates of anti-TIS legislation and policy are symbolized as dark figures, rebels and fundamentalists, or the less nefarious “soft-headed” (Hatch, 1994, p. 34) bleeding hearts. Included in this membership are academics, judges and defence lawyers who are all proclaimed to have an interest in a softer approach or to be blind to its consequences (DiIulio, 1995, pp. 15-16).

Similarly, Mateja (2004) opines that the only efficient means of reducing violent crime is by “reducing the number of criminals on the streets” (p. 319). In this respect, he claims that “the present system is working” (p. 320) through incapacitation, and that TIS measures respond in a real way to the “profound problem of crime” (p. 320). These sentiments are echoed in other descriptive narratives and various media accounts such as

in an article published in *The Economist* (1997), wherein it was argued that TIS initiatives merge the interests of rehabilitation, incapacitation, rational choice and market economy. Prison is described as an inevitability; as a “recession-proof industry” unless “the financial temptation of crack cocaine is removed” (p. 28). In the article, this conclusion is premised on allegations that the failure of the family and the generous proceeds of crime can be responded to by incapacitating offenders and training them to participate in a controlled market environment.

In support of claims such as those made by Mateja (2004) and Hatch (1994), Grimes and Rogers (1999) in presenting a quantitative empirical estimation of an econometric model (p. 745), posit that TIS in the US can lead to the increase of the prison population via the certainty of conviction (pp. 753-754). However, their research suggested that in turn, it is likely that TIS could potentially lead to sentence reductions where judicial discretion is possible which would slow inmate population growth vis-à-vis said decrease (p. 755). Grimes and Rogers also noted; “...it is possible that the full effect of the change may not completely manifest itself in the correctional system for some time” (p. 755).

In a cost-benefit analysis of TIS measures conducted by Shepard (2002), it was suggested that TIS legislation affects a judge’s ability to apply proportionate sentences as mandatory restrictions limit judicial discretion. Shepard (2002) goes on to suggest that TIS measures only reduce the effects and rates of serious crime as opposed to crime overall, as these initiatives are typically reserved for most serious offences. Furthermore, it was noted that TIS might have a deterrent effect where the probability of

arrest/conviction increases as a result of law enforcement “buy in,” and where the certainty of conviction is augmented (pp. 527- 528).

Shepard’s findings also lend support to the conclusion that longer sentences and an increase in the certainty of incarceration for crimes covered by TIS legislation presents a burden to the prison system in terms of cost (p. 531). An important outcome of this study is the impact that TIS has on offenders’ families and communities of origin (pp. 527- 528). Some have termed such implications a form of “invisible punishment”; effects of restriction that are immeasurable, intangible and potent (Travis, J. *in* Chesney-Lind & Mauer, 2002, pp. 16, 17-20).

Turner, Greenwood, Fain and Chiesa (2006), in a comparative empirical analysis, submitted that the US, within the last twenty years, has offered special funding to states on the condition that they implement TIS legislation and policy but also note that these states would have implemented this form of legislation regardless of such an incentive. They suggest that it is still too early to evaluate the impacts of TIS but increases in time-served, which would lead to overcrowding, is projected (pp. 364, 365, *passim*).

In their descriptive account of the Canadian condition, Donahue and Moore (2008) suggest that TIS and the implementation of other “tough-on-crime” strategies are merely tactics to distract the public from an ulterior motive that may consist of economic, legislative or spurious political interests. This form of distraction, they posit, is a means of disguising a potentially malevolent outcome whose process is benevolent in appearance (pp. 375, 376, *passim*).

One such outcome is arguably the move toward privatization, which has been considered to be one of the most punitive moves by the state and private agencies and one

often justified by benevolence or necessity (Christie, 2000; Greene 2006). Much of the existing criticism of incapacitative penal reform takes issue with the privatization of prisons. Penal privatization is frequently a product of or, at the very least, compatible with, the consequences of TIS measures; an increase in restrictive measures is tightly intertwined with market interests (Chesney-Lind and Mauer, 2002, p. 6). An example of this is noted in Greene's (2006) genealogical critique of privatization; it is in the interests of various agencies to incarcerate as many people as possible. In activating offenders' participation in the market by suggesting that working for privatized industry while incarcerated serves the purpose of rehabilitation, offenders in turn provide cheap labour for industry (p. 3). Furthermore, increased levels of incarceration also mean an increased burden on taxpayers and the state (Snider, 1998, pp. 29, 30, 37, 44, *passim*). Privatization then becomes a means by which to relieve this financial pressure. Based on these claims regarding privatization, one does not have to make a huge analytical leap to conclude that TIS initiatives can realistically lead to privatization as the state cannot meet the financial pressure that will mount as judge's discretion is curtailed and more and more are committed to custodial sentences for longer periods of time. This then provides the context in which privatization can be seen as an economically viable strategy² (Chesney-Lind and Mauer, 2002; Christie, 2000; Greene 2006).

In light of the foregoing, we begin to see that TIS activities can be looked at as simultaneously serving a political function (Hatch 1994; Mateja, 2004; DiIulio, 1995) and an administrative one (Grimes and Rogers, 1999; Shepard, 2002). The implications of these kinds of initiatives are then subject to social discussion (The *Economist*, 1997)

² See Chapter 4 for further discussion on privatization as a potential outcome of financial pressures.

and academic critique (Chesney-Lind and Mauer, 2002; Christie, 2000; Greene 2006; Snider 1998; Turner, Greenwood, Fain and Chiesa, 2006). The next section, and Chapter 2, will discuss the limitations of the literature in addressing the underlying themes of TIS, and posit an alternative means of looking at them by analyzing the dominant truth claims surrounding it.

Specific Limitations of Existing TIS Literature

As indicated in the last section, TIS activities, serve an administrative purpose. To that end, the existing TIS literature relies largely on methodology conducive to program evaluation (Grimes and Rogers, 1999; Shepard, 2002), or conversely, that designed to address the expansion of punitive crime control as a social ill (Chesney-Lind and Mauer, 2002; Christie, 2000; Greene 2006; Snider 1998; Turner, Greenwood, Fain and Chiesa, 2006). Certainly, these approaches are valuable with regard to their contributions. Nevertheless, there are significant limitations in what they are able to address. Namely, they fail to provide a means of interpreting the various levels of interaction involved in legislative change and resulting impacts on policy-makers and government agencies. For example, Mateja (2004) opines that “the present system is working” (p. 320), whereas Donahue and Moore (2008) claim that there is often an implicit and less-than-benevolent motivation to politics (p. 375). The limitation to these opposing claims exists in the absence of an explanation as to how criminal justice arrived to its current predicament.

Judith Greene (2006) submits an important critique in illustrating that various American TIS/privatization initiatives have leant themselves to corporate corruption through the conflict of interest inherent to running a prison as a business (p. 3). However,

while, as will be discussed in Chapters 4 and 5, it is true that privatization and TIS are compatible with a post-social, neo-liberal market society and problematic for that very reason, Greene's narrative lacks the theoretical underpinnings to understand the full implication of this fact beyond corporate greed. Grimes and Rogers (1999, pp. 745, 753-755) and Shepard (2002, pp. 527-528, 531) respectively, submit a quantifiable speculation with regard to the impacts of TIS legislation, namely, their research lends itself to the potential outcomes of legislative change in the sense of cause-and-effect. This is both their strength and their limitation. For lawmakers and academics trying to plan and forecast projections of the future, studies in this regard can provide a solid foundation. However, Garland (1996, 2001) in his discussion of social transformation views such projects as only one piece of the whole.

There is no doubt that there are significant and tangible impacts resulting from activities such as the implementation of TIS initiatives. However, David Garland has offered an implicit critique of such a narrow a focus, one that ignores a broader explanatory focus, which is dealt with in detail in Chapter 4. The fundamental limitation to these activities is that they assume and reproduce the rationalities underpinning the dominant regime's (1996, p. 445 Foucault, 1976/1980, p. 133) normalized ways of understanding (pp. 79-81), otherwise known as the common sense³. It is important for research to intellectually transcend common sense; however, this requires more than "...individually making some 'original' discoveries. It means also and especially the critical proliferation of truths already discovered..." (Gramsci, 1957, p. 60). As O'Malley

³ Garland states that the punitiveness we see today is a "deep-rooted aspect of our culture, embedded in our common-sense" (1996, p. 460). He goes on to say that the fear of crime has been "*institutionalized*. It has been written into common sense and the routines of everyday life" (2000, p. 367). Common sense is the normalized way of understanding crime, institutionalized through a complex set of interactions which become cultural facts (1996, p. 446).

(1996) states in explaining how the current “post-social” context has affected academic pursuits, it is “beginning to eliminate a once clear distinction between administrative and academic criminology, tending to push the latter in the direction of the former” (p. 35). This is because in academia (e.g. Criminology) the business ethos of post-social society is increasingly being adopted as it is forced to take hold amidst encroaching disciplines and relationships within a competitive market (O’Malley, p. 35).

The limitations to these narrow and administrative oriented forms of study (or programs based on them) are that they in large part fail to connect with social theory and where they do, within their terms and in their time-frames they produce few measurable benefits (O’Malley, p.35). This failure to connect to social theory and/or the use of outdated theory inhibits explanatory power, which is why most of the writing on TIS is deemed ‘narrow’ and are easily indoctrinated into the dominant regime, or, common sense. TIS literature is narrow because, as Garland suggests, these pursuits tend to be restricted and unsophisticated with little explanatory value. It does not view the Criminal Justice System (CJS) as a ‘social institution’ or as interacting with ‘society’ or even as part of society. In this way, much of the existing literature on TIS takes an administrative criminological, or indoctrinated view of ‘the social’ and of ‘society’, assuming the identity of the dominant, popular knowledges/rationalities. In so doing, they evade necessary scrutiny (Foucault 1976/1980, p. 82) and do not make any attempt to offer socially significant explanations of the TIS phenomenon.

Conclusion

It is clear that there is a notable “for” and “against” division in the TIS literature.

Although it is important to empirically describe these measures and outline their impacts on the CJS and society as a whole, the narrow administrative/indoctrinated approach has its limits. Studies that lend themselves to program evaluation in weighing the costs and benefits of TIS, use empirical analysis to assist governments and other agencies in assessing spending efficiencies. However, their scope is narrow in that they cannot measure the immeasurable and they fall short of identifying underlying causes and consequences. Garland suggests that there is a distinction between social structure and political response in spite of the fact that they are intimately related (1996, pp. 445-450, 2000, p. 347, *passim*, 2001, pp. 1-51, 105-138, *passim*) and he questions this relationship in explaining how we have come to accept and reproduce the current regime of truth around punishment. In doing this, Garland goes beyond the existent literature by addressing the anomalies that have come to shape what he refers to as, the current predicament of crime control (2001, p. 131).

As Garland (1996) noted, many writers “are right to direct our attention to the massive expansion of incarceration which is currently taking place throughout most of the developed world, since in political and sociological terms, this is of prime importance” (p. 450). However, in addition to these contributions, “there are developments occurring which tend in a different direction and operate according to a different kind of rationality” (p.450). These are discussed at length by both Garland and Pat O’Malley (1996). These developments in late 20th century crime control strategies (and criminological theory) stem from what O’Malley terms as a “post-social” rationality of governance. This takes community and the market to be important focal points of regulation that emphasize the ‘responsibilisation’ of all citizens – victims and offenders

alike (pp. 30-31). They enlist the ‘private sphere’ or that of civil society in the work of “rowing” (Braithwaite, 2000, p. 223; Garland 1996, 2001; O’Malley 1996). That is, emerging strategies of crime control and rationalities of governance emphasize “governance beyond the state” as an adjunct to traditional state-centred policies and understandings of crime control. Interestingly, these responsabilization strategies have emerged alongside the more traditional ‘command and control’ state strategies such as TIS.

Challenging the dominant assumptions at work within western society around crime control is inherent to Garland’s analysis. He aims to “identify the weaknesses and limitations that motivate this display of punitiveness and to point to some of the problems of power and authority that lie behind it” (p. 445). In fact, Garland (2001) states that “(t)oday more than ever, it is easy to live in the immediacy of the present and to lose all sense of the historical processes out of which our current arrangement emerged” (p. 1). This is a frailty which Foucault (1976/1980) would suggest is our failure to challenge the master status of dominant theory or, “knowledges”, a challenge he contests is important in the destabilization of dominant “regimes of truth”⁴. Foucault (p. 81-82) suggests that dominant knowledges or ‘grand theories’ are inherently unstable. Grand theories often try to explain everything but are inadequate in doing so in that there often exist anomalies for which it cannot account yet which are largely ignored (p. 81). Grand theories cannot account for the diversity created by these ‘anomalies’; however, the grand theory continues to exist nevertheless. The failure to acknowledge anomalies and respond to them is problematic as this presents the illusion of uniformity and coherence within a

⁴ The current regime of truth will be discussed throughout the thesis and at length in Chapter 4. I understand the present regime to be what Garland refers to as our reaction to the current criminological predicament and the new culture of crime control (2001, pp. 103-138, 167-205).

discourse, such as the discourse on punishment. This has happened in much of the TIS literature; there is the appearance of coherence and uniformity through the exclusion of competing truth-claims, and as O'Malley suggests, has, for the most part, become administrative in nature thus failing to ask the necessary social questions or to be reflexive with regard to its contribution to social theory (1996, p. 35).

Foucault (1976/1980) suggests that through exploratory methods, knowledges that have been subjugated as a result of politics and struggles might be exposed. Although subjugated knowledges are low ranking and do not have the truth status that the more dominant knowledges possess, through local criticism they can be used to challenge the dominant forms of knowing (pp. 81, 82). This is in fact one of my objectives in examining TIS. There is not simply one 'rationality' at work within the TIS movement, although there may appear to be. Garland (1996, 2001) provides a theoretical framework indebted to the work of Foucault that I will utilize to analyze how dominant knowledges are constructed.

Garland (1996, 2001) focuses on deconstructing knowledge claims by using a genealogical approach to understand "our current arrangements" (2001, p.1). His theory allows us to break free of assumed truths offered to us in much of the TIS literature and while "in the real world" there may not be "a clear distinction between 'social structure' and 'political response'" (p.201), it is exactly this distinction that we must see. In so doing we might learn that "'structurally related' is not the same as 'strictly determined'" (p. 201). In going forward we will see if this framework offers insight into the Canadian predicament specifically⁵. Namely, this thesis will explore the different rationalities

⁵ See Chapter 4 for further discussion on how this framework serves to illustrate the current Canadian criminological predicament.

underpinning “post-social” criminal justice initiatives and draws heavily on David Garland’s theory that there are two predominant crime control strategies at work in western societies: “strategies of denial” and “strategies of adaptation”. This theory will be used to guide my examination of the TIS legislation and debates surrounding this. More specifically, the key objective of this thesis is advancing the following three key arguments:

a) That the ‘Truth’ in sentencing is premised upon contradictory and divergent understandings of criminal behaviour, human nature, and crime control and correspond to what Garland has outlined as a ‘criminology of the Self’/Everyday Life on the one hand and ‘criminology of the other’ on the other hand.

b) The conflicting rationalities outlined by Garland (criminologies of the Self and the Other) can be found within the *Truth in Sentencing Act* and its formative discussions, meaning that the deployment of this *Act* in practice will likely produce the contradictory Strategies of Adaptation and Denial .

c) Although touted as administrative reform (which would necessitate strategies of Adaptation), the *Act* also re-asserts state/sovereign control over issues of crime and its control (reproducing the myth of sovereign power) via strategies of Denial⁶.

It will be argued that the formulation of TIS initiatives is a culmination of truth-claims and a consequence of conflicting rationalities. In the next chapter I outline an approach to studying legislation that breaks with a traditional doctrinal view of law; that is, with the dominant way law is conceptualized in legal studies and criminology. This is

⁶ Chapters 2, 3 and 4 elaborate on the criminologies of the Self/Everyday Life (crime as a normal social fact) and the Other (view offenders as rational opportunists and a political commodity) and their resulting strategies (Adaptation to failure by state agencies and Denial of failure to reassert Sovereign power) as conflicting responses to the current predicament of crime control (Garland, 1996, pp 450-463, Garland 2001, pp. 103-139, Garland 2000, pp. 354-369).

done to show that we can approach TIS as an outcome of a power struggle and conflict between competing rationalities and interests. This discussion places the present case study theoretically and within the context of socio-legal studies. It also discusses the work of Garland in more detail. Garland (1996, 2001) is theoretically unpacked with the objective of applying it as an interpretive framework. This framework will be explained methodologically, and then applied in the subsequent chapters to guide the reading and analysis of a selection of documents related to the development of TIS legislation. The application of this analytical framework illustrates Garland's conception of crime control strategies today, and aids in capturing and conceptualizing important and neglected elements of TIS generally and within the Canadian context specifically.

Chapter 2: A Conceptual Approach to the Problem of Crime and TIS

This chapter is meant to place this case study theoretically, as well as within the context of socio-legal studies. To do this, an alternative to the doctrinal law approach of looking at legislation is presented through a discussion of the socio-legal perspective on law. This perspective tends to coincide with the administrative orientation to criminology. Then, with this in mind, I move to consider the limitations of the TIS literature. Once the limitations are considered, Garland (1996, 2001) will be theoretically unpacked, schematically and conceptually, to set the stage for further examining his ideas in terms of illustrating TIS within the Canadian context.

Alternative Means of Looking at Law: the Socio-Legal Perspective

Crime is a particularly enigmatic and transient concept and Criminology as a study of said concept must be equally fluid. As Garland and Sparks (2000) suggest, it is “apparent that criminology’s subject matter is centrally implicated in the major transformations of our time” (p. 189). Garland and Sparks (2000) agree that the study of crime and Criminology as a discipline can no longer be conceptualized as isolated but rather pervade the borders of other territories such as medicine, social control, psychology and economics (pp. 189, 195). This contention decreases the probability of obtaining a ‘best-fit’ direct response to crime because it is complex. Just as there are thousands of potential combinations to try in unlocking a safe, there are countless ways to look at and understand the problem of crime. In other words, Garland and Sparks

challenge the researcher to look outside traditional boundaries, as criminology is relevant to many disciplines.

Following from this, one of the limitations of administrative/correctionalist criminology discussed in the last chapter is that it draws heavily on a doctrinal legal approach and as such tends to be indoctrinated by it, thus failing to be creative or reflexive of the dominant regime. As such, in contrast to the traditional legal versus sociological, psychological and criminological approaches to studying crime, Kraska and Neuman (2008) propose that the evolution of criminal justice studies involves the combination of “the two highly interrelated fields of study, criminal justice and criminology” (p. 5). This approach to research, they suggest, is a result of the requirement for the flexible (though no less rigorous) means of adopting a “balanced approach to a diverse and highly dynamic field of study” (Preface XXV). In other words, where interdisciplinary lines are being consistently blurred, an opportunity for innovation presents itself. Instead, of looking at the problem of crime in traditional ways, thereby reproducing the dominant understanding, where it is looked at newly in combining interrelated disciplines, the questions we ask might evolve.

Similarly, Alan Hunt (1986) claims that there are alternatives to the traditional pragmatic approaches to the study of law. A proponent of Critical legal studies, Hunt suggests that the benefit of these alternative methods is the ability to shift the objectives of research. For example, Hunt states that “Critical scholars are motivated by a much broader political objective within which it is ‘the law’ itself that is ‘the problem’; law is not conceived as being capable of resolving the problems that it apparently addresses” (p. 43). He goes beyond this to note that in a critical approach to legal studies, “law is seen

as a significant constituent in the complex set of processes which reproduces the experience and reality of human subordination and domination...” (p. 43). What is valuable to note in Hunt is the challenge to view law as a way into a much larger discussion concerning the broader problem of human subordination and domination.

As well, Neil Sargent (1991) argues that legal studies have traditionally been given a privileged status that has hindered comprehensive interdisciplinary analysis, and to that end, a reflexive approach to legal research (p. 13). Sargent offers a critique of critical legal studies in the sense that they are often absorbed into the master doctrine of studying law by emphasizing “adjudications and appellate court texts as the focal point for critical inquiry” and continuing to rely on “‘internal’ canons of critical inquiry...that privilege the legal text over its external social context” (p. 6). However, he does agree with the principle also identified by Hunt (1986, p. 43) that the law should not be considered an unquestionable reality but rather that it should be viewed as one factor in a complex set (p. 13). Sargent also claims that traditionally, legal study has either been indoctrinated or colonized (p. 5, *passim*). Typically, legal studies have been focused on training legal professionals (indoctrination) to the exclusion of other domains and ignoring social and structural elements/impacts. Alternately, he notes that where other approaches are critical of legal-centric study (e.g. feminism etc), they are “colonized” or absorbed into the master doctrine, which is plagued with significant gaps in the analysis of legal study (Sargent, 1991 p. 5, *passim*, Hunt, 1986, p. 43). That is to say that, “despite its self-consciously critical stance towards conventional doctrinal scholarship” in large part, “much of the new critical doctrinal scholarship share many of the same assumptions about the nature of law as an autonomous knowledge field as does the tradition of legal

liberalism that it seeks to displace” (p. 6). Therefore, be it a traditional or critical perception of legal works, much of the scholarship in the doctrinal tradition simply perpetuates the formation of a master doctrine.

In following Hunt and Sargent, and Garland and Sparks, studying the Law or the current predicament of crime control should not be limited by the assumption that administrative/correctionalist criminology is the only way to conduct social science research but should rather be interpreted as a subject in a broader, more varied and interdisciplinary social scope⁷. TIS legislation can be viewed as an arena where conflict and competing interests can be seen; that they are produced by, and reproduce dominant knowledge claims. The interdisciplinary or open-ended nature of socio-legal research and especially its broader focus on human subordination and domination is the key to moving forward in contributing to the current body of knowledge on TIS. As Sargent indicates, the law is not autonomous, and neither is criminal justice policy. Instead, to study these, we must also consider alternatives to traditional legal and administrative study by considering our social context, and to understand more about modes of domination and subordination, and thus power and politics (*passim*).

As argued in the Introduction, the body of research to-date has been limited in the way it looks at TIS. A socio-legal perspective, in borrowing from other disciplines, allows us to look at a legal issue in another way, as an issue of politics, power, and domination. The flexibility of this approach, as Kraska and Neuman (2008) and Garland and Sparks (2000) would suggest, is necessary for developing a more comprehensive understanding of the world around us and for expanding a criminological perspective

⁷ Further discussion concerning the ‘current predicament of crime control’ takes place during the analysis of Garland later in this chapter. As well, see Chapters 3-5 for additional discussion.

beyond traditional legal doctrines and toward an alternative understanding of law in criminology.

Expanding the criminological perspective on TIS can be done by utilizing the theoretical work of David Garland (1996, 2001) to look at the social and ideological emphasis on ‘truth’ in sentencing. Garland breaks from tradition by going beyond the study of law for its own sake, emphasizing instead the complicated and intimate relationship between criminal justice, law reform and social criminology. His work will assist in elaborating the shortcomings of the existing TIS literature and supply another viable option for not only interpreting, but also understanding legislative change. Garland’s theoretical framework presents us with an alternative to the administrative and correctionalist approach to the study of crime control as well as the doctrinal position on law. Instead of a traditional approach, Garland (2001) provides a language with which we can refer to relationships, activities and decision-making in law and the crime control strategies engaged in these interactions.

Garland’s Approach to the Problem of Crime

David Garland (1996, 2001) engages sociological and criminological insight as it relates to the transition and re-production of knowledge and power (regime of truth) within the context of changing modes of crime control, power, and domination in western society. His work provides a sound example of a well-formed socio-legal approach. As a prominent theorist in criminology, his analyses of social and legislative reform, as well as how these reforms have impacted criminological rationalities (or criminologies), clearly lends itself to the discussion of TIS. In what follows I offer a close reading of Garland to

unpack and clarify his position on crime control policy and practice today. This is done with the aim of offering the basis of a framework with which to describe and analyze TIS in a way that differs from existing literature. As such an extended effort to utilize his own words can be noted, rather than simply to offer general remarks or an impressionistic reading.

Garland's (2001) approach is a genealogy, or, "history of the present" (p. 2) that he derives largely from the works of Foucault and insights of classical social theorists such as Durkheim and Marx. Garland deconstructs social discourse and charts actual institutional and political change through time and environment. He does this by analyzing the shift from pre-to-post war ideology and penal practices to the unexpected cry against penal-welfarism, into the present post-modern context of the "crime complex" and, finally, considers the "culture of high-crime societies" (p. 161). In so doing, he identifies how specific material and cultural changes/formations lead to a particular series of events resulting in the discernable and contradictory predicament in which we now find ourselves (pp. 72, 76, *passim*).

Garland discusses the shift from the age of sovereign power and Hobbes' Leviathan, an age where the state as an arm of the Sovereign became a symbol of "both law and justice" and whose "forcible pacification of enemies and subjects alike, came in time to be the 'peaceable' (though still violent) maintenance of order and the provision of security to subjects" (p. 30). Garland elaborates on the post-war phase of penal-welfarism⁸ where "social work became a growth industry, fed by the feedback loop of

⁸ Penal-welfarism as defined by Garland refers to the rehabilitative ideal; a "civilized attitude towards crime-stressing social circumstances rather than individual responsibility, remedial treatment rather than punishment..." (2000, p. 356). He also states that this ideal "down-played the role of informal action on the part of the public, and privileged the role of professionals and government officials" (2001, pp. 32, 36-37).

newly recognized problems in need of professional solutions” (p. 47). That is to say, the age of welfarism, as a result of an economic post-war boom accompanied by post-war guilt, led to a “no-fault” professionally led, fix-it project of the individual. What was most remarkable about this time, Garland suggests (p. 37), is that there was no outward political or social opposition to the professional; the expert; the academic. It was not until the 1960s that ‘the referral’ to experts for problem solving was turned on its head. The public, politicians, and perhaps most significantly its own members, openly challenged the unquestioned status of the professional, thus leading to its ultimate rejection (pp. 54-60).

Further to this, the post-war boom saw changes in western society’s social and economic structure. The “consumption patterns and lifestyles that were once confined to the rich and famous were now held out to everyone, with disturbing consequences for the expectations of would-be consumers” (p. 86). This change that defined what has been termed “modernism” involved increased access by the middle-class, to wealth, technology and consumerism (pp. 77-92). The consumer-market was entered into as a pastime instead of only for necessity, and the job-market was opened to an increased number and variety of people. This in turn impacted the family structure (e.g. single-family homes, decreased supervision of children, individualism, the rejection of tradition) and the ways in which employers responded to employees (pp. 82-84 and 86). In fact, O’Malley (1996) states that in recent history, the social sphere has been reconfigured to enable a view of subjects “not as members of an overarching whole, shaped by social conditions and to be governed through social interventions, but as individuals, responsible for their own fate” (pp. 27-28). As a whole, changes to social and economic

traditions subsequently led to a change and increase in criminality promulgated by increased opportunities for crime, reduced situational controls, an increase in the population at risk and a reduction in the efficacy of social and self controls (p. 90).

Over time, the modern to post-modern shift from an emphasis on the collective to the individual also led to a shift in responses to crime. The contradiction between individualistic principles and collective information sharing led to what Garland calls the “criminologies of everyday life” or the “self” (p. 137) and the “criminology of the other” (p. 187). Where one is shaped by individualistic, market valuing neo-liberalism, the criminology of the Other is shaped by a neo-conservative agenda in that it “represent(s) a positive symbol of the state’s willingness to use force against its enemies, to express popular sentiment and to protect the public by whatever means necessary” (p. 138). As ambivalent rationalities replacing the “social criminologies” of welfarism on opposite sides of the spectrum, they at once normalize crime in the belief that it is a routine, everyday occurrence (“criminology of the self”) and demonize the offender by rendering them as individuals “different” from the norm (“criminology of the other”) (p. 137). Simultaneously there is a shift from the ‘social’ to the ‘individual’ in terms of the location of causes and remedies of the crime problem⁹. We are collectively affected in that “‘late-modernity’ is lived –not just by offenders but by all of us–in a mode that is more than ever defined by institutions of policing, penalty and prevention” (p. 194).

Garland indicates that these conflicting rationalities underpin the new predicament of crime control (p. 131) and catalyzed what he calls strategies of

⁹ The ambivalence of the present responses to crime is “not some miracle of system alignment. It is because neo-liberalism and neo-conservatism shaped the ideological environment in which criminal justice decisions were made” and reflects the same “deep ambivalence” present in the “realities and predicaments” of the late modern world (Garland, 2001, p. 138).

Adaptation and Denial/Reaction (pp. 113- 135), which will be discussed at length in the next sections. Briefly, following from the criminology of the Self/Everyday Life, adaptive responses to crime and the move away from welfarism involve the “rationalization of justice, the commercialization of justice, defining deviance down, redefining success, concentrating upon consequences; and redistributing responsibility” (p. 113). This response (“Strategies of Adaptation”) by the ‘*administrative* machine’, or, the Public Service and state agencies is a “coming to terms with its changing environment” (p. 131). This has given rise to, ‘smart’ crime control (p. 116), increased privatization (p. 117), the separation of deviance from ‘criminality’ (p. 117), redefined objectives (p. 119), an increased focus on consequence rather than on cause (p. 121) and the redistribution of prevention responsibility to the public (p. 123).

On the other hand, non-adaptive or ‘reactionary’ responses to crime (“Strategies of Reaction”/Denial), informed by the criminology of the Other, typically wielded by the “state’s *political* machine, have repeatedly indulged in a form of evasion and denial that is almost hysterical in the clinical sense of that term” (p. 131). This political-state “reaction” involves the populist, common-sense approach that ‘something is happening’, something must be done, and something *is* being done (pp. 131-135). In this discourse of denial, “the finer points of penological realism become secondary considerations easily subordinated to political ends” (p.133). Examples of this strategy are zero-tolerance initiatives, the war on “fill-in-the-blank”, and TIS laws (p. 133). In other words, strategies of denial are defined by the rationalities that underpin criminological knowledge that focuses on the other; the ‘majority rules’, ‘you’re with us or against us’.

Pat O'Malley (1996), explains this dualism in that at once the state is "no longer seen as an expression of the social, so much as the provider of particular forms of expertise and resources to be accessed (ideally) in market terms" (p. 28), while it is also focused on reforming regimes that "can be deployed for the governance of almost anything" (p. 28). So, while the State has decreased in scope it nevertheless intends to broaden its activity. That compounded with the emphasis on the individual or "the self" (p. 28), leads to the bifurcation of criminological rationality based on new "sites" that reflect the "refiguring of the social" (p. 29).

These sites, O'Malley goes on to suggest, are the "place of the 'community' and the local; the centering of individual responsibility and the valorization of victims of crimes" (p. 29). Garland (1996, 2001) refers to these sites in terms of the new criminologies and the strategies of Adaptation that centre around the local, individual and victim as stakeholders and responsible actors, and, and Denial, which view the local, individual and victim as sites and subjects of Sovereign might (1996, pp. 460, 461).

What is interesting about these two strategies is that they are contradictory yet this contradiction underpins what appears on the surface to be a uniform and relatively coherent CJS. As Garland has noted, "we thus have an official criminology which is increasingly dualistic, increasingly polarized and increasingly ambivalent" (Garland p. 461, 1996). In other words, the CJS informed by the duality in criminological thinking, is actually itself rife with conflict and contradiction and from this has emerged initiatives such as TIS legislation. It is this internal contradiction and the conflict inherent in the CJS that has made TIS initiatives possible. TIS is an example of a strategy of Denial in that it is distinctly punitive in nature and possesses "an absolutist quality designed to reassure a

distrustful public that the system will not betray them once the case goes out of view” (Garland, 2001, p. 133), thereby through its ‘law-and-order’ rhetoric, it reasserts the myth of sovereign power (Garland 1996, p. 460). That said, however, the criminology of the Self and resulting adaptive strategies are also demonstrated in the administrative implications of such an initiative in the acknowledgment that criminality is a way of life and must be responded to in a fashion not subject to past failures (p. 461).

Criminology of the Self/Everyday Life and Strategies of Adaptation

Garland’s divergent criminologies (1996, 2001), a result of neo-liberal societal development, have had several intriguing impacts on dominant rationality, thus leading to corresponding strategies. As noted earlier, the Criminology of the Self/Everyday Life serves to normalize criminal activity in the sense that it becomes expected; a part of everyday life; a social fact (Garland, 1996, p. 446). This discourse no longer depicts crime as an anomaly but rather “the threat of crime has become a routine part of modern consciousness, an everyday risk to be assessed and managed” (p. 446)¹⁰. Interestingly, but perhaps not surprising, is the impact this has had on the general view of the CJS and the way in which that same System views itself.

Garland suggests that as a result of social structural changes within western society, the discourse of normalized crime led to the rejection of penal welfarism as the need for risk management and scientific, or program evaluation, took the lead (p. 448).

¹⁰ The concept of discourse and ideology (in this case, knowledges / “rationality”) are frequently used in criminological research but it is important that their meanings not be taken for granted. Purvis and Hunt (1993) explain discourse as a process, and ideology as an outcome (p. 496). This definition is similar to that provided by Hall (1996) in explaining the creation of an ideology that has separated the West from the rest. Discourse networks that are based on ideologies as depicted by Hall, form new ideologies. It is in this way that the social world is perpetuated and ‘truths’ are developed (*passim*) or reproduced.

This has not only led to the rejection of penal welfarism as the “Nothing Works” ideology took hold, but the focus on risk, and mitigating it, has led to the strategies of Adaptation (pp. 446-459). As Garland notes, “crime becomes a risk to be calculated (both by the offender and by the potential victim) or an accident to be avoided..., rather than a moral aberration which needs to be specially explained” (p. 451). There is a collective responsibility between state and non-state agencies and actors involved in crime prevention and in large part, the individual is held responsible for avoiding or, participating in, criminal behaviour (p. 454). Key to this activity is the *redistribution of responsibility* (Garland, 2001, p. 113), or, “responsibilization” (p. 452). “Where the state once targeted the deviant for intensive transformative action, it now aims to bring about marginal but effective changes in the norms, the routines, and the consciousness of everyone” (p. 454). Employing new forms of research which, Garland suggests, is very rarely subject to public scrutiny, the responsibilization strategy allows the state to govern from afar, employing a “new form of knowledge” which requires a new form of expert, a new specialization and new skills “in the same way that positivist criminology once supported strategies of rehabilitation and individual correction” (p. 455).

Other strategies of Adaptation include *adapting to failure* (p. 455) as characterized by the *rationalization/professionalization of Justice* (2001, pp. 114 - 116) and a *concentration on consequences* (2001, pp. 121-122). These involve state agencies accepting that the overall “failure of crime control... has led to a reformulation of objectives and priorities” (Garland 1996, p. 455). This failure is defined by the state’s inability to eradicate criminal activity as well as the perception that the CJS is not primarily the “solution to the crime problem” but is “a problem in and of itself” (2001, p.

115). Challenges to legitimacy and of work overload have led to new ways of “system integration and system monitoring, which seek to implement a level of process and information management which was previously lacking” (1996, p. 455). Another development worthy of note is the new emphasis on risk in terms of business when it comes to the state. That is, an emphasis on measurable outputs, fiscal responsibility and performance accountability where criminal justice agencies are concerned (p. 455 and 2001, pp. 114 - 116, 121 - 122). Interestingly, is the change of focus involved in this transformation; where once, the state was seen as the strong-arm of the sovereign and later, the benevolent protector of citizens, state agencies are now involved in service-delivery (Garland 2001, pp. 121 - 122). Much like private business, criminal justice agencies involve their stakeholders and are responsible to them where outcomes and “profit” by means of deliverables and buy-in are of interest (pp. 115, 121 and 1996, p. 456). This is also reflected in the *commercialization of justice* strategy (also an adaptation to failure, 1996, p. 455-456) in which “the ethos of ‘customer relations’” is so pervasive it has “begun to influence the practice of government agencies as well” (2001, p. 117). An interest in addressing social issues has been replaced by an emphasis on “economy, efficiency and effectiveness in the use of resources” (p. 116) to the point that, from the mid 1980s onward it has been deemed necessary in some cases, to contract state-run services out to private industry (e.g. the privatization of prisons) (p. 116). The emphasis on the individual and stakeholder interests has become so much the focus of state agencies that they have become “less assured in their definition of what constitutes the public interest” (p. 117).

Defining deviance down, another means of Adaptation, is at first-glance somewhat counter-intuitive in its purpose. Garland posits that it is actually the state agencies' way of limiting the "level of demand placed upon them...either by filtering (criminal behaviour) out of the system altogether, or else lowering the degree to which certain behaviours are criminalized and penalized" (p. 456). As such, the CJS at once emphasizes certain behaviours while distracting the focus away from the scrutiny of others resulting in the facilitation of "its pathologies, such as the dilution of due process and the production of 'conviction records', which are not subject to legal proof," (p. 456).

Lastly, and one of the most interesting adaptive strategies is the CJS' *redefinition of success and failure*. No longer responsible for preventing crime, state agencies focus, as noted above, on performance indicators that measure "'outputs' rather than 'outcomes', or, what the organization *does* rather than what, if anything, it *achieves*" (p. 458). True to the neo-liberal themes of privatization and risk-management, criminal justice agencies adapt to just-deserts policy in that they no longer boast a "social outcome" but rather to "process complaints or apply punishments in a just, efficient and cost-effective way" (pp. 458-459). As such, in following Garland's explanation of the current predicament, the neo-liberal philosophy emphasizes results-based punishment (p. 459) as well as a distinction between the "punishment of crime" (business of the state) and control of crime (beyond the state, p. 459).

In essence, state agencies that are constantly reminded of their former failure, in an effort to survive have learned to adapt. Employing principles of risk management, risk aversion and the activation of stakeholders, the CJS has turned its focus on serious crime with the demand for controllable, efficient and measurable results.

Criminology of the Other and Strategies of Reaction/Denial

As indicated in the sections referring to the criminologies of the Self/Everyday Life and strategies of Adaptation, Garland states that there came to be a “challenge to the state’s law and order mythology” (2001, p. 109) in that it was widely recognized that it was incapable of “delivering ‘law and order’ and controlling crime within its territorial boundaries” (p. 109)¹¹. Garland also notes that this challenge occurred at a time when the state “was already under attack on a number of different fronts” (p. 109). Strategies of Denial therefore, are the attempt to “evade the reality principle” (accepted in the various administrative *adaptations*) and to reactivate the myth of the sovereign state. Garland explains “this politicized reaction” in that it takes “two recurring forms” and either “willfully *denies* the predicament and reasserts the old myth of the sovereign state and its plenary power to punish”, or “it abandons reasoned, instrumental action and retreats into an *expressive* mode that we might...describe as *acting out*” (p. 110).

Garland defines strategies of Denial as a non-adaptive “second-line of policy development” that is also a “more politicized, populist, regressive one” (p. 131), and, as mentioned earlier, these strategies are underpinned by the criminology of the Other. This latter, Garland describes as one that “is concerned to demonize the criminal, to excite popular fears and hostilities, and to promote support for state punishment” (1996, p. 461). It is also one that “trades in images, archetypes and anxieties, rather than in careful analyses and research findings...” (p. 461). In fact, even “in the face of evidence that crime does not readily respond to severe sentences...government (British and others

¹¹ Garland suggests that “sovereignty” strictly defined, is “the competence of a state legislature to make or unmake laws without challenge by other law-making authorities” and more widely as a “state’s claimed capacity to rule a territory in the face of competition and resistance from external and internal enemies” (2001, p. 109). The myth of the sovereign state therefore, is the belief that the state will fulfill this claim even though it has been proven that it cannot (p. 110).

elsewhere) has frequently adopted a punitive ‘law and order’ stance” (p. 460). So, routinely crime is said to be perpetrated by “‘predators’,... ‘sex beasts’,... ‘evil’, ‘wicked’, member(s) of the underclass” (p. 461), all of whom are idealized as “suitable enemies” (p. 461). They are a danger to be fought off, and a political tool to be used, and in this way might be controlled by being “taken out of circulation for the protection of the public...” (p. 461), demonstrating that, in the right hands, something can be done after all.

As such, strategies of Denial prescribe a “show of punitive force”, which is a characteristic that has become “embedded in the common-sense of the public” (Garland 1996, p. 460). The common sense surrounding punitiveness is part of a “social ensemble, a collective experience that sustains a new level of crime-consciousness, a new depth of emotional investment and a new salience of crime in our everyday lives” (2000, p. 369).

Garland (2001) has described the “collective experience” as the genealogy of the present West, in that the relations surrounding the criminologies inherent to the previous model of state governance (welfarism) have changed to the present common sense (pp. 1996, 72-76, *passim*). Garland asserts that those states that adopt the strategies of Denial, and in so doing, a “‘law and order’ stance that seeks to govern by force of command” (p. 460), concern themselves with punitive expressions of the populace (p. 460). In their pronouncements they effectively link “punitiveness with effective crime control, however controversial this may be” (p. 460). Garland also states that; “‘law and order’ policies frequently involve a knowing and cynical manipulation of the symbols of state power and the emotions of fear and insecurity which give these symbols their potency” (p. 460). In other words, Strategies of Denial reaffirm state power in the face of doubt by harnessing

the fear of the populous and at the same time claim the ability to do something to assuage this fear.

Not surprisingly, Garland suggests that strategies of Denial are employed by weak states as opposed to strong ones (p. 462) in that, punitive policies are “particularly salient where a more general insecurity - deriving from tenuous employment and fragile social relations- is widely experienced...” (p. 460). That is to say, states involved in engaging strategies of Denial to assert control are distracting its citizens from failure in other areas (Donahue & Moore, 2008, pp. 375-376) or, as Garland puts it: “a show of punitive force against individuals is used to repress any acknowledgement of the state’s inability to control crime” and a “failure to deliver security to the population at large” (1996, p. 460).

The political appeal of strategies of Denial is essentially that “the punitive response... can be represented as an authoritative intervention to deal with a serious, anxiety-ridden problem” (p. 460). In fact, Garland states that:

(T)he trauma of powerlessness in the face of fear prompts the demand for action. The feeling that ‘something must be done’ and ‘someone must be blamed’ increasingly finds political representation and fuels political action (2000, p. 368).

Garland goes on to suggest that while the strategies of Adaptation and Denial are “by no means *determined* by the social field...they are strongly conditioned by that field and probably inconceivable without it” (p. 369). Punitiveness exemplifies the revival of a “sovereign mode of action”, “sovereign might” (1996, p. 461) and control, which had been softened during the age of ‘the professional’ and welfare care. However, the myth of the sovereign does not reactivate itself in a silo, nor is it a creation exclusively by politicians. Rather, it is part of a “pattern of social routines, cultural practices and collective sensibilities that formed the social surface on which was built the crime-control

strategies that dominate at the present time” (2000, p. 369). Strategies of Denial therefore, reassert the myth of the sovereign state by reaffirming our denial of state failure.

Implications

The criminology of the Self and strategies of Adaptation seem at odds with the criminology of the Other and strategies of Denial, and they are. Where the former is defined by the projects of responsabilization, the latter is similarly defined by danger ideologies. In other words, crime *is* a normal part of everyday life, but it is committed by; “...the alien other which represents criminals as dangerous members of distinct racial and social groups which bare little resemblance to ‘us’” (p. 461). Where one is “marked by a high level of administrative rationality”, the other engages the “political arm of the state” (p. 459).

These rationalities are what Garland explains as a “dualistic and ambivalent pattern of criminological thinking, involving a split between what I term a ‘criminology of the self’ and a ‘criminology of the other’” (p. 446). These criminologies underpin and have led to equally dualistic response strategies: namely, the administrative response “to the current predicament of crime control”; the strategies of adaptation, and the political punitive strategy, that of symbolic “denial” (p. 446, 2001, pp. 131-135).

Significantly, the effects of the dualistic nature of the criminologies are, in the case of the Self, to “routinize crime, to allay disproportionate fears and to promote preventive action” (p. 461). The Other is “concerned to demonize the criminal, to excite popular fears and hostilities, and to promote support for state punishment” (p. 461).

Together and separate their impacts reflect the present common sense, belying a fear of insecurity and a rejection of the unpredictable (p. 470). Garland notes that the consequence of this dichotomy is that “there is now a recurring gap between research-based policy advice and the political action which ensues” (p. 462; see also O’Malley 1996). Where one criminology puts its stock in scientific risk-management and administrative rationalities, the other is emotionally driven, the result of which is denial; “a punitive strategy...driven by a political dynamic rather than a penological one” (p. 462). It is a non-adaptive strategy employed by various political parties (particularly the right-leaning) that denies the failure of the state to control/prevent crime, but rather claims that stricter punishment of delinquency (e.g. truth-in-sentencing, 2001, p. 133) and “law-and-order” is the key to success (2001, pp. 131-133).

Therefore, according to Garland, our social narratives influence the criminologies of crime control, which are at present the criminologies of the Self and the Other. In turn, these simultaneous yet juxtaposed rationalities inform the strategies of Adaptation and Denial (1996, pp. 446-470, *passim*). As such, both strategies represent active responses to change that has taken place within the social context and the dominant common sense (rationalities) (1996, pp. 446-470, *passim*). It follows from Garland’s conceptual analysis that, depending on how these responses are manifested and/or absorbed, this in turn affects the social context, the common sense and so forth (Foucault, 1976/1980, p.133). Essentially, we see that there is a cycle that repeats itself over time, involving several interrelated, inter-dependent factors that lead to change within the CJS.

With this understanding in mind, Garland’s concepts have been introduced in order to provide the basis of a framework with which to describe and analyze TIS and

possibly lend some understanding to the influences affecting our present criminological context. The value of these concepts in looking at Canada's *Truth in Sentencing Act*, is to provide a meaningful way of interpreting the dynamic undercurrents of state debate in a way that differs from existing literature. Although Garland is referring specifically to "strategies of crime control in contemporary Britain and elsewhere" (p. 445), the developments he describes mirrors many of the changes experienced in the Canadian context. He offers us a language with which to interpret our present 'predicament' without focusing on quantifiable results (Shepard, 2002, Turner, Greenwood, Fain and Chiesa, 2006), emphasizing 'social control' (Chesney-Lind and Mauer, 2002, Donahue & Moore, 2008 and Greene, 2006) or sliding toward mere speculation (DiIulio, 1995, Hatch, 1994). Employing Garland to analyze and interpret TIS is not only to offer a different position from those already discussed; it is also possible to 'test' the 'validity' of these concepts in the Canadian context through their application. That is, to see if they can aid us in producing a more adequate or informed understanding of the TIS initiative.

Conclusion

As indicated in the foregoing sections, the objective of this thesis is to study the case of Bill C-25, *Truth in Sentencing Act*, by utilizing David Garland's theoretical framework and concepts (1996, 2001). Garland's (2001) genealogy of the present illustrates the discourses and processes of neo-liberalism and neo-conservatism converging and leading to a regime of truth in sentencing. This truth is comprised of two bifurcated strands of criminological knowledge that have been defined by Garland as the two competing "criminologies" or "rationalities" outlined above (1996, p. 446 and 2001,

pp. 113-135). These rationalities inform and are also reproduced by various discursive activities or processes, which he has termed the strategies of Adaptation and Denial (2001, pp. 113-135)¹². So, the point in going forward is that TIS, as a strategy of Denial, is actually the demonstration of the conflicting rationalities outlined by Garland. In the next chapter I outline the methodological approach, the case study, which will facilitate my exploration of TIS using Garland as a source of sensitizing concepts.

¹² See Chapter 4 for discussion on the reproductive nature of the relationship between truth, power, politics and domination.

Chapter 3: A Methodological Approach to the Problem of Crime and TIS

In the previous chapter I outlined major themes from Garland's work on crime control and punishment that I utilize as sensitizing concepts¹³. One objective of noting these was to illustrate a framework for explaining Canada's current predicament in addressing crime control and sentencing. What follows is a description of how Garland's theory was utilized and tested in relation to the TIS legislation in Canada. It is simultaneously a means of looking at law from a socio-legal perspective while attempting to move beyond its limitations.

The Case Study Approach

Contemplating Bill C-25 along the lines of Garland's major concepts is best done via the case study. Kraska and Neuman (2008) indicate that researchers often use the case study in order to "emphasize contingencies in 'messy' natural settings" (i.e. the co-occurrence of many specific factors and events in one place and time) (p. 170). They also posit that in a "case-oriented approach...explanations or interpretations are complex and may be in the form of an unfolding plot or narrative story about particular people or specific events" (p. 170). A case study method opens the door to understanding the complexities of natural settings and offers some degree of flexibility where the collection of information is concerned.

Blaikie (2000) notes that case studies are valuable as they provide a means of theory testing (crucial-case study) (p. 220), and are useful in studying areas that have not

¹³ Sensitizing concepts can be understood in terms of giving the researcher an interpretive device and as a starting point for qualitative study; as a way of seeing, organizing and understanding experience (also referred to in Bowen 2006 p. 2 and in Blaikie, 2000 p. 139).

yet been studied in much depth (revelatory case) (p. 221). Although this approach is sometimes criticized as an excuse for a lack of rigour, being subject to bias (p. 218), unable to generalize and being unmanageable in terms of data and time, case studies if done effectively according to Blaikie, are actually none of these things. Rather, this approach is a way of “organizing social data so as to preserve the unitary character of the social object being studied” (Goode and Hatt cited in Blaikie 2000, p. 215).

Case studies only lack rigour insofar as one fails to adopt a systematic approach, which is similarly a danger to any study or experiment. Furthermore, with regard to generalizability, this research strategy is useful in ‘analytic generalization’ (Yin cited in Blaikie 2000, p. 223). That is to say, that statistical generalization has been taken for granted as the only means of attributing a theory to the general population; however, Blaikie challenges this assumption by suggesting that theory-testing is another means of supporting terms of generalizability, and one that is more suited to a case study approach (p.223).

Lastly, case studies have often been confused, Blaikie posits, with specific methods of data collection that happen to be time-consuming (p. 218); however, this does not always have to be the case. Such studies do not have to be unmanageable or lengthy as long as they are conducted in a systematic and manageable way and using ‘sensitizing concepts’ is one way of doing this (see Blaikie 2000, p. 217; Stebbins 2001, p. 22, 41).

Blaikie (2000) challenges us to use the case study to gain understanding (configurative-idiographic), link to theory (discipline-comparative), build theory, explore or challenge theoretical possibilities (plausibility probes) and test theory (crucial-case) (pp. 218-225). Case studies enable the researcher to investigate phenomena within a

natural setting and as such, are useful where the boundaries between the phenomenon and context are unclear and where multiple sources of evidence are employed (Yin cited in Blaikie 2000, p. 217). This approach allows for relevant information to present itself and provides the flexibility required in qualitative research (Blaikie, 2000, p. 232). To this end, to test Garland's theory in a meaningful way, the case study approach was used here to make sense of and organize Canadian criminological and criminal justice rationalities.

The aim of this thesis was to use Garland's language to help us make sense of TIS in a way that is different from what exists, and at the same time 'test' these same concepts for how they help us make sense of, describe, and analyze the case. Probably the most appropriate case study approach, then, is what Blaikie refers to as the "crucial-case study" (p. 220). In this instance, a case must "closely fit a theory if one is to have confidence in the theory's validity, or, conversely, must not fit equally well any rule contrary to that proposed..." (p. 220). Using Garland's conceptual language is a way to sensitize us to aspects of our case that we might otherwise overlook (p. 138), and which the existing literature has overlooked.

This approach falls within what is called the hermeneutic tradition. In this tradition, one must make sense of the diversity of language in social settings by "producing a typology, a set of categories...that capture the different concepts and their meanings" (p.139). As such, Garland provides a language with which to analyze the messiness of a Canadian political setting (e.g. the passing of Bill C-25).

The Practical Application

To effectively and reflexively study the case of Bill C-25 development and implementation, the following data sources were used. The selected documents provided a means of obtaining the clearest sense of the multi-dimensional and ‘dualistic’ character of TIS. These documents were chosen because they most effectively highlight the ideological “high notes” of the social and political debate surrounding truth in sentencing within the Canadian context. In effect they provide tangible examples of what Garland is getting at in his distinction between the two different types of strategies of control.

As such, the primary data sources included¹⁴:

- Transcripts from the House of Commons and the Senate debates (Second Readings dated April 20th, 2009 and June 16th, 2009 respectively)¹⁵
- Bill C-25, *The Truth in Sentencing Act*

The documents identified were read and analyzed using sensitizing categories derived from Garland in order to test the relevance of his description of the bifurcated criminologies of the Self/Everyday Life and the Other as well as their resulting strategies, within the Canadian context. These sources were identified based on their prominence in, and relevance to the decision-making process. It should be noted that related documentation (e.g. Committee evidence/minutes and First and Third Readings) were read to provide additional context surrounding the implementation of the Bill. However,

¹⁴ House and Senate Committee transcripts and evidence were also examined in order to provide supplementary information.

¹⁵ Of note is that the transcripts referred to here were found on the official Parliament of Canada website and had been recorded (Hansard, no. 041) as part of the larger debates in which other subjects than Bill C-25, *The Truth in Sentencing Act*, were discussed. As such, there were no page numbers in that format to refer to which posed significant methodological challenges. For ease of reference therefore, the section referring to the Bill in both the House and Senate (Hansard, Vol. 146, issue 46) readings, were removed from the whole and reproduced as their own individual documents to which page numbers were added for the purpose of this analysis.

while Committees are a forum for producing evidence in support of, or against a Bill there is no decision rendered as a result; only recommendations. In contrast, while there are decisions made at the First and Third Readings of a Bill, the former simply introduces it and the latter is primarily an opportunity for parliamentarians to raise any final concerns. As such, the transcripts from the Second Readings in the House of Commons and the Senate were selected for more in-depth analysis. This is because, at this stage of the process the major arguments were introduced from which much of the other debate followed. Furthermore, the decision to forward the Bill is largely based on the discourse and justification upon which these arguments are premised. To that end, the key documents were rigorously coded (as indicated below) to the point of theoretical saturation¹⁶, while additional sources provided evidentiary support of the findings.

The materials were organized by coding using the following sensitizing concepts and themes from Garland:

- Criminology of the Self [crime happens- it is a part of normal life (1996, p. 446)];
 - Criminology of the Other [criminals are not like ‘us’, they are monsters/anomalies/non-conformists (1996, p. 461)];
 - Penal Welfarism [rehabilitative ideal, treatment model (2001, p. 37)];
 - Strategies of Adaptation [specifically, the “rationalization of justice, the commercialization of justice, defining deviance down, redefining success, concentrating upon consequences; and redistributing responsibility” (p. 113)];
- and,

¹⁶ “Theoretical saturation” as defined by Alan Bryman (1988) refers to the point at which, “(T)here is a recognition in the idea of ‘saturation’ that further search for appropriate instances”, or cases “may become a superfluous exercise” (p.84).

- Strategies of Denial [e.g. appearances (public perception), emotionalism, politicization (three overarching themes), law-and-order, punishment, prison works, truth-in-sentencing (1996, pp. 459-463; 2001, pp. 132-135)].

The following Table was used to produce a structured reading of the primary source documentation and to systematically identify Garland’s themes.

Table: Criminologies of the Self, the Other and Welfarism

Criminological Knowledge	Strategy	Description	Colour
Self/ Everyday Life	Adaptation (Administrative)-Rationalization of Justice (Adapting to Failure - 1996)	<ul style="list-style-type: none"> - Professionalization of the CJS - More systematic ways of information-gathering, better caseload management, accountability, new strategies of system integration/monitoring (1996, p. 455, 2001, p. 115) - A system-wide emphasis on efficient spending and prioritizing (p.115) - Identified the CJS as a problem in and of itself (p. 115) - Objective= ‘Taming the System’ (p. 115) - Systemization has led to enhanced central planning/control/system-wide policy objectives (1996, p. 455, 2001, p. 115) - Information technologies and management practices led to standard reflexivity and self-monitoring (‘what works’ in measurables) (p. 115-116) - “Smart crime-control” (use of computers and coding) (p. 116) 	Green
Self/ Everyday Life	Adaptation-Commercialization of Justice (Adapting to Failure - 1996)	<ul style="list-style-type: none"> - Increased privatization of formerly state-monopolized powers to ‘for-profit’ contractors (1996, p. 455, 2001, p. 116) - Low-cost and high speed in providing prison places (p. 117) - Affecting policing (increase of 	Red

		<p>private policing)- can cause inequalities (access and provision)(p. 117)</p> <ul style="list-style-type: none"> - Ethos of ‘customer relations’ is so pervasive in commercial sector and business management and is starting to affect state agencies (p. 117) - Police, Courts etc now uphold specific public interests (stakeholders e.g. victims, businesses, sometimes inmates etc.) instead of public interest at large (p. 117)- more attuned to interests of individual consumers than what constitutes public interest (p. 117) 	
Self/ Everyday Life	Adaptation- Defining Deviance Down	<ul style="list-style-type: none"> - Filtering various offences out of the System and/or lowering degree some offences are criminalized/penalized (p. 456) -Consequence: dilution of due process - Current social focus is on major offences, prosecution on minor offences=counterproductive and expensive - Opposite of ‘net-widening’- allows minor /low-priority offences to slip a bursting net (pp. 456,457) - State agencies increase in size and scope (re “productivity”) while lessening process of minor offences (p. 457) 	Pink
Self/ Everyday Life	Adaptation- Redefining Success (and Failure- 1996)	<ul style="list-style-type: none"> - A scaling down of expectations/redefining goals/changing criteria for which success and failure is judged (1996, p. 458) - Police: emphasis on success of detecting serious crime/criminals but low expectations- random or opportunistic crime - Prisons: emphasis on incapacitation instead of 	Yellow

		<ul style="list-style-type: none"> rehabilitation - Offender responsible for outcomes and actions- no longer the State (like responsabilization) - Victim responsible for taking necessary steps to protect self and property (like responsabilization) - Success= internal goals instead of social goals - New performance indicators measure ‘outputs’ (what it does) instead of ‘outcomes’ (what it achieves) - Compatible with Just Deserts (less likely to fail) (p. 458 - 459) - Accountable/answerable for outputs, efficiency and cost-effectiveness (p. 459) 	
Self/ Everyday Life	Adaptation- Concentration on Consequences (Adapting to Failure - 1996)	<ul style="list-style-type: none"> - Reformulation of objectives (emphasis on crime management/consequences of crime instead of control/prevention) (1996, p. 455 and 2001, p. 121) - Changing policies to emphasize service-delivery business ethos and process- e.g. victims policies (1996, p. 455 and 2001, pp.121 - 122) - Customer relations approach (what the public wants instead of top-down abstract notions of what is best) (1996, p. 456)- e.g. reducing fear of crime (2001, pp. 122) 	Orange
Self/ Everyday Life	Adaptation- Redistributing Responsibility	<ul style="list-style-type: none"> - Activation of non-state actors/organizations (1996, p. 452) - “(P)artnerships,” multi-agency”, “activating communities”, “active citizens,” “help for self-help”, techniques/methods to establishing new forms of behaviour and stop established habits, publicity campaigns that raise consciousness/raise sense of duty/change practices (p. 452) 	Blue

		<ul style="list-style-type: none"> - All have responsibility, the state alone cannot prevent/control crime (p. 453) - Implement Federal legislation/regulation affecting non-federal establishments/organizations - Merges neatly with privatization (p. 453) - Acting at a distance but experiencing increase in size and exercise of power (p. 454) -Not concerned with reforming offenders but activating others to enforce changes in behaviour (p. 454) 	
Other	Denial	<ul style="list-style-type: none"> - Re-asserts State power - Political arm - Populist - Emotionally (fear and insecurity) driven (1996, p. 460) - Law-and-Order - Punishment - Politicization - Prison Works - TIS - Tough on crime (“punitive force”) compensates for failure to deliver security to population (p. 460) - Punitiveness part of public’s ‘common-sense’ (p. 460) - Gives appearance that “something is being done” (p. 461) - “...exemplifies the sovereign mode of state action” (p. 461) and punishment= act of sovereign might/absolute power (p. 461) - Rejection of welfarism and rehabilitative ideals and leads to mass-incarceration (p. 461) 	Orange/ Pink
Welfarism	N/A	<ul style="list-style-type: none"> - Rehabilitative ideal, treatment model (2001, p. 37) 	Black

As mentioned in Chapter 1, the key objective of this thesis is to advance the following three key arguments:

a) That the ‘Truth’ in sentencing is premised upon contradictory and divergent understandings of criminal behaviour, human nature, and crime control and correspond to what Garland has outlined as a ‘criminology of the Self’/Everyday Life on the one hand and ‘criminology of the other’ on the other hand.

b) The conflicting rationalities outlined by Garland (criminologies of the Self and the Other) can be found within the *Truth in Sentencing Act* and its formative discussions, meaning that the deployment of this *Act* in practice will likely produce the contradictory Strategies of Adaptation and Denial.

c) Although touted as administrative reform (which would necessitate strategies of Adaptation), the *Act* also re-asserts state/sovereign control over issues of crime and its control (reproducing the myth of sovereign power) via strategies of Denial.

As such, this table was used as a reference-guide in the structured reading of the primary sources, which also allowed me to ‘test’ the prevalence of Garland’s sensitizing themes in the Canadian law-making context. This procedure then enabled me to re-organize the materials thematically, which in turn lead me to postulate the three arguments of the thesis.

Chapter 4: Conflicting Rationalities in the Truth to Sentencing

In light of the methodology identified in the last chapter, in engaging an interdisciplinary, socio-legal approach, the key documents were analyzed in order to observe the presence and predominance of the dualistic rationalities, or, “criminologies” and subsequent strategies called upon in approaching crime control in the Canadian context. Concerning the conflictive nature of the modern-day criminologies, Garland (1996) stated that his argument concerning them was, “that this is a contradictory dualism expressing a conflict at the heart of contemporary policy rather than a rationally differentiated response to different kinds of crime” (p. 446). I have interpreted this to mean that crime control at this stage in our history actually has very little to do with crime or the individuals that commit it. Rather, the current predicament refers to the dualistic criminologies that are both a reaction to, and a reproduction of what exists at the foundation of western society’s political and legislative framework. As O’Malley (1996) suggests in his discussion of the Left and Right criminologies that have come to represent criminology in a post-social society, there is a convergence of rationalities of crime and control that were formerly at odds (pp. 28, 31, 36, *passim*). It is this convergence of duality that is explored in this chapter.

The fact that Bill C-25 is in and of itself entitled *The Truth in Sentencing Act*, suggests that there are some assumptions with regard to what “truth” actually means. In order to understand the politics of denial and punishment, it is important to first grasp the dynamic interactions of truth, power and domination.

The Rationalities of Truth and Power

In understanding TIS, it is important to understand Garland's approach to the concept of power¹⁷. Garland (2001) refers to "balances of power" (p. 88). He suggests that power is not something to be held *over* someone; rather it is a tool to be used (p. 133). He notes that historically, some have used power to force or oppress, while others have used power to distract or persuade (p. 133), but the point he seems to make is that power is agency; exercised where there is the opportunity to do so.

"Truth" is also an interesting concept in the current context and warrants further discussion before moving ahead. It is most often that TIS initiatives are implemented by politicians who are also involved in denying their own limitations (p. 462). In fact, Garland states that as a result of state ambivalence:

...there is now a recurring gap between research-based policy advice and the political action which ensues... whereas the 'preventive strategies'... are premised upon consolidated research results and clear administrative rationalities, the 'punitive' strategy is driven by a political dynamic rather than a penological one. One strategy adapts itself to the reality principle while the other strives to deny it (p. 462).

The foregoing illustrates a common disconnect with regard to different assumptions of "truth." In essence, this is exactly what Garland has been saying all along: the ambivalent rationalities used to respond to the current predicament are conflicting, yet coexisting truth assumptions that have subsumed other truth assumptions. In this sense,

¹⁷ As noted in Chapter 2, critical legal and socio-legal studies deconstruct the relationship between power, politics and domination. To that end, laws are not viewed as being actually made to solve a problem, but that "law is seen as a significant constituent in the complex set of processes which reproduces the experience and reality of human subordination and domination..." (Hunt, 1986 p. 43). In other words, politicization of legislation is a strategy of domination and is one relationship in a complex set that Garland seeks to address.

truth and power are not forces in and of themselves, nor are they opposing. In fact, Foucault (1976/1980), suggests, “truth isn’t the reward of free spirits”, rather:

Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its ‘general politics’ of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true (p. 131).

In other words, assumptions of truth, or “regimes” of truth are prevalent in society in how it is divided and functions. Furthermore, truths are formed by constraints, which Webster’s dictionary literally defines as being “the state of being checked, restricted, or compelled to avoid or perform some action”. The current regime, which Garland referred to as the responses to, and interactions stemming from the current predicament of crime (the criminologies of the Self and the Other), has been formed by the constraints imposed by the changes to western society’s structure (e.g. changes in workforce, family structure, values of individualism and opportunity etc). As Hunt suggests of modern law, we are dealing with a form of domination rather than a liberating set of rules.

The strategies of Adaptation and Denial are reactions to these constraints and reproduce a particular “‘political economy’ of truth.” According to Foucault 1976/1980,

‘Truth’ is to be understood as a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements.

‘Truth is linked in a circular relation with systems of power which produce and sustain it, and to effects of power which it induces and which extend it. A ‘regime’ of truth.

This regime is not merely ideological or superstructural; it was a condition of the formation and development of capitalism... (p. 133).

So, we have come by the current regime of truth in sentencing honestly in that: “our attitudes to crime - our fears and resentments, but also our common sense narratives and understandings - become settled cultural facts that are sustained and reproduced by cultural scripts...” (Garland, 2000, p. 368). The criminologies of the Self and the Other have become part of our cultural script according to Garland, one which reaffirms a business ethos (administrative state, crime control and the individual), and the other which reactivates state sovereignty. The outcomes to this are the strategies of Adaptation and Denial whose activities reproduce this script, and in turn a particular contradictory regime of truth in sentencing.

The current regime of truth is comprised of criminologies of the Self and the Other. However, within this regime a battle for domination wages as these truths are made up of certain assumptions/knowledges regarding what is politically, economically and procedurally real. One outcome of this battle for dominance is the activation of strategies and/or prescribed actions, such as the development of TIS laws, which then serve to reproduce a particular knowledge as having the status of truth.

That being said, surely ambivalent criminologies cannot be equally powerful in all contexts? One might presume that in an administrative setting, strategies of Adaptation represent the dominant knowledge, or truth, and that in a political one, the strategies of Denial might. The discussion surrounding the implementation of Bill C-25 confirmed that although TIS appears as a strategy of Adaptation as it seeks to administer administrative reform, it is in actual fact a strategy of Denial with the intent of reactivating the myth of

the sovereign state as Garland suggests (2001, p. 133). Foucault acknowledges such a “battle ‘for truth’” and, that it is not one fought “on behalf of truth” but over the “status of truth and the economic and political role it plays” (p. 132). He is referring to the greater context but also to the constraints that form and reproduce dominant knowledges at any given time. Similarly, Garland notes that:

Substantial sections of the public became less willing to countenance sympathy for the offender, more impatient with criminal justice policies that were experienced as failing, and more viscerally identified with the victim... ‘understanding’ the offender...gives way more and more to that of condemning him or her. The prospect of reintegrating the offender is more and more viewed as unrealistic and, over time, comes to seem less morally compelling (2000, p. 368).

The criminologies of the Self and the Other comprise the dominant regime, made up of contradictory notions of truth, which require not one, but a dual strategy of control, each underpinned by two very different rationalities or logics. The criminologies of Everyday Life/Self, on the one hand, and a criminology of the Other, on the other hand, are undoubtedly at odds. As Garland (1996) notes, they “operate on quite contradictory assumptions about the character of offending and the possibilities for criminal justice interventions” (p. 463). In order to operationalize these truths in practice, this then creates a situation where the crime control strategies themselves come into conflict. As Garland (p. 463) suggests, “the rhetoric, perceptions and emotions invoked by the punitive strategy [of denial] have the effect of undermining the preventive, responsabilizing strategy [of adaptation] ... making it more difficult for those committed to the latter to carry their policies through.” The criminologies nevertheless coexist, interact and influence each other but not without great volatility.

Understanding the dependencies between truth and power and their relation to domination and subordination, informs the following discussion surrounding how the contradictory criminologies of the Self/Everyday Life and the Other can be found within the *Act* and how corresponding strategies (Adaptation and Denial) will be produced and be seen using Garland's conceptual framework.

Criminologies of Everyday life/Criminology of the Self and Strategies of Adaptation

The 'criminology of the Self'/ 'criminologies of Everyday Life' inform strategies of Adaptation which are preventive and de-escalating measures for responding to the problem of crime. Garland suggests that this genre is supported and underpinned by an existing "set of cognate theoretical frameworks including rational choice theory, routine activity theory, crime as opportunity and situational crime prevention theory" (p. 450). In other words, crime is a rational and sometimes most obvious choice depending on where and when the opportunity arises.

As such, the criminologies of the Self/Everyday Life reject crime as deviance from the norm, but rather they operate under the premise that "crime is a normal, commonplace, aspect of modern society" and constitutes "... - a mass of events - which requires no special motivation or disposition, no pathology or abnormality" (p. 451). They relate to crime as "continuous with normal social interaction and explicable by reference to standard motivational patterns" (p. 451). These rationalities "characterize(s) offenders as rational consumers just like us" (p. 461). The objectives of the resulting strategies are to "routinize crime, to allay disproportionate fears and to promote preventive action" (p. 461). As such, crime becomes a "risk to be calculated (both by the

offender and by the potential victim) or an accident to be avoided rather than a moral aberration which needs to be specially explained” (p. 451).

Therefore, it is of no surprise that this criminology informs the strategies of Adaptation employed by the administrative arm of the state through the “rationalization of justice, the commercialization of justice, defining deviance down, redefining success, concentrating upon consequences; and redistributing responsibility” (2001, p. 113). Crime exists and it has been demonstrated that the System can no longer control or prevent it. As such, to manage crime the System must *adapt* in order to validate its usefulness. After all, if crime is inevitable and no longer preventable, it is best managed in the way post-modern society knows how: quantifiably, efficiently, effectively and collectively.

Criminology of the Other and Strategies of Denial

In apparent contradiction with the assumptions of the foregoing criminology, that a criminal is a rationally operating opportunist little different from his/her victim, the criminology of the Other is invoked by a punitive strategy of “essentialized difference” (p. 461). Namely, “it is a criminology of the alien other which represents criminals as dangerous members of distinct racial and social groups which bear little resemblance to us” (p. 461).

Where the former criminology is one of acceptance (e.g. crime is part of everyday life), the criminology informing Strategies of Denial is one of otherness. It sensationalizes crime and the criminal, playing on fear and insecurity and catering to the populist common sense (p. 460). However, the attractiveness of this strategy for the

political arm of the state is undeniable in that the punitive response "...can be represented as an authoritative intervention to deal with a serious, anxiety-ridden problem" (p. 460). This strategy reproduces state-power in its foundational claim that "'something is being done' here, now, swiftly and decisively" (p. 461).

As such, the rhetoric of the criminology of the Other and subsequent policy informed by strategies of Denial is rejection: "offenders are treated as a different species of threatening, violent individuals for whom we can have no sympathy and for whom there is no effective help" (p. 461). Therefore, if the latter is true than "the only practical and rational response to such types is to have them 'taken out of circulation' for the protection of the public" (p. 461). The offender is seen here as 'deviant' and the power of emotion and 'common-sense' is enough to campaign and see the implementation of tough on crime initiatives and truth in sentencing.

The following sections will demonstrate the effectiveness of employing Garland in understanding the truths making up today's regime, that the contradictory rationalities of Self and Other, and resulting strategies, are at hand in the *Act's* implementation, and that although TIS is presented as an administrative reform, it also is a tool used to reactivate the myth of the sovereign state.

Strategies of Adaptation in Bill C-25, *the Truth in Sentencing Act*

Garland (2001) states that over the last few decades and to-date, the contradictory responses of adaptation and denial have co-existed with authorities investing in different forms of crime control policy at different times (p. 113). However, Garland notes that over time there has been a discernible shift "with adaptive solutions being increasingly

eclipsed by more politicized, more expressive, alternatives” (p. 113). With that in mind this would suggest that in reading the key documentation concerning the implementation of Bill C-25, we might see adaptive rationality (criminology of the Self/Everyday Life) subverted by that of denial (criminology of the Other); that the Bill itself claims to represent “truth” in sentencing and that this would be defined in terms of punitive strategies of Denial. First though, it would be beneficial to establish the extent of the Adaptive strategies’ prevalence within the legislative debate.

Garland stated that prior to the shift of emphasis favouring denial, the authorities’ “response to the problem was more often characterized by adaptive measures” which were “usually developed by means of cumulative, low-visibility, administrative decisions, rather than as announced policies subject to political or public debate” (p. 113). That is not to say that debate did not exist but that crime management was discussed differently. Garland (1996) has made it clear that the criminology underpinning strategies of Adaptation is fundamentally different from that of Denial; “(n)or are these two diverging strategies simply the twin prongs...”; instead “they operate on quite contradictory assumptions about the character of offending and the possibilities for criminal justice interventions” (p. 463). In fact, as noted in the last section, “the rhetoric, perceptions and emotions invoked by the punitive strategy have the effect of undermining the preventive, responsabilizing strategy and making it more difficult for those committed to the latter to carry their policies through” (p. 463). So, within a political setting we should see two key criminological influences take shape within the debate. One rationality will, according to Garland’s theory, dominate and the other might influence, but both will exist. The rationality underpinning denial should refer to populist,

“common-sense” ideas, while that of adaptation will likely refer to the management and practical application of these ideas within the CJS.

Professionalization and Rationalization of Justice (Adapting to Failure 1996)

As indicated in Chapter 2, Garland noted that the widespread distrust emerging from penal welfarism led to a new form of professionalization and what he refers to as the rationalization of justice (2001, p. 114). This, he suggested, is a means of systematizing the CJS and through measurable, program evaluation processes, can control flawed and overly discretionary ones (pp. 114-116). Specifically, he indicated that this strategy is an attempt at “Taming the system”- its costs, its discretionary powers, its liability to expose the public to dangers” and that this has become “the project of government in this field” (p. 115).

We are able to see this strategy of Adaptation reflected in the measures used to ensure extra precaution in granting credit for time served found in the final version of Bill C-25. The Bill is based on the premise that judicial discretion in the past has been arbitrarily applied in cases of two-for-one credits; that this credit has been given without formulae or rationale (Second Reading in the House of Commons, p.6, *passim*). In other words, the System has been flawed in its arbitrariness and needs more controls put in place; it needs to be tamed. As such, the rationalization of justice is portrayed here, not only in limiting judicial discretion in terms of applying credit for time served, but also in requiring the judiciary to provide a rationale where said time is granted. This illustrates a move away from the acceptance of the current practice and toward one which must be

maintained vis a vis “a more formalized, more accountable, decision-making process” (p.114).

The finalized Bill is not the only reference to the rationalization of justice. This strategy could be seen throughout the House of Commons and Senate debates. In the introduction of the Bill’s second reading, the Conservative member in its favour claimed that the System is flawed in its application of credit for time spent in pre-sentence custody. In fact, it was noted that while “explanations for the length of a sentence are usually provided in open court at the time of sentencing”, the same is not required for the “decision to award pre-sentence credit. As a result, they do not always do so and this deprives the public of information about the extent of the pre-sentence detention” (Second Reading in the House of Commons, p.2).

In referring to the professionalization and the rationalization of justice, Garland is speaking largely of the authorities’ emphasis on “information technology, operational models, and computerized data processing” as well as “new mechanisms for promoting inter-agency coordination” (p. 115). However, what underlies these measures is actually public doubt. Garland states, that in the shift of criminologies there existed an “official perception of the criminal justice system that saw the system not as...a solution to the crime problem, but instead a problem in and of itself” (p. 115). Furthermore, there can be traced a “settled perception that the criminal justice process is characterized by arbitrariness...” and that the System’s status quo has “...a tendency to generate uncontrolled costs and unplanned outcomes, and to create risks and dangers for the public it should be protecting” (p. 115). These dangers and lack of public confidence in the

sentencing process are referred to in the key documents time and time again. In fact, it is suggested that the implementation of Bill C-25 would:

...require courts to note the sentence that would have been imposed without the credit, the amount of credit awarded and the actual sentence imposed. This requirement would result in greater transparency and consistency and would improve public confidence in the administration of justice (Second Reading in House of Commons, p.60).

Furthermore, the Conservative member opined that the proposed legislation was “part of a series of criminal justice bills...to help ensure the safety of Canadians” (p. 60). The State’s claims assume that the public perceives the CJS as seriously flawed and a threat to safety in its current form.

Garland (2001) indicates that although this strategy is engaged to ‘tame’ the System (p. 115), measures put in place to limit discretion through increased systematization and standardization is often, and not surprisingly opposed by the actual agencies to which they are being applied (in this case an example would be the Courts and its players). Where this occurs, it is a reaction to the decrease of the “decision-making autonomy and institutional integrity that they previously enjoyed” (p.115). The professionalization and the rationalization of justice render the System quantifiable, predictable and calculable. Limiting judicial discretion in the Bill does this by implementing specific, standard guidelines.

Commercialization of Justice and Defining Deviance Down

Although the strategies of the commercialization of justice and defining deviance down were not engaged to the same extent as others, it should not be concluded that they are not relevant to the discussion, nor should it be concluded that their limited presence

suggests that Garland's theory fails to apply to this case. Instead, with regard to the commercialization of justice in Canada, while the State is still accepted as the primary administrator of justice and has not yet implemented a private prison system (which is the most obvious example of justice commercialization), the criminology underlying this strategy is not altogether absent from the debate. Similarly, concerning defining deviance down, although it is not hugely visible in the reading of the Bill (as the latter is concerned with harsher punishment as opposed to de-emphasizing the lesser offences) it nevertheless can be seen in that both strategies are supported by the ideological groundwork being laid.

The commercialization of justice as Garland (2001) describes it, is primarily focused on the fact that "government reliance upon the private sector has increased", and that this is "not least because of the comparative speed and low cost with which commercial companies could provide new prison places" (p.117) and goods and services generally. As noted above, for the most part this does not directly apply to the Canadian context as prisons are still within the public domain, although some services within federal penitentiaries are contracted out to private companies¹⁸. It does not necessarily follow, however, that the principles of commercialization are absent. In fact, in the last few years the privatization of Canadian prisons has been discussed at the political level several times. An article published by CTV News in September 2012 referred to a recent 1,400-page report published by the Harper Government analyzing the benefits and shortcomings of privatization when compared to other countries and in Canadian jails as

¹⁸ Corrections Canada is routinely involved in procuring external goods and services, including, but not exclusive to the areas of IT, Health Services, Elder Services and Education. Additional information on external contracting is publicly available as part of CSC's annual National Procurement Plan (e.g. <http://www.csc-scc.gc.ca/text/NPP/2012-2013/1-eng.shtml>).

well. The outcome was that privatization was, at least for the time being, dismissed as an option as it was determined that “... there were benefits. I’ve (Vic Toews, former Minister of Public Safety) examined that myself, but I don’t see there are sufficient benefits to change over an entire system.” It was further noted that there was “no interest in going to a private model which would put the supervision of prisoners in private hands.” Although there is strong opposition to the privatization of prisons even within the present government, the article noted that there is pressure to save money, which has led to the closures of two major federal institutions (Leclerc and Kingston Penitentiary), as well as pressure to make money by “U.S. private prison firms” who “have been lobbying a number of government departments in Ottawa for fresh opportunities” as a result of recent changes to immigration (asylum) laws (<http://www.ctvnews.ca/politics/feds-studying-private-prisons-as-way-to-save-money-1.967126> and, <http://www.guardian.co.uk/world/2012/nov/29/canada-asylum-seekers-private-prison-companies>). These are two very significant drivers leading toward privatization and, as Garland also indicates, “the ethos of ‘customer relations’ that is so pervasive in the commercial sector, and so central to business management, has begun to influence the practice of government agencies as well” (p. 117). Government agencies have “redefined their mission as being to serve particular ‘consumers’ such as local communities and businesses; victims and victims’ families; occasionally even inmates and their families” (p. 117). Emphasis on the greater social good has been traded in for service delivery and the interests of individual consumers. As O’Malley (1996) suggests “(r)elations of individual competition and cooperation, epitomised in the figure of ‘the market’...provide the preferred models for governing the terrain formerly dominated by the now discredited

social” (p. 28). These values can be seen within the debate transcripts in which the Canadian public is referred to in these terms.

As noted in the last section, Bill C-25 is said to respond to the public in the role the latter plays as a stakeholder. The Conservative member explained in the House of Commons debate that:

There is a concern that the current practice of awarding generous credit for pre-sentence custody may be encouraging some of those accused to abuse the court process by deliberately choosing to stay in remand in the hope of getting a shorter term of imprisonment once they have been awarded credit for time served (Second Reading in House of Commons, p. 3).

The consumer in this context is represented as “the ordinary Canadian” for whom “it is hard to understand how such sentences comply with the fundamental purposes of sentencing” (Second Reading in the House of Commons, p. 3). Government is therefore less concerned with ‘public interest’ (what would be best for the social good) but rather what the consumer public is alleged to want, which is a more efficient, systematic, transparent process wherein the offender serves the actual sentence he/she is meant to serve.

Interestingly, members of the Canadian public are not considered the only investors in justice. Similarly, members of the System itself are characterized as stakeholders at various points of the process. Specifically, it was noted that “Provinces and territories have pushed for amendments to the conditional sentencing regime and are supportive of this bill” (Second Reading in the Senate, p. 5). Furthermore, the Bill was also “supported by provincial and territory attorneys general and correctional ministers...” To that end, the Senator “respectfully urge(d) all honourable members to ensure the approval of Bill C-25 without delay” (Second Reading in the Senate, p.6).

Most telling in engaging agents (e.g. provincial and territorial actors) of the System in this way is that it puts forward the notion that individual factions within it demand truth in sentencing. These factions are represented as consumers with a vested interest in the Bill's outcome. Furthermore, as most are purported to be experts in the field they work in, they reproduce the problems of public confidence by acknowledging that, even to them, the current system appears flawed where sentencing is concerned and must be rectified.

Garland (2001) warns against a reliance on the private sphere in that it is liable to have significant and grave consequences, as it begins to "transform the character of the crime control field", by "setting up new interests and incentives, creating new inequalities of access and provision, and facilitating a process of penal and security expansion that might otherwise have been more constrained" (117). While Garland is referring specifically to the privatization of prisons, these consequences are not isolated to that. It is the criminology underpinning such developments as they come to pass. Whether it is that Canada is on the road to privatization, or that the State merely seeks to use a business ethos to justify the marginalization of various groups, the transformation of Canada's crime control field is occurring and the potential consequences could be grave indeed.

Garland (2001) states that as another result of increasing crime rates and the subsequent burden upon CJS agencies over the last several decades, the managerial outcome was to define deviance down. He demonstrates that "this reduction effect was achieved either by filtering complaints and cases out of the system, or else by lowering the degree to which certain behaviours are criminalized and penalized" (p. 117). Various minor crimes or lesser deviant behaviour have thus been diverted to other channels in

order to lessen the burden on specific agencies such as the Police and prison systems in the interest of cost-efficiency. Garland uses the examples of fixed sentences instead of lengthy processing, the decriminalization of various behaviours, applying monetary penalties for offences that would once have attracted probation and being sentenced to community service as opposed to custody, as examples of defining deviance down (p. 118). There is not so much an example of this in the materials as there is of defining deviance *up*. That is, defining deviance in terms of what is perceived to be the most offensive.

As part of the political rhetoric in the Conservative postulation supporting Bill C-25, the Member stated that:

The proposed legislation is part of a series of criminal justice bills that has been introduced since we took office to help ensure the safety of Canadians. To make Canada safer, we have enacted legislation to get violent and dangerous criminals off our streets. We have cracked down on sexual predators, dangerous offenders, and those who use guns to commit crimes. We have given the police more tools and resources to combat crime and to deal with those who drive while under the influence of alcohol or drugs (Second Reading in the House of Commons, p.60).

The Member went on to note that in the current session and in addition to Bill C-25, three more Bills were introduced, all relating to serious offences related to gangsterism, the drug trade and identity theft.

While it is difficult to assess the validity of Garland's concept of defining deviance down in the current context, I would argue that it is the characterization of what is "serious" crime as well as the very omission of a discussion on the subject of minor crime and lesser deviant behaviour, and that lends it ideological support.

Redefining Success (and Failure- 1996)

As a response to public criticism, Garland suggests (2001) that instead of denying their ineffectiveness and limitations in the ability to control crime, state agencies have reacted by “scaling down expectations, publicly redefining their aims, and seeking to change the criteria by which failure and success are judged” (p. 119). Agencies have re-defined success in terms of what they can control such as targeting the most serious offences, and incapacitation. The prison system is less concerned with rehabilitation than incapacitation. Similarly, probation services derive success from their ability to “deliver inexpensive forms of monitoring and community-based control” (p. 119).

This is clearly seen in the House of Commons and Senate debates as the mere existence of the Bill represents the discernible shift away from social welfare models of crime control and toward the incapacitation of offenders (Garland, 2001, pp. 120, 133). In fact, the fundamental ‘purposes of sentencing’ in the discussion of the Bill are defined as: “to denounce unlawful conduct, deter the offender from committing other offences and protect society by keeping convicted criminals off the streets” (Second Reading in the House of Commons p. 3). Further to this, the two-for-one process was viewed as a failure as the credit for time served did not uphold these tenets. Observable is the move away from welfarist rehabilitation, which is no longer considered in the definition of successful incarceration; in its place is incapacitation for the sake of public safety.

In addition to the foregoing, this redefinition is also consistent with the concept of responsibilisation, which we will discuss shortly, as it seeks to “shift responsibility for outcomes onto the ‘customers’ with whom they deal...” (p.119). For example, “the prison inmate is now said to be responsible for making use of any reformative

opportunities that the prison might offer...”(p.119). The reason for this is to re-distribute responsibility in order for state agencies to maintain attainable goals free of liability for outcomes they cannot control.

The fundamental purposes of sentencing according to the Conservative member are made true by the claim that the offender, who is a rationally acting opportunist, as a defense strategy opts to remain in remand (despite deplorable conditions-Second Reading in the Senate, pp. 13, 14) to ultimately receive a lighter sentence by being awarded a generous credit for time served (Second Reading in the House of Commons, p. 16, 19 and Second Reading in the Senate, p. 7). The supporting Senator claimed that Bill C-25 should “encourage good conduct by accused persons while on bail. It could also encourage them to seek an early trial where possible...” (p. 5). It should be noted that while the offender may be responsible for their own behaviour, they have very little control over the expediency of judicial processing (Second Reading in the House of Commons p. 21). Nevertheless, as Garland indicates the offender is held responsible (2001, p. 119) for their actions with regard to both punishment and recidivism. Proponents of the Bill in fact suggest that Bill C-25 is just a first step in a system that needs to be redefined to potentially include the concept of “earned parole”¹⁹: officially extending offender responsibility to include their rehabilitation as well (Second Reading in the House of Commons, p. 4).

Additionally, Garland indicates that the shift of sentencing legislation and policy toward “mandatory penalties, sentencing guidelines, and ‘just desserts’...has the effect of focusing attention firmly upon process and away from outcome” (p.120). As such,

¹⁹ It should be noted that in reading the text and analysis of parliamentary debates, terms such as “earned parole” and “crime” should be understood as referring to the State’s (political arm) language and the rhetoric used to contextualize the Bill’s justification.

defining success in a way that is responsible, quantifiable and controllable, it is therefore measured by the steps put in place to ensure its result. To this end:

Increasingly organizations seek to be evaluated by reference to internal goals, over which they have near total control, rather than by reference to social goals such as reducing crime rates, catching criminals or reforming inmates which involve too many contingencies and uncertainties. The new performance indicators are designed to measure 'outputs' rather than 'outcomes'... (p. 119).

Therefore, the Bill serves to re-define success in several different ways, not the least of which is the implementation of specific controls in an area that had been previously reserved for judicial discretion:

We were pleased that the government left this measure of discretion in the hands of the court, *but (emphasis added)* we are also pleased that judges will have an obligation to explain, in their decisions, why they decided to give extra credit, if in fact that is the decision made. *The public will then understand (emphasis added)*. We have capped it at 1.5 days for every day served, but by requiring the court to explain the reasons for that increased credit, we believe it will have the effect of increasing public confidence in the justice system (Second Reading in the House of Commons, p. 21).

These outputs are specific and measurable and the Courts and associated agencies can therefore be held accountable for them. We see it is as Garland (2001) observed; "part of the price of failure is that these agencies are no longer permitted the professional autonomy and discretion for which they were once entrusted" (p. 120). The State claims that the System is open to abuse and lacks the necessary controls. As such, it is perceived to have failed. As a result, the State has ensured that its agencies are now "increasingly subject to state-imposed standards and guidelines, and are closely monitored and inspected to ensure that they comply" (p. 120). Thus, the State has dictated the re-

definition of “success” to its agencies, and in doing so, reproduced the perception of Sovereign power in relation to them.

Concentration on Consequences

Another concept related to adaptive strategies is the concentration on consequences. This strategy is characterized by an “emergent pattern of adjustment” which is the “tendency of state agencies to give more priority to dealing with the *consequences* of crime rather than its *causes*” (Garland, 2001, p. 121). As such, there has been yet another shift in emphasis, away from criminality and toward the outcomes of crime, which Garland identifies as “supporting victims, mitigating crime costs, addressing public fear and reducing insecurity” (p. 121).

With regard to victims and mitigating the costs of crime, Garland indicates that where the political arm of the state “came to develop their own, rather punitive, conception of how to act in the victim’s interests”, the administrative arm’s approach “has typically focused upon more modest, more responsive goals” (p. 121). To this end, state agencies have employed victim notification systems, offered access to support, and alternative means of offender restitution such as restorative justice (p. 121-122). With regard to the administrative response, it cannot so much be seen in the reading of Bill C-25. That is not to say, however, that it would not be observable once the Bill is being implemented by Canada’s criminal justice state agencies. Unfortunately at this time, that

discussion is beyond the present scope²⁰.

In reading the debates surrounding Bill C-25 implementation, a heavy emphasis was observed on the Canadian public as the ‘victim’ in these proceedings. Although there will be a more thorough discussion of this in the Strategies of Denial section (below) due to its political nature, it should nevertheless be noted as an illustration of the concentration on consequences. As indicated in the last section, the intention of the Bill is to add supposed clarity to judicial proceedings so that the “public will then understand.” It was also stated that there is currently the impression that “offenders are getting more lenient sentences than they deserve” and that that this is unjust as “bad behaviour should not be rewarded with credit for pre-sentence custody” (Second Reading in the Senate, pp. 3, 4).

With regard to reducing insecurity, Garland (2001) recognizes other studies that have indicated that fear of crime is not necessarily associated with crime or victimization rates (p. 122). As such, policy-makers respond to the fear of crime by addressing the fear and insecurity itself as opposed to its causes. In fact where some studies suggested that the fear of crime was affected even though crime-rates did not decrease, various governments (the UK and the US) “began to develop mission-statements and practices that took the reduction of fear as a distinct self-standing policy goal” (p. 122). Surprisingly, although it was originally thought that the fear of crime could be “dispelled by a reliable dose of information” (p. 122) this was proven a mistake “however great the

²⁰In keeping with Garland, what we might see as a result of Bill C-25 implementation in line with a concentration on consequences, are mandated changes to agency policy in light of an emphasis on incapacitation in new legislation. This would occur in order to facilitate necessary increases in double-bunking as well as the building of new units in Federal prisons. Instead of reflecting on why there is, or will be increased overcrowding in prisons and what that means for the Canadian CJS, there is an emphasis on its consequences: adapting to state-led policy.

gap between these fears and the statistical risks involved” (p. 122). This is a pivotal point in understanding the outcomes of recent initiatives such as in the case of truth in sentencing.

The NDP Member responding to the Bill presented research indicating that Bill C-25 “will not make Canada safer” (Second Reading in the House of Commons, p. 41). Instead, it was posited that there are other system issues that need to be reviewed concerning overcrowding and the harsh conditions of our remand system. This information was dismissed by another Member in support of the Bill: “some academics see things a little less in operational terms than do those who know the field...there are times to listen to the academics, but there are times when their remarks should be viewed with respect but with a certain detachment” (Second Reading in the House of Commons, pp. 41-42). In spite of information challenging the rhetoric underpinning Bill C-25, *The Truth in Sentencing Act*, it was clear that the reduction of insecurity had very little to do with “reliable information” (Garland, 2001, p. 122). In fact, regardless of information presented to the contrary, a supporting Senator of the Bill claimed that:

Time and time again, Canadians have said they want a strong criminal justice system. They want quick and decisive action to tackle crime. The government is committed to protecting its citizens by making laws that will keep our streets and communities safer. Several key pieces of legislation have been introduced to achieve this objective. The government has a long list of accomplishments in tackling crime over the past two years, and Bill C-25 should be added to this list (Second Reading in the Senate, p.6).

Regardless of what causes crime, or in this case, governs judicial discretion in awarding credit for time served, it is irrelevant. In light of the state’s failure to address the causes of crime in the past, the result is that the consequences of crime have become of

key importance, as these are more manageable. One example of this, as Garland mentioned (2001, p. 122), is to assuage fear and protect the public from what has come to be accepted as a normal social fact (criminology of the Self). To “tackle crime,” therefore, is to keep communities and streets safer by keeping offenders out of them.

Redistributing Responsibility

The last of the strategies of Adaptation is that of *responsibilization*. According to Garland (1996), this involves “the central government seeking to act upon crime not in a direct fashion through state agencies...but instead by acting indirectly, seeking to activate action on the part of non-state agencies and organizations” (p. 452). He further states that the “recurring message of this approach is that the state alone is not, and cannot effectively be, responsible for preventing and controlling crime” (p. 453) and that “key phrases” of responsibilization include those such as “partnership”, ‘inter-agency cooperation’, ‘the multi-agency approach’, ‘activating communities’, creating ‘active citizens’ (and) ‘help for self-help’ (p. 452). Garland explains that the concept of responsibilization is one that allows the state to act at a distance (p. 454). In other words, it is not a means for the state to wash its hands of its place in managing crime, but more so, that it is “taking on an ambitious new role” (p. 454) by activating non-state agencies and individuals in crime control and prevention. Essentially, the state is acting indirectly, through shaping the context within which non-state agencies, communities and individuals conduct themselves.

The adaptive strategy of responsibilization can be seen in the state’s debate surrounding the implementation of Bill C-25. It was noted in the section referring to the

redefinition of success (and failure) that the fundamental purposes of sentencing in the discussion of the Bill are defined as being “to denounce unlawful conduct, deter the offender from committing other offences and protect society by keeping convicted criminals off the streets” (Second Reading in the House of Commons p. 3). It was also noted that, the practice of administering a credit of two-for-one for time served in pre-sentencing custody, was not viewed by proponents of the Bill as upholding these tenets. The redistribution of responsibility is consistent with the present state’s focus on incapacitation, a strategy of Denial, as it treats the offender as a rational actor who has chosen for him/herself a life of crime and as such must be removed from the social world. Incapacitation, however, is not the final word with regard to the activation of offenders’ participation in the social sphere, but the State’s provision of rehabilitation is no longer the primary vehicle. Instead the emphasis is on the state’s ability to monitor and ensure accountability, and the offender’s capacity to strategize and take responsibility for his/her actions while incarcerated and on release. They, not a jury, process or System itself, are alleged to be ultimately responsible for the outcome of the charges laid against him/her:

The approach taken in the truth in sentencing bill should encourage good conduct by accused persons while on bail and should encourage them to seek an early trial where possible and where appropriate to enter an early guilty plea (Second Reading in the House of Commons, p.11).

This belief extends to rehabilitative activities as well. The Members refer to “earned parole” (Second Reading in the House of Commons, p. 4), which requires that offenders take responsibility for their actions in moving toward release. It is no longer the current state’s responsibility to solve social problems, as was the focus of welfarism. Rather in true neo-liberal, or, ‘post-social’ fashion (O’Malley, 1996, p. 26), the state is

involved but civil actors are ultimately activated as the responsible agents (p.31). As such, the criminologies informing the discourse of crime control identify an accused as a rational actor. This actor is perceived to make a decision at every fork in the road by choosing one way or another toward social acceptance or rejection, but whichever way he chooses is his own.

Therefore, if the offender is ultimately responsible for his/her actions and the ‘offender’ (by definition), at some crossroads along the way has chosen delinquency, then the next logical presumption is to suggest that, “bad behaviour should not be rewarded with credit for pre-sentencing custody” (Second Reading in the Senate, p. 4, also in Second Reading in the House of Commons, p. 6). As such, where the offender is viewed as a threat that must be contained, it is believed that they must get what they deserve, hence “truth” in sentencing²¹.

The “recurring message of this approach is that the state alone is not, and cannot effectively be, responsible for preventing and controlling crime” (Garland, 1996 p. 453). This is echoed in the Bill’s second reading in the House of Commons with regard to Canadians’ request to get tough on crime: “We (the state) cannot do this alone” (p. 12). Of course, responsabilization most often refers to the participation of private citizens and organizations/agencies in mitigating risk and to this end, Garland refers to the “multi-agency approach” (1996, p. 452). In essence this approach is compatible with the highly contentious movement toward privatization (Garland, 1996, p. 453, Greene, 2006, p. 3 *passim*). Privatization as it refers specifically to criminal justice is, as discussed in the

²¹ Garland (2001) indicates that measures such as ‘truth in sentencing’ “have an absolutist quality designed to reassure the public” and to that end, represents the state’s intolerance of lawlessness (pp. 132, 133). He further states that these initiatives are “designed to be expressive, cathartic actions, undertaken to denounce the crime and reassure the public” against those who are typically regarded as being “dangerous and undeserving” (pp. 132, 133).

section referring to the commercialization of justice (and Chapter 1 to some extent) the State's contract (or several) with a private agency (or several) in carrying out services that formerly belonged to the State. In Criminology these contracts are most often referred to in terms of the privatization of prisons. Where previously the State has been responsible for the management of prisons and prisoners, in some cases, such as in the USA, this responsibility has been farmed out to private industry (Greene, 2006 and Christie, 2000).

Canada of course, is not as far along when it comes to the privatization of the federal CJS. However, that is not to say that the ideology of responsabilization is not already informing the discourse surrounding it. In keeping with this strategy's principles, there is increased emphasis by the State and its agencies, on the importance of networking and partnerships (*The Nineteenth Annual Report to the Prime Minister on the Public Service of Canada*, 2012, p. 9). In fact, while the parliamentary discussion concerning Bill C-25 does not refer to partnerships with private agencies, it does refer to partnerships with agencies at other levels of government. For instance, the Honourable Member Rob Nicholson (Minister of Justice and Attorney General of Canada, CPC at the time of the debate) states with some urgency, "we (the state) need to work closely with our provincial and territorial partners to deal with the many issues associated with sentencing reform" (Second Reading in the House of Commons, p. 7). Partnerships of this nature are referred to elsewhere as well (on pp. 10, 11, 12, 20, 22 and 31 and in the Second Reading in the Senate on pp. 5 and 7). While the Hon. Minister is referring to partnerships with other levels of government, those of an expanding nature are gaining traction to the point that they have become a necessary priority for the Public Service in

the interest of renewal, efficiency and effectiveness in the forward-looking, Clerk's Annual Report to the Prime Minister. In this report, the Public Service has been directed to do more with less and in that vein to monopolize on international and national partnerships as much as possible:

We must also deepen our engagement with a broad network of external partners: other nations, other levels of government, the private sector, civil society, and citizens themselves (2012, p. 9).

We are seeing a push for partnerships, one of the fundamental characteristics of redistributing responsibility, demonstrated by state agencies as in the Clerk's Annual Report, and by the state in the reading of Bill C-25. The message in the foregoing passage is layered: state agencies have been called upon to activate partnerships to facilitate efficient governance. On a more profound level, however, the passage represents the State's broader attempt to "bring about action on the part of 'private' agencies and individuals" (Garland 1996, p. 452) and in so doing, to bring about action in us all. Although privatization has not entered the room, it is certainly looming at the door in the form of redistributing responsibility.

In reading the texts utilizing Garland's sensitizing themes, it is evident that Bill C-25 and its surrounding debates demonstrate the presence of strategies of Adaptation. It is also evident that, as a result, there are several questionable implications with regard to the current regime of truth in the Canadian criminal justice context. That being said, Garland reminds us (2001):

...whatever one thinks of them, and however many problems they raise, these strategies are characterized by a high level of administrative rationality and creativity. The agencies involved have, over time, recognized the predicament they face (or at least a version of it), and responded to its challenges by revising their practices, renegotiating their external relationships, and

building new institutions. But these developments form only one aspect of a deeply contradictory response. As the administrative machine of the state has gone about its business of devising strategies, adapting to its limitations and coming to terms with its changing environment, the state's political machine has repeatedly indulged in a form of evasion and denial that is almost hysterical in the clinical sense of the term (p.131).

This excerpt perfectly denotes the dualistic nature of the current responses to the 'new predicament' of crime control (p. 131). It demonstrates the adaptive acceptance of current ideologies while demonstrating how strategies of Denial attempt to "reaffirm the force of law and to reactivate the myth of sovereign power" (p.133) and dominance, by governing through highly politicized, emotive and populist assertions.

Strategies of Denial in Bill C-25, *the Truth in Sentencing Act*

The readings were analyzed in light of the following, keeping in mind the sensational-emotional-fear-mongering-tough-on-crime-common-sense-populist-political-state-power-rhetoric (1996, p. 460) by which Garland defines them. He identifies Denial as a strategy that can be denoted by the use of punitive force (p. 460). It is a "sovereign act which tends to command widespread popular support" once "welfare solutions have been politically discredited" (p. 461).

Garland asserts that the Denial reaction to the current predicament is similar to more archaic forms of ruling such as in the days of Louis XV. The strategies of Denial, underpinned by the criminology of the Other, is merely a means of demonstrating how "harsh punishments have been used as public displays of a ruler's power, designed to reaffirm the force of the law and reactivate the myth of sovereignty" (p. 460). By capitalizing on fear and insecurity in identifying the Criminal as the source of that fear,

and by claiming a means of giving that threat to security its just desserts, the state claims a hand in being able to control crime. This is certainly at odds with the strategies of Adaptation that work under the premise that the opposite is true: that the State in actual fact has very little control.

Although Garland states that the “neo-liberal agenda of privatization, market competition and spending restraints shaped much of the administrative reform...” (2001, p. 132), leading to the criminologies of the Self and strategies of Adaptation, it was a very different agenda, the neo-conservative agenda, that shaped the “public face of penal policy” (p. 132) and displays of Denial. To that end:

(I)ntead of acknowledging the limits of the sovereign state and adapting to them, the political agenda governing high profile policies was to ‘restore public confidence’ in criminal justice while asserting the values of moral discipline, individual responsibility and respect for authority (p. 132).

The result of this agenda includes activities that “have an absolutist quality designed to reassure a distrustful public that the system will not betray them once the case goes out of view” (p. 133). An example of this, he states, is truth in sentencing (p. 133). While there are other examples of initiatives that the criminology of the Other and resulting strategies lend themselves to, it is the aforementioned that is of interest in this particular case.

The decision-making and surrounding discussion of Bill C-25 takes place in the political forum. In light of this, if strategies of Denial are those most often engaged by the political arm of the state, it would follow that parliamentary debates would predominantly illustrate these strategies in order to reaffirm the regime of state sovereignty.

As noted earlier, Garland (2001), in referring to this second line of policy development states that strategies of Denial (acting out), is a more “politicized, populist, regressive one” (p. 131). It is also by which, from the perspective of political actors; “the finer points of penological realism become secondary considerations easily subordinated to political ends” (p. 133). As such, in spite of the fact they may prove totally ineffective and contradict the “reality principle” (Garland 1996, p. 462), politically they re-assert the myth of the sovereign state by perpetuating the illusion that the state has control (Garland 2001, Chapter 5 footnote 75). As a result, in a political setting, while the objective of implementing TIS legislation is touted as an administrative reform (as seen in the last section), it actually serves the political interests of the state, namely “to ‘restore public confidence’ in criminal justice while asserting the values of moral discipline, individual responsibility and respect for authority” (p. 132) by administering punishment that “exemplifies the sovereign mode of state action” (1996, p. 461) and performative action “which exemplifies what absolute power is all about” (p. 461). TIS is such an illusion in that it lends the perception that something is being done, the state is doing it and thus reassures an already distrustful public that their interests will not be forgotten; justice will be meted out by their sovereign (Garland 2001, pp. 131- 138, Garland 2000, p. 351-352, Garland 1996, p. 459-463).

In the reading of Bill C-25, three predominant themes in assertions of state power, engaging strategies of Denial were identified: Appearances, Emotions and Politicization.

Appearances

In understanding the utility of the strategies of Denial in reactivating sovereign power, the crux of this strategy appears to be one of appearances. Strategies of Denial are very useful in the political forum as Garland suggests, in that they deny the failure of the state to prevent crime, and reactivate the myth of sovereign power by changing the process of law-making to become “a matter of retaliatory gestures intended to reassure a worried public and to accord with common sense, however poorly these gestures are adapted to dealing with the underlying problem” (2001, p. 134).

The Bill is called the *Truth in Sentencing Act*. As noted in the outset of this chapter, truth in sentencing is both a reaction and a reproduction of the current regime of truth, one branch of which Garland has referred to as the criminology of the Other and the resulting strategies of Denial. The “truth” is at once defined by the criminology of the Other but it also defines it, in what Foucault (1976/1980) described as a “circular relation” to systems of power. In the House (and Senate) debates this relationship was illustrated in that:

...there is a concern that the current practice of awarding generous credit for pre-sentence custody may be encouraging some of those accused to abuse the court process by deliberately choosing to stay in remand in the hope of getting a shorter term of imprisonment once they have been awarded credit for time served (Second Reading in the House of Commons, p. 3).

The emphasis on public perception is apparent. This passage directly follows another referring to people “being in the dark about why detention should allow a convicted criminal to receive what is most often considered to be a discounted sentence” (pp. 2-3). Proponents of the Bill further claim that this ignorance “creates the impression that offenders are getting more lenient sentences than they deserve” (p. 3). Ironically, it is

not people's ignorance that is seen to be the problem but the perception that offenders are not getting their just desserts. So, it is proposed that the law be amended to provide the perception of punitive justice. This reaffirms the necessity for sovereign intervention in giving the "appearance that 'something is being done' here, now, swiftly and decisively" (Garland, 1996, p. 461).

Furthermore, during the course of the Bill's reading, evidence is presented indicating that where a credit for time served has been given, it has traditionally been because "the individuals in preventive custody are penalized...as they are not eligible for parole or rehabilitation and education programs" and because "the conditions under which they are held are stricter" (p. 33) and "harsher" (p. 35) than in post-sentencing custody. In spite of this evidence, there is "no need for co-operation, no negotiation, no question of whether or not it might 'work'" (Garland, 1996, p. 461). Rather, a punitive response represents an "authoritative intervention to deal with a serious, anxiety-ridden problem" (p. 460) such as the "...practice of awarding generous credit" which:

...erodes public confidence in the integrity of the justice system. It also undermines the commitment of the government to enhance the safety and security of Canadians by keeping violent or repeat offenders in custody for longer periods (Second Reading in the House of Commons p. 3).

In contradiction with the adaptive understanding of failure, Canadian Parliament asserts that changing the law to be more 'truthful' will reassert the perception of state effectiveness (power).

As Garland explains, "harsh punishments have been used as public displays of a ruler's power, designed to reaffirm the force of the law and reactivate the myth of sovereignty" (Garland, 1996, p. 460). Bill C-25 is an example of just that. The state

submits the belief that the current practice of awarding “generous credit for pre-sentence custody may be encouraging some of those accused to abuse the court process” (Second Reading in the House of Commons, p. 3) and that offenders deliberately choose to stay in remand in order to ultimately reduce their sentence (p. 3). In response to such intensely biased and populist assertions, one Member stated that he was passed a letter “from a retired judge who said that was an insult to the intelligence of anybody who works in the criminal justice system” (p.3). This was underscored by the statement that the “defence bar does not control the agenda. Prosecutors do not control the agenda” but that the “judges control the agenda in their courtrooms and they do not allow for meaningless...extensions...” (p. 46). It was instead suggested that processing delays are an issue of inadequate resourcing (yet another failure) (p. 46-47). In spite of information to the contrary, the state’s claim here is that the Bill will render a corrupt system more efficient and effective thereby being a more accurate and transparent process. This is characteristic of sovereign state intervention as Garland (2001) explains in his footnote:

For an insider’s account...See also M. Tonry, *Sentencing Matters*, 159: ‘Officials who support mandatory penalties often do not much care about problems of implementation, foreseeable patterns of circumvention, or the certainty of excessive and unjustly severe penalties for some offenders. Their interests are different, as recent policy debates demonstrate (p. 254, Chapter 5 footnote no. 57).

Therefore, although there is no evidence, barring the anecdotal, that harsher punishment (e.g. reducing credit for time served) will actually work, it does not matter. Instead, it is alleged that there exists too much judicial discretion and that public confidence in the state (and its agencies e.g. the CJS) would be restored by administering harsher punishment in mandating longer prison sentences.

Emotional Response

The readings demonstrated that political actors believed that there existed the public perception that the current sentencing practice opened itself up to violation by those who would abuse court processes. Throughout the debates this perception was used to evoke an emotional response underpinned by strategies of Denial:

“...the impression is that offenders are getting more lenient sentences than they deserve” (Second Reading in the Senate, p. 3).

I am sure that we have all read newspaper accounts of sentences that seem to be far shorter than they should be...the reader of that article may be left with the impression that the offender “got off” lightly (Second Reading in the Senate, p. 2).

I was disturbed with news over the weekend of an editorial supporting Bill C-25, published in the *Windsor Star*, which referenced a case where Tammie Steinhoff, a disturbed and brutal incident, stabbed and killed her own toddler son. She was sentenced to nine years, but because of the current system, she will only serve five years and ten months.... Some critics will argue that the (b)ill is against the charter of rights and that it is cruel and unusual punishment. I think Canadians accept and want this change... (Second Reading in the House of Commons, p. 17).

I want to refer to a case that happened just last month in Toronto. A man convicted of manslaughter in the death of a nearly one-year-old baby found with 38 wounds was sentenced to six and a half years in prison. However, given that he has already served three years in pretrial detention since he was arrested for this killing, the two-for-one credit will guarantee that he is out on the streets within six months of his conviction (Second Reading in the House of Commons, p. 58).

“...Canadians have been clamouring for change” (Second Reading in the Senate, p. 5).

Can we expect the NDP to support the (b)ill at committee and later at third reading? When can we expect him to stand up for Canadians and protect the safety and security of victims and

those who are vulnerable in our society? (Second Reading in the House of Commons, p. 51).

The above suggests that offenders are not merely taking advantage of the CJS but that they are also abusing the public, which it serves. Garland notes that harsher punishments can be “punitive pronouncements of government ministers” which are “barely considered attempts to express popular feelings of rage and frustration...”(1996, p. 460). Disturbingly is that emotion, which should perhaps be free from this process, is employed by law-makers as a strategy to support their claim to potency.

Moreover, the foregoing illustrates Garland’s claim that “‘law and order’ policies frequently involve a knowing and cynical manipulation of the symbols of state power and of the emotions of fear and insecurity which give these symbols their potency” (Garland, 1996, p. 460). It should be noted that Garland implicitly warns us not to view the state as the sole engineers of these techniques. Rather, emotional provocation works as a strategy because “our attitudes to crime- our fears and resentments” are part of a crime-complex that “produces a series of psychological and social effects that exert an influence upon politics and policy” (2000, p. 368). In adding to this he explains:

The perceptual and emotional strands of this collective experience have been taken up, reworked, and inflected towards particular outcomes by politicians, policy-makers and opinion-formers: the political process is, in that sense, determinative. But it would be a mistake to focus all of our attention upon these processes of political transformation and representation. The newly emerging policies of crime control also depend for their possibility and the popular resonance upon the pre-existence of certain widespread social routines and cultural sensibilities. These routines and sensibilities are the extra-political conditions that now make policies of this kind possible...and desirable... (2001, p. 139).

In other words, as illustrated in Chapter 2, there were a series of social, political and economic changes that have led us to a complex of narratives and a collective common-sense facilitating bifurcated criminologies and contradictory crime control strategies by which fear and insecurity have become a part of our cultural script. It is as Foucault explained: truth is a system of ordered procedures; a circular relation with systems of power which produce and sustain it (1976/1980, p. 133). As such, a highly emotive and populist crime control (Denial) strategy is effective to state sovereignty by reproducing the fear it is said to assuage.

Politicization

Garland argues that some legislative measures not only intend to reassure the public that something is being done but also that, in spite of evidence to the contrary or protests from various groups, this will often be met with “a form of denial that is ... hysterical in the clinical sense of that term” (p. 459). As an example, Garland refers to British Home Secretary Michael Howard’s *volte face* of 1993, introducing mandatory sentencing, in which he claimed that “‘prison works!’- only months after his own government had publicly declared that ‘imprisonment is an expensive way of making bad people worse’” (p. 132).

Similarly, as noted earlier in the ‘appearances’ section, in the context of the *Truth in Sentencing Act*, and in spite of evidence rejecting the claim that justice professionals let, or in some cases encourage offenders’ abuse of the CJS, this opposition was met with unfounded denial (p.459). Unfortunately, this is not the only example to be found in the Bill’s readings.

The Bill was also challenged in terms of its strict limitations in granting credit for time served:

(T)he denial of bail has nearly doubled over the last decade, to the point where many prisons are extreme programs. The remand conditions in many Canadian prisons now violate the UN standard minimum rules... (Second Reading in the House of Commons, p. 41).

In spite of the wide-spread understanding that conditions in remand can be incredibly oppressive and fail to meet the minimum standards outlined by the United Nations, this point was once again met with denial. This excerpt came from a Member quoting Professor Tim Quigley from the University of Saskatchewan who had written that the Bill would not make Canada safer (p. 41). In response, the academic opinion of a published professor was dismissed in that although “there are times to listen,” there are also occasions that “their (academics’) remarks should be viewed with detachment” (pp. 41-42). Also said, there are times to listen but this was not one of them.

Further to this, a Bill proponent was asked to provide evidence in support of claims that excessive credit for time served resulted in overcrowding in remand²². The response was, that while there was no statistical evidence on hand, it was simply based on logic (Second Reading in the Senate, p. 8). The fact that no evidence, empirical or otherwise, is required (and is actually openly rejected) to make decisions on a process that would affect the vast majority of the CJS if not the whole is insulting. These strategies of Denial are in line with Garland’s assertions and are serving another purpose than controlling crime in that:

²² ...as the Bill would allegedly relieve some pressure of overcrowding in remand by dissuading those who would opt to purposely delay their trial and sentencing processes in order to receive the maximum credit allowed.

(I)n the face of evidence that crime does not readily respond to severe sentences...or a greater use of imprisonment...(British) government (like others elsewhere) has frequently adopted a punitive ‘law and order’ stance that seeks to deny conditions which are elsewhere acknowledged and to reassert the state’s power to govern by force of command (1996, p. 460).

A strong ‘law and order’ stance therefore, is not one to mitigate crime or its effects. Rather it serves another purpose: to deny failure and reassert the state’s claim to power.

Garland contends that similarly, even in the face of opposition, “few politicians are willing to oppose a policy when there is so little political advantage to be gained by doing so” (2001, p.132). This is clearly seen in the reading of the Bill for, although the *Act* is criticized by opposing parties and considered to be largely ineffective, they nevertheless concede TIS overall (Second Reading in the House of Commons, pp. 2, 12, 14, 42, Second Reading from the Senate, p. 16). And, in spite of evidence opposing the Bill’s rationale, this is met with more rhetoric in the form of ‘if you’re not with us, you’re against us’ and that everything being done is for the sake of the Canadian people (Second Reading in the House of Commons, pp. 38, 51, 62 and Second Reading in the Senate, pp 3, 4, 5, 6,). As such, challengers of the Bill in any true nature run the risk of alienating themselves from their colleagues but even more so, from the Canadian public; a risk that is politically unacceptable. According to Garland, this tactic is much like the decision to wage war: “the decision to inflict harsh punishment”, such as truth-in-sentencing, “...exemplifies the sovereign mode of state action” (2001, p. 135).

As previously noted, the strategies of Denial and punitive response, represent an “authoritative intervention to deal with a serious, anxiety-ridden problem” (Garland 1996, p. 460) and to re-assert state power (p. 460, 2001, pp. 133-135). The concept of truth in

the case of TIS in the Canadian context represents what Garland refers to as the “political uses of danger” (Mary Douglas cited in Garland, 1996, p. 461). This aptly describes the strategies here, in which:

...offenders are treated as a different species of threatening, violent individuals for whom we can have no sympathy and for whom there is no effective help. The only practical and rational response to such types is to have them ‘taken out of circulation’ for the protection of the public (p. 461).

This is exactly what the Bill would functionally be doing: incapacitating offenders for extended periods of time. As such, where the success of the CJS has been redefined in terms of its ability to manage crime (adaptation), keeping criminals off the streets ensures the state’s ability to claim (falsely) “effective crime control” (Garland 1996, p. 460) and, in turn, the strength to “force and command” (p. 460). This sheds some light on Garland’s conclusion that “...punitive outbursts and demonizing rhetorics have featured much more prominently in weak political regimes than in strong ones” (p. 462). It has already been established that the sovereign state has failed in general, has been under attack on several fronts, and has proven unsustainable (pp. 448, 449). Nevertheless, it is an apparatus that has been well established within western culture and is deeply enmeshed in the genealogy of our social fabric yet contradicts our post-social, neo-liberal society (p.448). As a result, punitive practices politically reassert state power at a time during which its claim to it has been deeply opposed.

The discussion concerning the cyclical relationship between truth and power and its relation to domination at the outset of this chapter was intended to explain how the contradictory criminologies and corresponding strategies of the current regime have become part of our cultural script according to Garland, one which reaffirms a business

ethos (administrative state, crime control and the individual), and the other which reactivates state sovereignty. These divergent criminologies and strategies exist because of the contradictory beliefs and claims that have been accepted and constrained to become part of our common-sense narratives (Garland, 2000, p. 368)²³. However, their consequences are responses to crime which are also contradictory in nature. TIS, and Bill C-25 specifically, is an example of this conflict, for although it refers to the reform of the CJS it is actually concerned with reproducing the myth of sovereign might.

Initial Observations: Ideological Overlap and the Intimacy of Conflict

Garland indicates that the strategies of Adaptation and Denial are not only ideologically dualistic but logistically dichotomous as well (p.131). He suggests that, while the administrative arm of the state typically engages adaptive responses, strategies of denial are generally employed by the political machine (p. 131). As we have seen, I would posit that this is indeed the case (at least as far as the present study of the political forum is concerned) but they are involved in a complex relationship in which they are connected in spite of their contradictions, and that two key findings or, observations can be summarized stemming from the three major arguments: 1/ that conflicting criminologies exist in the Canadian context and although they are divergent, there is some ideological overlap, and 2/ that although both are present, one is dominant.

²³ As discussed in Chapter 2, the structural and criminological changes which took place over the last century have resulted in the contradictory beliefs and claims that are both informed by, and reproduce the current predicament of crime control.

1. Ideological Overlap

In studying Bill C-25, *The Truth in Sentencing Act* House of Commons and Senate readings, Garland's conceptual framework provided a meaningful way of interpreting the discourse surrounding the Bill's implementation in the political setting. The divergence between the strategies of Adaptation and Denial, as well as their underlying criminologies, were illustrated and defined briefly as follows²⁴ (also outlined in Chapter 3):

- Criminology of the Self [crime happens- it is a part of normal life (1996, p. 446)];
- Criminology of the Other [criminals are not like 'us', they are monsters/anomalies/non-conformists (1996, p. 461)];
- Strategies of Adaptation [specifically, the "rationalization of justice, the commercialization of justice, defining deviance down, redefining success, concentrating upon consequences; and redistributing responsibility" (p.113)]; and,
- Strategies of Denial [e.g. appearances (public perception), emotionalism, politicization (three overarching themes), law-and-order, punishment, prison works, truth-in-sentencing (1996, pp. 459-463; 2001, pp.132-135)].

As has been discussed at length throughout, the foregoing definitions illustrate the contradictions between the criminologies that make up the current regime, though Garland argues that it is not by miracle or chance that they are at odds. Instead, the present response to the predicament of crime control is part of a greater crime complex which has been characterized by structural change, our attitudes about crime, our

²⁴ For additional discussion of how Garland's concepts were coded, please refer back to Chapters 2 and 3.

insecurities, anger and common-sense narratives that have become “settled social facts” only to be reproduced by cultural scripts (Garland, 2000, p. 368).

In light of the differences inherent to bifurcated rationalities, O’Malley (1996) suggests in his discussion concerning the shifts in criminological discourse from social to post-social that:

As long as the politics of the social predominated, the alignment of Left and Right in their suspicion of the state was always hypothetical - it rarely occurred that they were required directly to address their intersections on such matters as opposition to state intrusiveness, of welfare as creating dependency, for the state stood between them. The re-figuring of the social and thus of the state has produced new collisions, areas of direct confrontations and the potential for new (and perhaps repugnant or unanticipated) convergences. The old alignments of Left and Right become more problematic, when - as in the figure of the victim - opposing positions not infrequently find themselves running in the same direction, seeking similar goals... (p. 31).

Although O’Malley, in this paragraph, is referring specifically to criminological discourse as shown in research, it is also applicable to the dualistic nature of criminological discourse as described by Garland (1996, 2001). The shift away from welfarist or “social” assumptions in governance has led to two opposing rationalities that collide and converge in places we have not yet seen.

In light of Garland’s explanation of the conflicting responses to the current predicament, it is not particularly surprising that, in reading the parliamentary debates there was the emergence of some ideological overlap between the two criminologies:

And while the neo-liberal agenda of privatization, market competition and spending restraints shaped much of the administrative reform that government imposed on criminal justice agencies behind the scenes, it was the very different neo-conservative agenda that dictated the public face of penal policy. Instead of acknowledging the limits of the sovereign state and adapting to them, the political agenda governing high profile

policies was to ‘restore public confidence’ in criminal justice while asserting the values of moral discipline, individual responsibility and respect for authority (2001, p. 132).

The above is true as it relates to Bill C-25 in terms of how the criminologies of the Self and Other inform associated processes. It is as Garland states; they are, at their core, at odds. However, as he also states, their coexistence is not “by some miracle of system alignment” (p. 138). In addition to the “deep ambivalence” referred to by Garland, there are also certain characteristics that they have in common. For example, of those listed in the passage above (Garland, 2001, p. 132), two of the key neo-conservative characteristics noted in the readings were those of “public confidence” and “individual responsibility.” Although Garland denotes these points as informing strategies of Denial, we also see these characteristics in strategies of Adaptation as well.

As indicated throughout this chapter, the restoration of public confidence appeals to populist agendas but it is also a strategy meant to adapt to failure. Adaptations by administrative agencies include the rationalization and professionalization of justice, the commercialization of justice, re-defining success and failure and adapting to failure. These responses value the public as a client, and through the implementation of administrative processes, state agencies attempt to re-define their role in relation to public perception (Garland 1996, pp. 456, 459; Garland, 2001, 117). At the same time, although individual responsibility reproduces the criminology of the Other, it is also consistent with one of the fundamental assumptions associated with redistributing responsibility (Adaptation) in that all actors are ultimately responsible for their actions, and to some extent their fate (Garland, 1996, p. 453, 458).

Furthermore, it was noted throughout the Bill's readings that in some instances the value placed in administrative processes were used as a justification for the political agenda:

Although there is no mathematical formula for calculating this credit, courts have routinely appl(ied) a credit of two to one for the time spent in presentencing custody. Courts have also been known to give credit on a three-to-one basis and to grant less than a two-to-one credit. In other words, the court will deduct from the sentence it would otherwise impose, a multiple of every day a convicted offender has spent in remand.

I am sure we have all read newspaper accounts of sentences that seem to be far shorter than they should be....with the impressing that the offender "got off" lightly.

...
Bill C-25 will provide a more consistent approach to this issue (Second Reading from the Senate, p. 2).

Although the apparent concern is with the failure of an administrative process and the need to adapt to become more measurable and accountable, the underlying emphasis is on the abuse of the public by offenders who should not be entitled to more than they deserve thus underscoring the fundamental assumptions associated with the criminology of the Other. Garland elaborates on this intimate conflict:

There is also pressure upon government to respond to criticisms of the adaptive strategies discussed above, particularly when the administrative tendency to define deviance down produces results which sections of the public and the media find unacceptable (1996, p. 460).

Bill C-25 is an example of the pressure experienced by the State to deny an administrative adaptation. The unofficial allowance of the two-for-one credit based on judicial discretion was an adaptation to make equitable something that was seen by some state agency actors as being unjust. As a result of negative public and media attention as

identified throughout Chapters 4 and 5, there was a call for the state to re-assert its power to “compensate(s) a failure to deliver security to the population at large” (p. 460).

So, there is no question that the criminologies are dualistic fundamentally and in actual application. However, they can be engaged at the same time in a “battle for truth” (Foucault, 1976/1980, p. 132) only to arrive a seemingly uniform conclusion (e.g. the passing of punitive law).

2. Administering State Power through Administrative Reform

Also throughout this chapter, we saw that the dominant truth assumptions were defined in terms of the strategies of Denial. As such, as Garland would have predicted, the decision by the political machine to implement Bill C-25 was dominated by these same strategies for, although various political actors contested the Bill, as members of the state they all arguably had the same interest in mind: reassertion of the sovereign. However, this objective was enabled by adaptive techniques such as those identified in that section. To this end, the Bill was read a third time and received Royal Assent on October, 22nd, 2009.

Much in the same way that strategies of Adaptation were subverted by those of Denial in the political setting of parliamentary debate, so too (and even more so) was welfarism in the Bill’s passing. Garland (1996) refers to welfarism as:

...the excluded middle ground...which depicted the offender as disadvantaged or poorly socialized and made it the state’s responsibility-in social as well as penal policy- to take positive steps of a remedial kind (p. 462).

Welfarist ideology can certainly be seen in the readings, generally by actors playing the challenge function in relation to the Bill. In reality, the former credit for time served

permitted judicial discretion in acknowledging that where an accused was not released on bail prior to sentencing, that the conditions of that term of incarceration would be taken into account. To this end, one Member referred to an offender who “slept on the floor next to the toilet...he ate his meals on the toilet...Living in filth, [he] developed a skin disease” (Second Reading in the House of Commons, p. 43). It was also noted by the same Member that:

...was not in the 1800s. This was in 2002 in a detention centre in metropolitan Toronto...He was in pretrial custody under those circumstances. He did get two for one when he was ultimately sentenced (Second Reading in the House of Commons, p. 43, also referenced in the Second Reading in the Senate, p. 15).

The Member went on to state that the provision for credit for time served is a safeguard in accordance with the *Canadian Charter of Rights and Freedoms* against cruel and unusual punishment (p. 44). As such, at issue was that justice as defined by ‘law and order’ was apparent in the proposed amendments in the Bill; fairness was not (Garland, 1996, p. 460). There is a serious social concern here: the public does not understand that innocent (until proven guilty) people are regularly facing the truly deplorable conditions of our remand centres. Furthermore, an opposing Member expressed concern that the problem was one, not related to generous crediting, but relating to a lack of resources and moreover, that the Bill would have “little effect on reducing the remands” (Second Reading in the House of Commons, p. 47, also referred to in Second Reading in the Senate, p. 9). The response to these challenges was one of insecure accusation:

I had understood that the NDP would support our government in trying to protect Canadians. He said that most Canadians did not understand pretrial custody. Essentially he is saying that Canadians are ignorant when it comes to the two-for-one and three-for-one debate (Second Reading in the House of

Commons, p. 51, reference made in Second Reading in the Senate, p. 2).

Therefore, regardless of the conditions in which we house our innocent (as, in remand, they have not yet been sentenced), any disagreement with the Bill is interpreted as a threat and dismissed as such.

Again, we see that it as Garland opined:

One might say that we are developing an official criminology that fits our social and cultural configuration—one in which amorality, generalized insecurity and enforced exclusion are coming to prevail over the traditions of welfarism and social citizenship (Garland, 1996, p. 462).

As such, although the principles of welfarism may still exist, any challenge to the dominant criminological discourse is subverted by the criminologies underpinning adaptation, but even more so, strategic denial. As O'Malley (1996) indicated: "...many of the post-social politicians do not reject the social per se, but rather the sense of the social as the primary focus..." (p. 27). In other words, while social discourse exists in political discourse as in the case of Bill C-25, it is no longer the primary focus. Instead, Denial and Adaptive strategies and market (competitive) and community (cooperative) (p. 28) values have seen that social welfarism is comfortably displaced by another definition of "truth."

This displacement occurs much in the same way that O'Malley (1996) described technologies of the "social":

...there are many other discourses in criminology, medical, biological, psychological, and so on...these were ordered as technologies within a regime of the social. While their internal problematics were by no means necessarily social, during this era their role was defined extensively in terms of policies of social planning. Thus, for example, psychological criminologies were drawn into this social orbit, becoming techniques or elements of broader social policies (p.26).

Similarly, while various discourses were used as ‘technologies’ within the social regime, so too are Adaptation and Denial used as technologies in the current post-social political context; truth assumptions underlying criminologies of the Self/Adaptation are present and dominant in the sense that they preside over other criminologies such as social-welfarism, but in this case they are subjugated by the dominant knowledges informing the strategies of Denial, as the goal of TIS in the political forum, is to reassert the political interest in sovereign power.

In this way, the new legislation is *prima facie* represented as an administrative improvement to the CJS but is fundamentally the reactivation of the myth of the sovereign state. *The Truth in Sentencing Act*, upholds both the values of incapacitative punishment and administrative processing. The Bill itself was an amendment to ostensibly enhance the accountability and transparency of the sentencing process by creating built in measurables, indicators and deliverables in the interest of CJS clientele. At the same time, the implementation of the Bill is fraught with all the insecurity and emotion of a fire and brimstone call to repentance. Garland explains this ambiguity:

State sovereignty over crime is simultaneously denied and symbolically reasserted. The limits of police and punishment are recognized in one policy only to be ignored in another. One strategy seeks to build institutions better suited to the conditions of late modernity, another cranks up the old power of the state in an attempt to overcome these same conditions (2001, p. 138).

The same can be said for the implementation of legislation in the political environment of parliament, in which there are political actors discussing a highly politicized topic. However, the passing of legislation is also a highly administrative process with the objective of obtaining administrative results. In this setting, members of parliament become administrative agents pushing political ideas. The readings also

indicate that the process and discussion relating to the Bill, simultaneously reasserts state power while also calling into question the limitations of its own CJS. Ultimately however, in the greater context of the state overall:

...while agency administrators, government departments, and local authorities have been busy de-escalating the criminal justice response to crime or building a new infrastructure of 'preventative partnerships'. Elected officials and legislatures have been escalating the penal response and promoting what amounts to a strategy of punitive segregation (2001, p. 138).

Identifying the flaws within the CJS through a punitive lens, as in the claim that Bill C-25 will help to fix the problem of crime (Denial), is also a commitment by the political arm of the state. As the evidence demonstrated, it is a mistaken claim that will indeed escalate the penal response, placing value in incapacitation over rehabilitation in spite of the belief that longer sentences do not reduce crime unless incapacitation is forever (Second Reading in the House of Commons, p. 40, Second Reading in the Senate, pp.8, 9).

The result of the Bill, and others like it is an increased burdening of the administrative machine in which "high rates of imprisonment represent an ineffective waste of scarce resources" (Garland, 2001, p. 138). As such, Garland's theory is indeed relevant in the Canadian context for at once, government agencies are attempting to adapt to late modernity, while also being required to, as demonstrated in the Bill's readings (Second Reading in the House of Commons, Second Reading in the Senate, *passim*). At the same time, parliament is 'cranking' up the old powers of the state in an attempt to overcome post-modern conditions, which at their core reject the sovereign as the sole administrator of control.

Chapter 5: Conclusion

Bill C-25, *The Truth in Sentencing Act*, received Royal Assent in October 2009. This amendment to the Criminal Code, intended to reduce credit afforded for time served in pre-sentence custody is indicative of a punitive shift experienced by other western states such as the USA and the UK. There is substantial literature (Braithwaite, 2000; Chesney-Lind and Mauer, 2002; Christie, 2000; Donahue and Moore, 2008; Foucault, 1976/1980; Garland, 1996; 2000; 2001; Greene 2006; Snider 1998; Turner, Greenwood, Fain and Chiesa, 2006) concerning various aspects of the increased punitiveness that has taken hold in states that had previously employed a rehabilitative, welfarist model. There appeared to be a gap, however, regarding the underlying themes of this shift, and the role TIS plays in it, within the Canadian context.

As noted in Chapters 2 and 3, much of the literature surrounding TIS activities generally, tends toward an emphasis on administrative, correctionalist and critical criminology, but that these are often subjugated, or indoctrinated, by the dominant regime of truth in their assumption that “law as a unitary object of knowledge” (Sargent, 1991, p.1). To reiterate Sargent (1991), the doctrinal tradition in legal scholarship is almost singularly relied upon as it is viewed as “providing a link between law as a field of intellectual inquiry and law as a field of professional practice” (p. 1). This link is significant as it creates a field through which, as O’Malley argues, competing truth claims are excluded and one where alternative scholarship tends to become administrative, failing to address underlying themes or be reflexive concerning its contribution to social theory (1996, p. 35). Although Sargent (1991) is even skeptical that

critical studies or interdisciplinary ones are free of indoctrination when it comes to breaking from the doctrinal tradition specifically related to legal academy, Hunt (1986) suggests that more generally, understanding law as part of a larger discussion and one that is concerned with the broader problem of human subordination and domination, is what gives an alternative approach its value.

As such, an interdisciplinary approach and socio-legal perspective, was useful in addressing the underlying themes reproducing the current regime of truth in sentencing (as exemplified in Bill C-25). This approach provided a means of looking at law's relationship to power, politics and domination through an alternative lens, and added to its usefulness was the space it made for reflexivity in looking at the theory that informs this relationship by at once engaging, and testing Garland's sensitizing themes in explaining it.

Garland's framework is defined by linkages made between social change and political and administrative reform resulting in two dominant and conflicting criminologies (Self/Everyday Life and the Other) underpinning the equally bifurcated strategies of Adaptation and Denial. Informed by this theoretical framework, the objective was to illustrate a possible explanation for Canada's current predicament of crime control. In doing this, I set out to advance the following three key arguments:

- a) That the 'Truth' in sentencing is premised upon contradictory and divergent understandings of criminal behaviour, human nature, and crime control and correspond to what Garland has outlined as a 'criminology of the Self'/Everyday Life on the one hand and 'criminology of the other' on the other hand.

- b) The conflicting rationalities outlined by Garland (criminologies of the Self and the Other) can be found within the *Truth in Sentencing Act* and its formative discussions, meaning that the deployment of this *Act* in practice will likely produce the contradictory Strategies of Adaptation and Denial.
- c) Although touted as administrative reform (which would necessitate strategies of Adaptation), the *Act* also re-asserts state/sovereign control over issues of crime and its control (reproducing the myth of sovereign power) via strategies of Denial.

In light of the foregoing, Garland's theory was unpacked and tested as a means of looking at law and crime control from a socio-legal perspective. The goal was to escape the doctrinal tradition in investigating the *Truth in Sentencing Act* and look at crime legislation and its processes differently in an attempt to offer a socially significant explanation of the TIS phenomena and its relation to power, politics and domination.

To that end, as reflected in Chapter 4, the analysis of bill proceedings was done to ascertain whether Garland's interpretation of the western predicament of crime control extends to the Canadian context and to understand what that implies with regard to the current regime. The outcome itself was neither surprising nor predictable, for although two inconsistent criminologies were indeed found to exist side-by-side, this is exactly what Garland claimed would transpire:

Adaptation, denial and acting out. If these ambivalent responses to the crime control predicament have produced policies that, however incoherent in their own terms, fit remarkably well into the broader framework of contemporary social and economic policy, it is not by some miracle of system alignment. It is because neo-liberalism and neo-conservatism shaped the ideological environment in which criminal justice decisions were made, and because these wider political currents are characterized by the same deep ambivalence in their relation to

the realities and predicaments of the late modern world (2001, p. 138).

Therefore, although the criminologies of the Self/Everyday Life and the Other result in two drastically different strategies they are not “two diverging strategies simply the twin prongs of a concerted policy for the control of serious crime on the one hand, and minor crime on the other” (1996, p. 463). More accurately, “They operate on quite contradictory assumptions about the character of offending and the possibilities for criminal justice interventions” (p. 463). Furthermore, the “rhetoric, perceptions and emotions invoked by the punitive strategy have the effect of undermining” adaptive strategies, making it more difficult for those engaging the latter “to carry their policies through” (p. 463). Where one strategy is adaptive and “characterized by a high level of administrative rationality and creativity...adapting to its limitations”, the other is a more “politicized, populist, regressive one” (2001, p. 131), which act out in that they “engage in a form of impulsive and unreflective action, avoiding realistic recognition of underlying problems...” (p.133). As such, the contradictory criminologies, even while one might, at times, be more dominant than the other, nevertheless comprise the dominant regime of truth which requires not one, but a dual strategy of control, each underpinned by two very different rationalities or logics.

In analyzing the documentation and in applying these conflicting criminologies of the Self/Everyday Life and the Other and their strategies in relation to the text, it was ultimately found that they are not only present within TIS, but that there wages a complex ‘battle for truth’, political power and domination, and that TIS is constructed by this conflict. Moreover, it was determined that within this conflict, at least in the political

forum, that the hallmarks (e.g. appearances, emotional response, politicization) of a reactive strategy of Denial are prevalent.

In other words, the analysis of Bill C-25 confirmed what Garland had suggested: that competing strategies exist and that they are not only ideologically dualistic but logistically dichotomous as well (p. 131). He indicated that while the administrative arm of the state typically engages adaptive responses, strategies of denial are generally employed by the political machine (p. 131); however, in the analysis of Bill C-25, leading from this two key conclusions were drawn in addition to the three major arguments: 1/ that conflicting criminologies exist in the Canadian context and although they are divergent, there is some ideological overlap, and 2/ that although both are present, one is dominant. This was observed in the last chapter to be true for although adaptive strategies were utilized under the pretense that it would bring much needed administrative reform, in fact, the surrounding debate, the public and media attention resulting in the push for state sovereignty, and the Bill's implementation, fundamentally denotes the characteristics inherent to the strategies of Denial. The passing of Bill C-25, *The Truth in Sentencing Act*, signifies a punitive turn and the rejection of evidence-based change, one of the cornerstones of adaptation. Its mere existence represents the cyclical relationship between truth and power and the reassertion of sovereign domination by the State.

Implications

Garland provided us with a means and model to see an outcome before it has occurred based on the applicability of his theory to crime control law making in Canada. Bill C-25, *The Truth in Sentencing Act* was passed on October 22nd, 2009. However, it

was only one in a series of many such as Bill C-14 *An Act to amend the Criminal Code (organized crime and protection of justice system participants)*, Bill C-15, *An act to amend the Controlled Drugs and Substances Act*, and Bill S-4 “to provide law enforcement officials with the tools they need to protect Canadian families and businesses from identity theft” (Second Reading from the House of Commons, p. 61) to name a few. The impact on Canada’s CJS at all levels, will be and doubtless is, logistical as well as social. Over time, as Garland states, “there has been a perceptible shift in emphasis, with adaptive solutions being increasingly eclipsed by more politicized, more expressive alternatives” (2001, p. 113) as is the case here. As a result, the CJS, as informed by the duality in criminological thinking, in both the administrative and political fields, have led to the bifurcation of the System itself. This contradiction is precisely what has made initiatives such as TIS possible as it can be presented as administrative change while still serving its sovereign objective to deny state failure.

The outcome of the implementation of Bill C-25, however, has doubtless perpetuated the motion of state agencies having to once again adapt to a politically motivated initiative. And, for all the talk of partnerships, agencies have very limited control over whether a Bill comes to pass. As such, in the current context there is little option but to take responsibility for the requirements imposed upon them and adjust accordingly. Since they are accountable for resources that they would receive to implement the necessary administrative changes, agencies must develop processes and expend immeasurable effort adapting to a plan that evidence suggests will result in yet another failure (Garland 2001, pp. 113-131, 138). In other words, the logistical

implications resulting from the implementation of Bill C-25, *The Truth in Sentencing Act*, is simply said to be more of the same:

Law making becomes a matter of retaliatory gestures intended to reassure a worried public and to accord with common sense, however poorly these gestures are adapted to dealing with the underlying problem (p. 134).

In spite of this pessimism, it should “come as no surprise to observe that administrators and criminal justice professionals are often implacably opposed to legislation of this kind and tend to dilute its effects in implementation” (p. 134). For example, in *R. vs Johnson*, the presiding judge used his discretion to reduce the overall sentence instead of relying on the two-for-one option to reflect harsh conditions in remand centres and he has urged others to do the same (Legal Report: Forensics and Criminal Law, May, 2011 and The Globe and Mail, “The Last Laugh on Truth and Sentencing, August 23rd, 2012).

It is conceivable then, that administrators, where possible will attempt to circumvent the rule (the constraint) where it is seen to be unjust. Of course, some agencies will have more flexibility than others. For instance, while some discretion exists with regard to the judiciary, Federal Corrections and the Parole Board of Canada have limited agency with regard to how many offenders serve their sentence and for how long once that sentence has been pronounced.

Concerning the Bill itself, there are some very interesting implications in terms of Garland. As noted throughout the case, Garland’s sensitizing concepts lend a theoretical framework with which to understand the Bill and as to what it means in the present Canadian context. In fact, if we accept the ‘bottom-up’ assumptions of adaptation and denial: that the public is the alleged driving force behind claims for change, then based on

the evolution of our socio-political world, the implementation of Bill C-25 arguably reflects the current criminologies of Canadian society overall.

If this is true, then the conception-through-implementation of Bill C-25 illustrates a shift in what Garland referred to as “penal welfarism” (1996, p. 448) and, perhaps most interestingly, the exacerbation of a lack of faith in the professional, or, “nothing works” ideology extending to the judicial, and justice system as a whole (446-459, 2001, p. 102). The Bill illustrates that the move toward responsabilization, privatization, partnerships, measurability, deliverability and punitiveness applied by the sovereign state and state agencies alike, either represent what the rest of society wants, a miscommunication, or manipulative strategies engaged by the political machine. Doubtless, as Garland (2000) implies, there are those of us who view harsher punishments as just, as there are those who still believe in the welfarist philosophy (p. 368- crime complex). Much like the shift away from welfarism, we as a society will doubtless find ourselves at another crossroads. In Garland’s 2001 discussion on the dialectic of freedom and control, he states that:

Historians have pointed to a recurring pattern of social development in which the upheaval and disruption characteristic of periods of social change subsequently give way to efforts and consolidation and the re-imposition of order and control (pp. 197-198).

There is an ebb and flow to social change; however, “so long as offenders...appear as ‘other’ and as chief source of their own misfortune, they offer occasions for the dominant classes to impose strict controls without giving up freedom of their own” (p. 198). Our society is no longer one that believes in citizenship as the “high ideals of solidarity have been eclipsed by the more basic imperatives of security, economy, and control” (p. 199). Into the future, we as a society will either plunge

forward with neo-liberal/neo-conservative approaches to crime, or, we must re-invent the definition of truth once again (but this is not necessarily in the interest of the dominant classes).

However, if we continue along this path, a frightening thought may be realized in that “[A] government that routinely sustains social order by means of mass exclusion begins to look like an apartheid state” (Garland 2001, p. 204). Doubtless, this is not the legacy that Canada, state and people, wants to impart its future generations. Our vehicles for change are as yet unknown but may come in the form of economic prosperity or extreme downturn and strong leadership. Garland indicates that at the beginning of the 21st century, the USA saw an unprecedented economic boom. In spite of this prosperity, this did not impact the momentum of punitive justice and security (p. 203). Of course, we now know that what has come to pass is a recession that has crippled many countries across the globe including the US. Perhaps then, the boom belied a false sense of security translating to insecurity in other areas (e.g. fear of crime)? Although the boom was unprecedented, should it follow that it had as widespread an impact as did the boom of the 1950s? If we saw true economic prosperity that brought a new way of life to so many could/would it once again change the structure of society? Or perhaps, an economic downturn would initiate the shift, as exemplified in the frustration we have since seen demonstrated in solidarity projects such as the Occupy Wall Street movement.

Garland also suggested that “punitive outbursts and demonizing rhetorics have featured much more prominently in weak political regimes than in strong ones” (1996, p. 462). Perhaps all that is required is confident leadership to restore public faith in the state and/or affect change. Under the Obama Administration in the US we have seen the

closure of Guantanamo Bay and attempts to introduce healthcare, both of which in their own way value citizenship differently, a way from which the current Canadian regime seems to be moving away.

Future Research

Ironically, Garland indicated a desire for a “more extensive work of international comparison” which could show “how other societies such as Canada...have experienced the social and economic disruptions of late modernity without resorting to these same strategies and levels of control” (2001, p. 202). There is no question that we are not at the same level of punitiveness as the USA and some other countries, as can be demonstrated by their ratios of incarceration and methods of management; however, in this thesis, I have attempted to demonstrate that our rationalities are not so different. As such, an area for future research would be to further study *if* Canada is different and *how*. Perhaps, if we *are* different, it is because we already have certain welfarist structures well in place, within which we have put considerable value (e.g. healthcare). Perhaps it is because we have never had the economic prominence that the USA or the UK has enjoyed in its history. Maybe, we are different in that our politics tend to be more moderate. On the other hand, maybe we are simply behind the times in our move toward hysteria. Regardless, this is an area worthy of additional research if we are interested in preventing the levels of punitiveness and disparity seen by other neo-liberal states.

Another area of study that we might benefit from would be further analysis of the specific genealogical patterns that have led countries like the USA and the UK to their present condition; perhaps we too are headed toward the privatization of prisons. The

many crime-control legislative amendments tabled by the Conservative government all seem to mandate longer terms of incarceration to an increased number of offenders. Certainly, where mass-incarceration occurs, tax-dollars alone cannot sustain such an infrastructure.

With regard to the current predicament Garland states that:

...unlike the penal-welfare strategy, which was linked into a broader politics of social change and a certain vision of social justice- however flawed in conception and execution-the new penal policies have no broader agenda, no strategy for progressive social change and no concern for the overcoming of social divisions. They are instead, policies for managing the danger and policing the divisions created by a certain kind of social organization, and for shifting the burden of social control on to individuals and organizations that are often poorly equipped to carry out this task (1996, p. 466).

In other words, we are working with a reactive and vengeful approach to social ills. At least welfarism was to some extent supported by a criminology we could be proud of in spite of its flaws. Perhaps instead of constantly bandaging a wound that will never heal in the dark, we should be asking ourselves where we went wrong. Going on in this way cannot be effective. If this is truly the case, and nothing works, then... what works?

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